

IN THE MATTER OF THE URGENT PETITION FOR THE RELEASE OF PRISONERS ON HUMANITARIAN GROUNDS IN THE MIDST OF THE COVID-19 PANDEMIC,

G.R. No. 252117. July 28, 2020

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Antecedents

On April 6, 2020, Dionisio S. Almonte, Ireneo O. Atadero, Jr., Alexander Ramonita K. Birondo, Winona Marie O. Birondo, Rey Claro Casambre, Ferdinand T. Castillo, Francisco Fernandez, Jr., Renante Gamara, Vicente P. Ladlad, Ediesel R. Legaspi, Cleofe Lagtapon, Ge-Ann Perez, Adelberto A. Silva, Alberto L. Villamor, Virginia B. Villamor, Oscar Belleza, Norberto A. Murillo, Reina Mae A. Nasino, Dario Tomada, Emmanuel Bacarra, Oliver B. Rosales, and Lilia Bucatcat (petitioners) filed a petition before this Court entitled "In the Matter of the Urgent Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the COVID[1]-19 Pandemic." Here, petitioners allege that they are prisoners and are among the elderly, sick, and pregnant population of inmates exposed to the danger of contracting COVID-19 where social distancing and self-isolation measures are purportedly impossible.[2] As such, they are invoking this Court's power to exercise "equity jurisdiction" and are seeking "temporary liberty on humanitarian grounds" either on recognizance or on bail.[3] Moreover, they are also asking the Court to order the creation of a "Prisoner Release Committee" similar to those set up in other countries to conduct a study and implement the release of prisoners in congested penal facilities. In seeking their provisional release on recognizance or bail, petitioners essentially argue that: (a) their continued confinement which poses a high risk of contracting COVID-19 is tantamount to cruel and unusual punishment proscribed under the Constitution;[4] (b) the United Nations (UN) standards, particularly the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), imposes a duty on the part of the State to protect the health and safety of prisoners consistent with the guarantees of the right to life;[5] (c) the government's response to the pandemic is not enough to protect the safety of the inmates;[6] (d) the government should take a cue from other countries which undertook measures to decongest their jails by releasing eligible prisoners;[7] (e) the Court may brush aside procedural rules and grant temporary liberty based on humanitarian reasons and equity jurisdiction;[8] and (f) it is not feasible for them to file petitions for certiorari with the trial courts due to the Luzon-wide enhanced community quarantine (ECQ).[9]

For respondents' part who are represented by the Office of the Solicitor General, they filed their comment opposing petitioners' plea for their temporary release and for the creation of a Prisoner Release Committee and argued that: (a) petitioners are valuable members of the Communist Party of the Philippines — New People's Army — National Democratic Front (CPP-NPA-NDF) who have committed heinous crimes and are merely taking advantage of the current public health as well as the "fickle arena of public opinion" situation in seeking for their temporary release based on humanitarian reasons;[10] (b) the government has adequate medical facilities, personnel and measures to address the threat of COVID-19 in jails and other detention facilities;[11] (c) petitioners have ample remedies under this Court's several circulars which addressed the needs to decongest the jails in response to the COVID-19 pandemic;[12] (d) petitioners violated the doctrine of hierarchy of courts;[13] (e) the grant or denial of bail, the evaluation of petitioners' respective medical conditions, and the determination of

whether or not the evidence of guilt is strong are questions of fact which should be determined by the trial courts;[14] (f) petitioners cannot be temporarily released on recognizance because they were charged with capital offenses;[15] (g) petitioners cannot be granted provisional liberty based on equity because governing laws exist;[16] (h) the doctrine espoused in *Enrile v. Sandiganbayan*[17] is inapplicable because petitioners present a threat to public safety due to their supposed membership in the CPP-NPA-NDF;[18] (i) releasing petitioners violates the equal protection clause as there is no substantial difference between them and the rest of the detainees as everyone is equally vulnerable to COVID-19;[19] and (j) the Philippines is not bound to adopt the manner of decongesting jails undertaken by other countries as they operate under their own set of laws.[20]

Issues

-I-

Whether or not the instant petition filed directly before this Court may be given due course...

-II-

Whether or not the Nelson Mandela Rules are enforceable in Philippine courts...

-III-

Whether or not petitioners may be given provisional liberty on the ground of equity...

-IV-

Whether or not the Court has the power to pass upon the State's prerogative of selecting appropriate police power measures in times of emergency...

Ruling

The Supreme Court is a collegiate judicial body whose rulings and binding opinions are the results of its members' collective and majoritarian consensus. The doctrines it establishes do not depend on the judgment or will of a sole magistrate as such is the spirit of collegiality. Thus, after initial deliberations and exchanges of ideas, it was collectively realized that the instant case presents several complex issues making the interaction of applicable principles ridden with far-reaching implications. Nonetheless, the members of this Court have unanimously arrived at the conclusion to treat the petition as petitioners' application for bail or recognizance, as well as their motions for other practicable and suitable confinement arrangements relative to the alleged serious threats to their health and lives.

At the outset, it is a settled rule that the Supreme Court is not a trier of facts.[21] Relatedly, a direct invocation of this Court's original jurisdiction is generally proscribed to prevent inordinate demands upon its time and attention which are better devoted to those matters within its exclusive jurisdiction as well as to prevent further over-crowding of its docket.[22]

Concomitantly, the Constitution guarantees the right to bail of all the accused except those charged with offenses punishable by reclusion perpetua when the evidence of guilt is strong.[23] However, in cases where the offense is punishable by reclusion perpetua and where the evidence of guilt is strong, bail is a matter of discretion.[24] Here, trial courts are granted the discretion to determine in bail applications whether there is strong evidence of guilt on the part of the accused.[25] A summary hearing is conducted merely for the purpose of determining the weight of evidence.[26] Only after weighing the pieces of evidence as contained in the summary will the judge formulate his own conclusion as to whether the evidence of guilt against the accused is strong based on his discretion.[27]

Therefore, the entitlement to bail is a question of fact.

In this case, petitioners have been charged with offenses punishable by reclusion perpetua. As such, they are not entitled to bail as a matter of right. Consequently, there is a need to conduct summary hearings for the purpose of weighing the strength of the prosecution's evidence as to petitioners' guilt. This process entails a reception and an evaluation of evidence which the trial courts are competent to handle. The foregoing holds true with respect to the motions for other confinement arrangements which also necessitate reception and evaluation of evidence by a trial court. Hence, being a court of last resort, this Court ingeminates and reminds the Bench and the Bar that it is not the proper avenue or forum to ventilate factual questions especially if they are presented for adjudication on the first instance.

Like the case of *Versoza v. People, et al.*[28] and *Cruz, et al. v. Secretary of Environment and Natural Resources, et al.*[29] the Court deems it fitting to have the other remaining issues threshed out in the separate opinions of its members that are attached to and made integral parts of this Decision.

WHEREFORE, in view of the foregoing reasons, the Court TREATS the present petition as petitioners' applications for bail or recognizance as well as their motions for other confinement arrangements, and REFERS the same to the respective trial courts where their criminal cases are pending, which courts are hereby DIRECTED to conduct the necessary proceedings and consequently, resolve these incidents with utmost dispatch. Accordingly, the proceedings before this Court are considered CLOSED and TERMINATED.

No pronouncement as to costs.

SO ORDERED.

Gesmundo, J. Reyes, Jr., Hernando, Carandang, Inting, Gaerlan, and Baltazar-Padilla, JJ., concur.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Lazaro-Javier, Zalameda, and Delos Santos, JJ., see separate opinions.

Lopez, J., see concurring opinion.

[1] Corona Virus Disease.

[2] Rollo, p. 14.

[3] Id. at 8.

[4] Id. at 7-8.

[5] Id. at 6-7, 42-54.

[6] Id. at 23-29, 42-59.

[7] Id. at 6.

[8] Id. at 8-10, 54-58.

[9] Id. at 10.

[10] Id. at 225, 232.

[11] Id. at 225-226, 233-238, 256-259.

[12] Id. at 238, 263-265.

- [13] Id. at 240-245.
- [14] Id. at 242-245, 247-249, 256.
- [15] Id. at 245-247.
- [16] Id. at 249-250.
- [17] Id. at 250-251.
- [18] Id. at 252-254.
- [19] Id. at 252-256, 261.
- [20] Id. at 259-263.
- [21] *Heirs of Teresita Villanueva v. Heirs of Petronila Syquia Mendoza, et al.*, 810 Phil. 172, 177 (2017).
- [22] *Rayos, et al. v. City of Manila*, 678 Phil. 952, 957 (2011). (Citations omitted)
- [23] See: *Obosa v. Court of Appeals, et al.*, 334 Phil. 253, 270 (1997). (Citations omitted)
- [24] See: *Leviste v. Court of Appeals, et al.*, 629 Phil. 587, 610-611 (2010). (Citations omitted)
- [25] *Napoles v. Sandiganbayan*, 820 Phil. 506, 517 (2017).
- [26] See: *Go v. Court of Appeals, et al.*, 293 Phil. 425, 447 (1993). (Citations omitted)
- [27] *People v. Tanes*, G.R. No. 240596, April 3, 2019. (Citations omitted)
- [28] G.R. No. 184535, September 3, 2019.
- [29] G.R. No. 135385, December 6, 2000, 400 Phil. 904, 931.

SEPARATE OPINION

PERALTA, C.J.:

I join the majority in treating the instant petition as petitioners' application for bail or recognizance. I submit this opinion, however, in order to articulate my views on some salient points.

The instant Petition[1] calls for the release of prisoners on humanitarian grounds in the midst of the pandemic created by the 2019 Novel Coronavirus Disease (COVID-19) that now grips the world at the neck.

Petitioners, who deem themselves as political prisoners detained in various penal institutions in the country, profess that they are most vulnerable to COVID-19 as they are either elderly, pregnant, or afflicted with hypertension and/or diabetes. Believing that an outbreak of the disease in their respective places of confinement is not unlikely owing to what they perceive to be hellish conditions in highly-congested local prisons, they fear that they stand to be the most susceptible to infection if and when such outbreak does occur.[2]

In support of this bid, petitioners cite a number of medical reports and abstracts tending to demonstrate that the elderly, sickly and those already afflicted with certain ailments, are the easiest victims of the novel disease.[3] Thus, they plead for their release from confinement either on bail or recognizance, as well as for the creation, by directive of the Court, of a Prisoner Release Committee with accompanying ground rules for the conditional release of similarly situated prisoners.[4] They invoke humanitarian considerations based on international law

principles, specifically those embodied in the Revised United Nations Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rule of 2015) and Article 9.1 of the International Covenant on Civil and Political Rights (ICCPR).[5]

By way of Comment,[6] the Office of the Solicitor General (OSG) advocates for the dismissal of the petition based on outright violation of judicial hierarchy. It explains that the plea should be offered before the courts where petitioners' respective cases are being heard, and not directly with the High Court. It also calls attention to the fact that petitioners have all been charged and, except for one[7] who has already met conviction and is currently serving sentence, are under prosecution for non-bailable offenses in relation to their alleged membership in the CPP-NPA-NDF. More than half of them are in custody at Camp Bagong Diwa, Taguig City and none of them has yet been reported to exhibit signs of infection.

As said, the Petition must be treated as petitioners' application for bail or recognizance.

I

The release of petitioners on bail is restricted by twin fundamental provisions of the Constitution and the Rules of Court. Section 7 of Rule 114 of the Rules of Court instructs that a person charged with a capital offense or with an offense punishable by reclusion perpetua or life imprisonment shall not be entitled to bail when the evidence of guilt is strong.[8] The rule echoes from Section 13, Article III of the Constitution which stresses that bail, while ordinarily a right of an accused, is not available to those charged of a capital offense or an offense punishable by life imprisonment or reclusion perpetua when the evidence of guilt is strong.[9]

Here, petitioners are all charged with crimes or offenses that are punishable by death, life imprisonment or reclusion perpetua. Worse, one of them was already convicted by the trial court. Hence, none of the petitioners can claim to be entitled to bail as a matter of right. Their entitlement to bail is a matter reposed to judicial discretion—particularly, to the discretion of the court where their cases are pending.

The question of whether petitioners are deserving of provisional liberty, much more of whether the evidence of guilt against them are strong, are certainly questions of fact. Resolving such questions in the first instance is not, and has never been, the province of this Court. It is not difficult to see the merit in the OSG's argument, therefore, that the instant petition suffers from infirmity—for the same not only ignores the doctrine of hierarchy of courts—but also implores this Court to act on a matter that lies outside its competence as it is not ordinarily legally equipped to evaluate evidence respecting the right to bail.

Indeed, judicial discretion in granting bail may be exercised only after pertinent evidence is submitted to a court during a bail hearing after due notice to the prosecution.[10] The necessity, if not indispensability, of a bail hearing under the circumstances is all the more revealed if we consider that certain factors in the fixing of a bail bond—such as the nature and circumstances of the crime, character and reputation of the accused, the weight of the evidence against him, the probability of the accused appearing at the trial, whether or not the accused is a fugitive from justice, and whether or not the accused is under bond in other cases—unequivocally require the presentation of evidence and a reasonable opportunity for the prosecution to refute it.[11]

Yet, petitioners argue that it would be unreasonable to require them to follow the usual procedure in applying for bail given the threat of the COVID-19 pandemic and the fact that the whole Luzon has been placed under enhanced community quarantine.

The argument fails to convince.

We remind petitioners that neither the pandemic nor the executive declaration of a Luzon-wide lockdown has the

effect of suspending our laws and rules, much less of shutting down the Judiciary.

Contrary to petitioners' insinuation, applying for bail before trial courts has not been rendered infeasible even amidst the COVID-19 pandemic and the Luzon-wide lockdown. In Administrative Circular (AC) No. 31-2020, issued on March 16, 2020, this Court explicitly assured that court hearings on urgent matters—including that of "petitions, motions or pleadings related to bail"—will continue during the entire period of the community quarantine.

In addition, the Court has issued several circulars specifically aimed at facilitating and expediting the release of certain persons deprived of liberty (PDL) at the height of the present COVID-19 pandemic. Thus:

- 1.) In AC No. 33-2020,[12] the Court specifically allowed the electronic filing of applications for bail and granted trial court judges a wider latitude of discretion for a lowered bail amount effective during the period of the present public health emergency. The Circular also sanctioned the electronic transmission of bail application approvals and directed the consequent release order to be issued within the same day to the proper law enforcement authority or detention facility to enable the release of the accused.
- 2.) In AC No. 34-2020,[13] on the other hand, the Court expanded the efficacy of electronic filing of criminal complaints and informations, together with bail applications, to keep up with the executive determination of the need to extend the period of the enhanced community quarantine in critical regions of the country.
- 3.) In AC No. 37-2020,[14] the Court ordered the pilot-testing of videoconference hearings on urgent matters in criminal cases, including bail applications, in critical regions where the risk of viral transmission is high.
- 4.) Finally, in AC No. 38-2020,[15] the Court authorized the grant of reduced bail and recognizance to indigent PDLs pending the continuation of the proceedings and the resolution of their cases.

These issuances, accompanied by pertinent circulars[16] emanating from the Office of the Court Administrator (OCA), had, in fact, facilitated the gradual and incremental release of 33,790 detention prisoners from March 17 to June 22, 2020 as follows:[17]

Period

Number of PDLs Released

Nationwide

March 17 to April 29

9,731

April 30 to May 8

4,683

May 9 to May 15

3,941

May 16 to May 22

4,167

May 23 to May 29

2,927

May 30 to June 5

2,149

June 6 to June 11

2,924

June 12 to June 22

3,268

Total PDLs released from March 17 to June 22, 2020

33,790

II

An examination of the substance of the instant Petition would further reveal its inaptness.

Invoking equity considerations, petitioners allude to the doctrines in *Enrile v. Sandiganbayan, et al.*[18] and *De la Rama v. The People's Court*[19] where the accused were allowed temporary liberty on account of proven medical condition as their continued incarceration was shown to be further injurious to their health and would endanger their lives.[20] The OSG, on the other hand, rebuffs this allusion by positing that *Enrile* cannot be relied upon as a precedent because it is a *pro hac vice* ruling.

While I believe that petitioners' invocation of *Enrile* is misplaced, I take exception to the OSG's characterization of the ruling in that case as *pro hac vice*.

Pro hac vice is a Latin term meaning "for this one particular occasion." [21] Similarly, a *pro hac vice* ruling is one "expressly qualified as x x x cannot be relied upon as a precedent to govern other cases." [22] The Court never expressly qualified the *Enrile* ruling as having only a *pro hac vice* application. In fact, the Court, even if it minded to, could not have validly made such qualification, considering that the promulgation of *pro hac vice* decisions has already been declared as illegal in our jurisdiction. In the 2017 en banc case of *Knights of Rizal v. DMCI Homes, Inc.*[23] we held:

Pro hac vice means a specific decision does not constitute a precedent because the decision is for the specific case only, not to be followed in other cases. A *pro hac vice* decision violates statutory law - Article 8 of the Civil Code - which states that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines." The decision of the Court in this case cannot be *pro hac vice* because by mandate of the law every decision of the Court forms part of the legal system of the Philippines. If another case comes up with the same facts as the present case, that case must be decided in the same way as this case to comply with the constitutional mandate of equal protection of the law. Thus, a *pro hac vice* decision also violates the equal protection clause of the Constitution. (Emphasis supplied)

Petitioners err in their invocation of *Enrile* simply because the circumstances in that case are different from the circumstances herein.

First, the petitioner in *Enrile*—the Senator Juan Ponce Enrile—underwent bail hearing with the Sandiganbayan prior to his resort to this Court. What Senator Enrile assailed before this Court then was the Sandiganbayan's denial of his Motion to Fix Bail and its Motion for Reconsideration. In the instant case, however, petitioners are asking the Court to grant their provisional liberty by way of bail or recognizance without filing a motion before the trial courts having jurisdiction over their respective cases.

Second, in his bail hearing for the Sandiganbayan, Senator Enrile was able to present evidence of his current fragile state of health. Based on that, the Court was able to infer that Senator Enrile's advanced age and ill health

required special medical attention. On the other hand, to prove their medical conditions, petitioners herein attached medical certificates and other documents in their petition. However, the Court cannot simply take judicial notice of petitioners' age and health conditions. Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them; it is the duty of the court to assume something as matters of fact without need of further evidentiary support.[24] Age and health conditions necessitate the presentation of evidence. This further emphasizes the need to conduct a bail hearing.

Lastly, Senator Enrile's medical condition was not the only consideration why he was afforded the benefit of bail. In Enrile, the Court affirmed the right to bail because Senator Enrile was likewise not shown to be a danger to the community and his risk of flight was nil - a conclusion that was impelled not only by his social and political standing, but also by his voluntary surrender to the authorities. Thus -

In our view, his social and political standing and his having immediately surrendered to the authorities upon his being charged in court indicate that the risk of his flight or escape from this jurisdiction is highly unlikely. His personal disposition from the onset of his indictment for plunder, formal or otherwise, has demonstrated his utter respect for the legal processes of this country. We also do not ignore that at an earlier time many years ago when he had been charged with rebellion with murder and multiple frustrated murder, he already evinced a similar personal disposition of respect for the legal processes, and was granted bail during the pendency of his trial because he was not seen as a flight risk. With his solid reputation in both his public and his private lives, his long years of public service, and history's judgment of him being at stake, he should be granted bail.[25] (Citations omitted)

The Court is mindful that a contagion within the country's penal institutions is neither unlikely nor impossible. Yet, we take judicial notice of the fact that following the executive declaration of a public health emergency in March, the Bureau of Jail Management and Penology (BJMP) and the Bureau of Corrections, under a joint mandate to protect the health and safety of all PDLs and detention prisoners, have implemented preventive and precautionary measures against a potential COVID-19 outbreak in detention and correctional facilities. The measures include the total lockdown of penal institutions, the designation of isolation facilities within premises, the procurement of personal protective equipment, as well as nutrition and on-site education campaigns. Only recently, the Bureau of Corrections has also put in place necessary infrastructure to provide inmates facility for online visits/video conference with their relatives.

Be that as it may, petitioners would now have the Court follow the global trend of late, whereby various governments have taken swift unprecedented measures in decongesting prison facilities by allowing an exodus of prisoners on conditional or temporary liberty to mitigate the effects of an on-site community transmission of COVID-19 or otherwise curb that possibility. It bears to stress, however, that these initiatives were based on laws and rules prevailing in those jurisdictions. For instance, the directive for the release of prisoners in the territories of India applies only to those convicted or charged with offenses punishable with less than seven years of jail term.[26]

At any rate, the Philippines did not lag behind in this respect. As I have already pointed out, this Court - mindful of the circumstantial vulnerabilities present in detention and correctional facilities across the country, as well as of the limits of its own power and competence - has already caused, through its various issuances in response to the pandemic, the seamless release of 33,790[27] detention prisoners in a most expeditious way but in line with existing fundamental laws, rules and legal processes. Such issuances, in turn, complement on-going efforts by executive agencies to expedite the release of PDLs via parole, pardon and executive clemency. Indeed, the latest figures from the Department of Justice indicate that, as a direct result of implementing its Interim Rules on Parole and Executive Clemency[28] which took effect last May 15, 2020, the Board of Pardons and Parole (BPP) was already able to grant parole to 221 PDLs, recommend the release on conditional pardon of 56 others, and endorse

the commutation of sentence of 56 more from May 18, 2020 to June 10, 2020—a period of only less than a month.[29] These, in addition to the earlier reported release by the BJMP of some 4,188 PDLs from March 17 to April 30, 2020.[30] Undeniably, such parallel efforts by the Judiciary and executive show the government's commitment in maximizing, nay, in exhausting, every available legal means in order to decongest the country's detention and correction facilities amidst the current national health crisis.

III

At this juncture, we stress that unless there is clear showing that petitioners are actually suffering from a medical condition that requires immediate and specialized attention outside of their current confinement - as, for instance, an actual and proven exposure to or infection with the novel coronavirus - they must remain in custody and isolation incidental to the crimes with which they were charged, or for which they are being tried or serving sentence. Only then can there be an actual controversy and a proper invocation of humanitarian and equity considerations that is ripe for this Court to determine.

We come to the conclusion that petitioners are probably seeking administrative - not judicial - remedies that would genuinely address their concerns in regard to which this Court, as overseer of the Judiciary, could exercise no other prerogative than to: (a) treat the instant petition as petitioners' application for bail or recognizance, (b) refer the same to the respective trial courts where their criminal cases are pending for resolution and (c) direct said courts to resolve such incidents with deliberate dispatch. That judicial remedy is unavailable to the reliefs prayed for, is all the more apparent from their collective sentiment that the government-imposed quarantine and lockdown measures, which in the interim necessarily denied them of supervised access to their families and friends, have negatively affected their mental well-being. As they hereby complain about languishing in isolation, they fail to see that in truth, the rest of the outside world is likewise socially isolating as a basic precautionary measure in response to a pandemic of this kind. They lament the lingering fear of a potential infection within their confinement on account of their respective physical vulnerabilities and hereby plead that they be indefinitely set free, without realizing it is that same exact fear which looms outside of prison walls.

WHEREFORE, I vote to: (a) TREAT the instant petition as petitioners' application for bail or recognizance, (b) REFER the same to the respective trial courts where their criminal cases are pending for resolution, and (c) DIRECT said courts to resolve such incidents with deliberate dispatch.

[1] Rollo, pp. 3-62.

[2] Id. at 14, 29, 34-36.

[3] Id. at 37-42.

[4] Id. at 59.

[5] Id. at 42-48.

[6] Id. at 224-266.

[7] Id. at 232.

[8] Section 7. Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable. — No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.

[9] Sec. 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of

guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the Writ of Habeas Corpus is suspended. Excessive bail shall not be required.

[10] *People v. Presiding Judge of the RTC of Muntinlupa City*, 475 Phil. 234, 244 (2004).

[11] See *People v. Judge Dacudao*, 252 Phil. 507, 513 (1989).

[12] Dated March 31, 2020.

[13] Dated April 8, 2020.

[14] Dated April 27, 2020.

[15] Dated April 30, 2020.

[16] Namely, OCA Circular Nos. 89-2020, 91-2020, 93-2020, 94-2020, 96-2020, 98-2020.

[17] Figures from the Office of the Court Administrator.

[18] 767 Phil. 147 (2015).

[19] 77 Phil. 461 (1946).

[20] Rollo, pp. 55-57.

[21] *Partido ng Manggagawa (PM) v. COMELEC*, 519 Phil. 644, 671 (2006).

[22] *Id.* (Emphasis ours)

[23] G.R. No. 213948, April 18, 2017.

[24] *CLT Realty Development Corp. v. Hi-Grade Feeds Corp., et al.*, 768 Phil. 149, 163 (2015).

[25] *Enrile v. Sandiganbayan, et al.*, *supra* note 18, at 173.

[26] <https://www.humanrightsinitiative.org/content/stateut-wise-prisons-response-to-covid-19-pandemic-in-india>. Last visited May 27, 2020.

[27] Figure as of June 22, 2020. See note 17.

[28] BPP Resolution No. OT-04-05-2020.

[29] Letter of Secretary Menardo Guevarra to the Chief Justice dated June 15, 2020.

[30] <https://tribune.net.ph/index.php/2020/05/12/4188-prisoners-freed-to-decongest-jails/>. Last visited on May 31, 2020.

SEPARATE OPINION

PERLAS-BERNABE, J.:

I concur in the result. As I have proposed from the inception of this case, the instant petition should be treated as petitioners' respective applications for bail/recognizance, as well as their motions for suitable and practicable confinement arrangements, and consequently, be referred to the proper trial courts for the conduct of further proceedings. However, due to the collective decision of the membership to confine the ponencia to this

unanimous disposition subject to separate opinions on some significant constitutional issues, I am impelled to submit this Separate Opinion to explain the reasons and justifications for my concurrence.

I. Prayer for Release on Bail/Recognizance.

Primarily, petitioners seek direct recourse to the Court for their temporary release on recognizance or, in the alternative, bail, "for the duration of the state of public health emergency, national calamity, lockdown[,] and community quarantine due to the threats of x x x [Coronavirus Disease 2019 (COVID-19)]."[1]

At its core, bail "acts as a reconciling mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring the accused's presence at trial." [2] Its purpose is "to guarantee the appearance of the accused at the trial, or whenever so required by the trial court." [3] Similarly, "[r]ecognizance is a mode of securing the release of any person in custody or detention for the commission of an offense" but is made available to those who are "unable to post bail due to abject poverty." [4]

Our Constitution and statutes prescribe a legal framework in granting bail or recognizance to persons deprived of liberty (PDLs) pending final conviction. The Constitution denies bail, as a matter of right, to "those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong." [5] In the same vein, Republic Act No. (RA) 10389, known as the "Recognizance Act of 2012," provides that recognizance is not a matter of right when the offense is punishable by "death, reclusion perpetua, or life imprisonment" [6] and as per its implementing rules, "when the evidence of guilt is strong," [7] consistent with the Constitution.

When the accused is charged with an offense punishable by death, reclusion perpetua, or life imprisonment, the usual procedure is for the accused to apply for bail with notice to the prosecutor. Thereafter, the judge is mandated to conduct a hearing to primarily determine the existence of strong evidence of guilt or lack of it, against the accused. When the evidence of guilt is not strong, the judge is then tasked to fix the amount of bail taking into account the guidelines set forth in Section 9, Rule 114 of the Rules of Criminal Procedure. In *Cortes v. Catral*, [8] the Court explained:

[W]hether bail is a matter of right or of discretion, reasonable notice of hearing is required to be given to the prosecutor or fiscal or at least he must be asked for his recommendation because in fixing the amount of bail, the judge is required to take into account a number of factors such as the applicant's character and reputation, forfeiture of other bonds or whether he is a fugitive from justice.

When a person is charged with an offense punishable by death, reclusion perpetua[,] or life imprisonment, bail is a matter of discretion. Rule 114, Section 7 of the Rules of Court states: "No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment when the evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal action." Consequently, when the accused is charged with an offense punishable by death, reclusion perpetua[,] or life imprisonment, the judge is mandated to conduct a hearing, whether summary or otherwise in the discretion of the court, not only to take into account the guidelines set forth in Section 9, Rule 114 of the Rules of Court, but primarily to determine the existence of strong evidence of guilt or lack of it, against the accused. [9] (Underscoring supplied)

Pursuant to procedural rules, the accused may also seek a reduction of the recommended bail amount, [10] or seek a release through recognizance upon satisfaction of the conditions set forth by law. [11]

In this case, petitioners are all charged with offenses that are punishable by death, reclusion perpetua, or life imprisonment. [12] In fact, one of them had already been convicted by the trial court and her appeal is pending resolution. [13] Petitioners have not shown that any of them has filed the necessary bail applications. It was neither shown that bail hearings were conducted in their respective cases in order to determine whether or not there exists strong evidence of guilt against them, which would, in turn, determine their qualification or disqualification for

the reliefs prayed for.

"Strong evidence of guilt" entails the submission of evidence by the parties, and consequently, a circumspect factual determination. The Court is not a trier of facts, and hence, is not competent to engage itself in such a laborious endeavor. Institutionally, the Court does not function like a trial court where hearings are conducted for the presentation of evidence by the litigants involved. Accordingly, it is incapable of determining whether or not any of the petitioners may be released on bail or recognizance pursuant to the provisions of law and the Constitution.

This notwithstanding, petitioners seek temporary liberty - specifically, through bail or recognizance - on humanitarian grounds, invoking this Court's equity jurisdiction. It is hornbook doctrine, however, that equity comes into play only in the absence of law. "Equity is justice outside legal provisions, and must be exercised in the absence of law, not against it." [14] As mentioned, there is a prescribed legal framework in granting bail or recognizance to PDLs pending final conviction. Bail or recognizance cannot be granted to persons who are charged with capital offenses when the evidence of guilt against them is strong. Hence, the Court would be betraying its mandate to apply the law and the Constitution should it prematurely order the release of petitioners on bail or recognizance absent the requisite hearing to determine whether or not the evidence of guilt against them is strong. While it is noted that this was done in the past in the case of *Enrile v. Sandiganbayan* (*Enrile*), [15] the majority ruling in that case should be deemed as "pro hac vice" in light of the past Senator's "solid reputation in both his private and public lives" [16] and "his fragile state of health" [17] which deserved immediate medical attention.

To understand the peculiarity of *Enrile*, one may simply consult the majority Decision therein which would readily show, on its face, that no bail hearing to determine the existence of "strong evidence of guilt" against *Enrile* was conducted. In fact, the absence of this requisite hearing was precisely the reason why the *Sandiganbayan* denied *Enrile's* motion to fix bail on the ground of prematurity:

On June 5, 2014, the Office of the Ombudsman charged *Enrile* and several others with plunder in the *Sandiganbayan* on the basis of their purported involvement in the diversion and misuse of appropriations under the Priority Development Assistance Fund (PDAF). On June 10, 2014 and June 16, 2014, *Enrile* respectively filed his Omnibus Motion and Supplemental Opposition, praying, among others, that he be allowed to post bail should probable cause be found against him. The motions were heard by the *Sandiganbayan* after the Prosecution filed its Consolidated Opposition.

On July 3, 2014, the *Sandiganbayan* issued its resolution denying *Enrile's* motion, particularly on the matter of bail, on the ground of its prematurity[,] considering that *Enrile* had not yet then voluntarily surrendered or been placed under the custody of the law. Accordingly, the *Sandiganbayan* ordered the arrest of *Enrile*.

On the same day that the warrant for his arrest was issued, *Enrile* voluntarily surrendered to Director Benjamin Magalong of the Criminal Investigation and Detection Group (CIDG) in Camp Crame, Quezon City, and was later on confined at the Philippine National Police (PNP) General Hospital following his medical examination.

Thereafter, *Enrile* filed his Motion for Detention at the PNP General Hospital, and his Motion to Fix Bail, both dated July 7, 2014, which were heard by the *Sandiganbayan* on July 8, 2014. In support of the motions, *Enrile* argued that he should be allowed to post bail because: (a) the Prosecution had not yet established that the evidence of his guilt was strong; (b) although he was charged with plunder, the penalty as to him would only be reclusion temporal, not reclusion perpetua; and (c) he was not a flight risk, and his age and physical condition must further be seriously considered.

On July 14, 2014, the *Sandiganbayan* issued its first assailed resolution denying *Enrile's* Motion to Fix Bail, disposing thusly:

. . . [I]t is only after the prosecution shall have presented its evidence and the Court shall have made a determination that the evidence of guilt is not strong against accused Enrile can he demand bail as a matter of right. Then and only then will the Court be duty-bound to fix the amount of his bail.

To be sure, no such determination has been made by the Court. In fact, accused Enrile has not filed an application for bail. Necessarily, no bail hearing can even commence. It is thus exceedingly premature for accused Enrile to ask the Court to fix his bail.[18] (Emphases and underscoring supplied)

To my mind, the majority ruling in Enrile, which in turn, cited *De La Rama v. The People's Court*,^[19] is an unusual judicial precedent which strays from the prescribed legal course on bail or recognizance. For a person charged with a capital offense, a bail hearing is necessary to determine whether or not the accused may nonetheless be released on account of the established finding that the evidence against him or her is not strong. This requirement finds force in none other than our Constitution. At any rate, the foregoing special considerations taken into account by the majority therein were not shown to attend in this case. Hence, petitioners cannot invoke the Enrile ruling to successfully obtain their desired relief.

Petitioners, however, should not be completely barren of any relief from this Court. In the interest of substantial justice, and considering that the present petition is the first of its kind in the context of this novel public health situation, the Court may relax the usual procedure requiring that bail applications be first filed before the trial courts, and instead, treat the instant petition as petitioners' respective bail applications and refer the same to the proper trial courts. Thereafter, the trial courts having jurisdiction over petitioners' respective cases must determine the merits of the bail applications. However, before proceeding, they must first ascertain whether or not previous bail applications have been filed by petitioners and their status. This preliminary determination upon referral to the respective trial courts would result into the following possible scenarios:

- (1) If a bail application had already been previously filed and consequently denied by the trial court, then the denial must stand on the ground that there is already a determination that the evidence of guilt against the accused-petitioner charged with a capital offense is strong and hence, need not be re-litigated further;
- (2) If a bail application had already been previously filed but had yet to be resolved by the trial court, the bail hearings should just continue, taking into account the submissions in the present petition; or
- (3) If no bail application was previously filed and bail hearings have yet to be conducted to determine whether or not the evidence of guilt against an accused-petitioner charged with a capital offense is strong, then the trial court must, with notice to the prosecutor, conduct the necessary proceedings to make such determination.

Once it is determined that the evidence against an accused-petitioner (or any accused for that matter) is not strong and hence, qualified for bail or recognizance, he or she should then be given an opportunity to present evidence showing, *inter alia*, his or her age and medical condition. As per our Rules of Criminal Procedure, these factors must be taken into account in determining the reasonable amount of bail to be imposed.^[20]

To reiterate, this petition is the first of its kind in the context of this novel public health situation. It is apt to mention that the petition was filed back on April 8, 2020.^[21] Judicial notice may be taken of the fact that at that time, the COVID-19 pandemic was at its unnerving onset. Public uncertainty, confusion, and paranoia were at their peak, and the government, as a whole, was just beginning to reckon the proper policy approach in dealing with a pandemic of historical and global proportions. Therefore, with the life-concerning threat of the COVID-19 pandemic hanging above their heads, petitioners directly resorted to this Court to seek their temporary release. Verily, humanitarian considerations juxtaposed against the novelty of the public health situation, especially with the emerging public perception at that time, dictate that instead of denying the petition outright, partial relief be accorded to them.

It deserves highlighting that there would be no harm in treating the petition as petitioners' respective bail applications, and referring them to the proper trial courts. The procedure for referral as herein proposed is not some groundbreaking innovation; it is but analogous to remand directives which have been customarily done by the Court. Needless to state, non-traditional procedures such as this are clearly within the powers of the Court[22] and are permissible when there are compelling reasons to further the higher interests of substantial justice, as in this case. While this may not be the ordinary procedure, the circumstances so warrant the discretionary relaxation of our rules.

A caveat, however, must be made: the unique situation of petitioners as being the first litigants to file such petition before the Court only obtains as to them. Henceforth, it is my view that PDLs similarly situated as petitioners should follow the existing rules of procedure and Court issuances on filing bail/recognizance applications before the proper inferior courts having jurisdiction over their respective cases.

II. Prayer for "Other Non-Custodial Measures."

Our laws on bail or recognizance do not account for prison conditions as a ground for provisional liberty under these specific legal modes. Under our existing legal framework, the right to be released on bail or recognizance is anchored only on the nature of the charge and on whether or not there exists strong evidence of guilt against the accused. Nevertheless, nothing prevents an accused from seeking a different imprisonment arrangement if he or she is able to prove that his or her life is greatly prejudiced by his or her continued confinement. Neither are courts prohibited from granting an accused such practicable alternative confinement arrangements to protect his or her life, although not considered as bail or recognizance in the traditional sense of our laws. After all, our statutes command that "[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws,"[23] and "[i]n case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail."[24]

As our current legal framework does not specify the parameters for these reliefs, it is submitted that they be adjudged according to the deliberate indifference standard adopted in foreign jurisprudence. However, before delving into this topic, I find it imperative to discuss some fundamental principles relative to the right to life in light of the subhuman conditions of our prison system. This springs from the insinuations during the deliberations on this case that it is the legislative's task to remedy our subhuman prison conditions, and that the right to life does not include the right against cruel and unusual punishment under Section 19, Article III of the 1987 Constitution.

There is no quibbling that courts are duty-bound to recognize a person's right to life, and grant permissible reliefs despite, and to reiterate, the silence, obscurity or insufficiency of our laws. This command is founded on none other than the fundamental law, particularly in our Bill of Rights enshrined in the Constitution. A person's right to life – whether accused of a crime or not – is inalienable and does not take a back seat nor become dormant just because of the lack of necessary legislation to address our subhuman prison conditions. When the right to life is at stake, the Bill of Rights operates; making a fair and just ruling to preserve the right to life is not entirely dependent on some unpassed legislation that directs the structural improvement of our jails or allocates budget to improve our penal institutions. It must be borne in mind that Section 4 (a) of RA 10575[25] expressly states that:

Section 4. The Mandates of the Bureau of Corrections. - x x x

(a) Safekeeping of National Inmates - The safekeeping of inmates shall include decent provision of quarters, food, water and clothing in compliance with established United Nations standards. The security of the inmates shall be undertaken by the Custodial Force consisting of Corrections Officers with a ranking system and salary grades similar to its counterpart in the [Bureau of Jail Management and Penology (BJMP)]. (Emphasis supplied)

This is in accord with the State's policy expressed in Section 2 of the same law:

Section 2. Declaration of Policy. - It is the policy of the State to promote the general welfare and safeguard the basic rights of every prisoner incarcerated in our national penitentiary. It also recognizes the responsibility of the State to strengthen government capability aimed towards the institutionalization of highly efficient and competent correctional services.

Towards this end, the State shall provide for the modernization, professionalization and restructuring of the Bureau of Corrections (BuCor) by upgrading its facilities, increasing the number of its personnel, upgrading the level of qualifications of their personnel and standardizing their base pay, retirement and other benefits, making it at par with that of the [BJMP]. (Emphasis supplied)

These United Nations standards pertain to the Nelson Mandela Rules issued by the UN General Assembly:

The Standard Minimum Rules for the Treatment of Prisoners, originally adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, constitute the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners, and have been of tremendous value and influence in the development of prison laws, policies and practices in Member States all over the world.[26] (Emphasis supplied)

The Nelson Mandela Rules pertinently provide:

1.

PRISONER'S INHERENT DIGNITY AND VALUE AS HUMAN BEINGS[27]

-

Treat all prisoners with the respect due to their inherent dignity and value as human beings.

-

Prohibit and protect prisoners from torture and other forms of ill-treatment.

-

Ensure the safety and security of prisoners, staff, service providers and visitors at all times.

2.

VULNERABLE GROUPS OF PRISONERS[28]

-

Take account of the individual needs of prisoners, in particular the most vulnerable categories.

-

Protect and promote the rights of prisoners with special needs.

-

Ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis, and are treated in line with their health conditions.

3.

MEDICAL AND HEALTH SERVICES[29]

-

Ensuring the same standards of health care that are available in the community and providing access to necessary health-care services to prisoners free of charge without discrimination.

-

Evaluating, promoting, protecting and improving the physical and mental health of prisoners, including prisoners with special healthcare needs.

x x x x[30]

Because of their recognition in our local legislation, they have been transformed as part of domestic law, or at the very least, having been contained in a resolution of the UN General Assembly, constitute "soft law" which the Court may enforce. In *Pharmaceutical and Health Care Association of the Philippines v. Duque*: [31]

Under the 1987 Constitution, international law can become part of the sphere of domestic law either by transformation or incorporation. The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation. The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.

x x x x

"Soft law" does not fall into any of the categories of international law set forth in Article 38, Chapter III of the 1946 Statute of the International Court of Justice. It is, however, an expression of non-binding norms, principles, and practices that influence state behavior. Certain declarations and resolutions of the UN General Assembly fall under this category. The most notable is the UN Declaration of Human Rights, which this Court has enforced in various cases, specifically, *Government of Hongkong Special Administrative Region v. Olalia* [550 Phil. 63 (2007)], *Mejoff v. Director of Prisons* [90 Phil. 70 (1951)], *Mijares v. Rañada* (495 Phil. 372 (2005)), and *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.* [520 Phil. 935 (2006)]. [32] (Emphases supplied)

With the foregoing in mind, it is therefore incorrect to say that the Nelson Mandela Rules are absolutely not judicially enforceable in our jurisdiction. By authority of our laws, courts may already recognize the effects of our subhuman prison conditions and grant proper reliefs based on the circumstances of the case. To be sure, the lack of laws allocating budget for the structural improvement of our jails in order to address subhuman conditions does not mean that our courts are powerless to grant permissible reliefs which are grounded on the Bill of Rights of our Constitution. In this relation, it must be emphasized that when the court grants such reliefs, it does not venture in policy making or meddle in matters of implementation; after all, it cannot compel - as petitioners do not even pray to compel - Congress to make laws or pass a budget for whatever purpose. Policy making towards improving our jail conditions is a separate and distinct function from adjudicating Bill of Rights concerns upon a valid claim of serious and critical life threats while incarcerated. The former is within the province of Congress, the latter is within the Court's.

Additionally, in response to one view, [33] let me stress that the protection of the right against cruel and unusual punishment pursuant to Section 19, Article III of our Constitution is not completely left to the determination of legislature. To recount, the exchanges during the constitutional deliberations evince the intent of the Framers to create a provision explicitly recognizing the problem of our substandard jail conditions and that Congress "should

do something about it"; hence, the phrase "should be dealt with BY LAW":

MR. REGALADO:

Madam President, I am proposing a further amendment to put some standards on this, to read: "The employment of PHYSICAL, psychological OR DEGRADING punishment ON ANY PRISONER."

Please permit me to explain. The punishment may not be physical but it could be degrading. Perhaps, the Members have seen the picture of that girl who was made to parade around the Manila International Airport with a placard slung on her neck, reading "I am a thief."

That is a degrading form of punishment. It may not necessarily be corporal nor physical. That is why I ask for the inclusion of OR DEGRADING "punishment" on this line and employment should be ON ANY PRISONER. It includes a convicted prisoner or a detention prisoner.

MR. MAAMBONG:

Where would the words be?

MR. REGALADO:

"The employment of PHYSICAL, psychological OR DEGRADING punishment ON ANY PRISONER." This is all-inclusive.

MR. MAAMBONG:

In other words, the Commissioner seeks to delete the words "against CONVICTED prisoners or pretrial detainees," and in its place would be "ON ANY PRISONER."

MR. REGALADO:

Because in penal law, there are two kinds of prisoners: the prisoners convicted by final judgment and those who are detention prisoners. Delete "or pretrial detainees"; then, "or the use of GROSSLY substandard or INADEQUATE penal facilities." If we just say "substandard," we have no basis to determine against what standard it should be considered. But if we say "GROSSLY substandard," that is enough of a legislative indication and guideline.

MR. MAAMBONG:

Madam President, before we take it up one by one, the Committee modification actually deleted the words "substandard or outmoded," and in its place, we put the word INADEQUATE. Is it the Gentleman's position that we should put back the word "substandard" instead of "INADEQUATE"?

MR. REGALADO:

I put both, "or the use of GROSSLY substandard or INADEQUATE penal facilities," because the penal facilities may be adequate for a specific purpose but it may be substandard when considered collectively and vice-versa; and then, we delete the rest, "should be dealt with BY LAW." That capsulizes, I think, the intent of the sponsor of the amendment.

FR. BERNAS:

If we add the word "GROSSLY," we are almost saying that the legislature should act only if the situation is gross.

MR. REGALADO:

How do we determine what is substandard?

FR. BERNAS:

We leave that to the legislature. What I am saying is that the legislature could say: "Well, this is substandard but it is not grossly substandard; therefore, we need not do anything about it.

MR. REGALADO:

Could we have a happy compromise on how the substandard categorization could come in because it may be substandard from the standpoint of American models but it may be sufficient for us?

FR. BERNAS:

I do not think we should go into great details on this. We are not legislating...

MR. REGALADO:

So, the sponsor's position is that we just leave it to the legislature to have a legislative standard of their own in the form of an ordinary legislation?

FR. BERNAS:

Yes.[34] (Emphases and underscoring supplied)

However, nowhere is it shown that the Framers intended to completely insulate the matter of subhuman jail conditions from judicial relief when a substantial relation to a person's right to life is convincingly made. In my opinion, the right to life permutates to the prohibition against any form of cruel and unusual punishment against one's person. When serious and critical threats to one's life are adequately proven by virtue of one's conditions while incarcerated, the Court must fill in the void in the law and grant permissible reliefs. Under extraordinary

circumstances, temporary transfers or other confinement arrangements, when so proven to be practicable and warranted, may be therefore decreed by our courts if only to save the life of an accused, who is, after all, still accorded the presumption of innocence. Indeed, an accused cannot just be left to perish and die in jail in the midst of a devastating global pandemic, without any recourse whatsoever. At the risk of belaboring the point, the lack of laws addressing the subhuman conditions of our prison system does not mean that our courts are rendered powerless to grant permissible reliefs, especially to those who have yet to be finally convicted of the crimes they were charged with. The Court's duty to protect our Bill of Rights is constant – respecting the right to life is constant. To deny relief on the excuse that it is Congress' responsibility to institutionally improve our prison systems is tantamount to judicial abdication of this perpetual tenet.

At this juncture, it is relevant to point out that the main thrust of preventive imprisonment is not to punish – as there is yet no penalty – but rather, to protect society from potential convicts and their propensity to commit further crimes. Preventive imprisonment also ensures that the court having jurisdiction over the case may properly conduct the necessary proceedings and effectuate its decision. In *United States v. Salerno*,^[35] the Supreme Court of the United States (SCOTUS) touched upon this basic premise that pretrial detention does not serve as a punishment for dangerous individuals:

Although a court could detain an arrestee who threatened to flee before trial, such detention would be permissible because it would serve the basic objective of a criminal system – bringing the accused to trial. x x

x

x x x x

We conclude that the detention imposed by the Act falls on the regulatory side of the dichotomy. The legislative history of the Bail Reform Act clearly indicates that Congress did not formulate the pretrial detention provisions as punishment for dangerous individuals. x x x Congress instead perceived pretrial detention as a potential solution to a pressing societal problem. x x x There is no doubt that preventing danger to the community is a legitimate regulatory goal. x x x^[36] (Emphases supplied, citations omitted)

While, as recognized above, "preventing danger to the community is a legitimate regulatory goal," an accused's right to life borne from critical subhuman conditions cannot be just sacrificed at the altar of police power if there are practicable alternative solutions to both ensure his or her continued detention, as well as his or her survival. Again, preventive imprisonment is not yet a penalty. To let an accused perish in jail because of the deliberate indifference of the State towards his or her medical conditions is even worse than a penalty because he or she has been effectively sentenced to death absent a final determination of his or her guilt. Surely, there must be some form of judicial relief to, at the very least, balance these various interests.

The deliberate indifference standard is based on jurisprudence from the United States, where we have patterned the Bill of Rights of our own Constitution. As rationalized by SCOTUS, "when the State takes a person into its custody and holds him there against his will, [as in the case of prisoners,] the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being."^[37] In the case of *Estelle v. Gamble* (*Estelle*),^[38] the SCOTUS, however, qualified that it is the State's "deliberate indifference to serious medical needs of prisoners [which] constitutes the 'unnecessary and wanton infliction of pain' x x x proscribed by the Eighth Amendment." In *Estelle*, it was held:

We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the "unnecessary and wanton infliction of pain," x x x proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs x x x or by prison guards in intentionally denying or delaying access to medical care x x x or intentionally interfering with the treatment once prescribed. x x x Regardless of how evidenced, deliberate indifference to a prisoner's serious

illness or injury states a cause of action under § 1983.

x x x x

x x x [I]n the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute "an unnecessary and wanton infliction of pain" or to be x x x "repugnant to the conscience of mankind." Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend "evolving standards of decency" in violation of the Eighth Amendment. x x x (Emphases and underscoring supplied, citations omitted)

Since the SCOTUS's promulgation of *Estelle*, the "deliberate indifference" standard has been used in succeeding cases in order to determine whether or not a supposed inadequacy in medical care received by an inmate may constitute a violation of the Eighth Amendment.[39] This standard was further refined in *Helling v. McKinney*[40] (*Helling*), wherein the SCOTUS introduced two (2) elements that may help in determining whether there exists such violation, namely the objective and subjective factors. The existence of these factors must be proven with evidence showing that: (a) the prisoner was deprived of a basic human need or that he or she had an objectively serious medical condition (objective factor); and (b) the prison officials knew about the prisoner's need or condition, which they consciously disregarded by actions beyond mere negligence (subjective factor).[41]

To clarify, the objective factor should involve a determination of whether or not the inmate is exposed to a risk which seriously and critically threatens his or her right to life while incarcerated. As stated in *Helling*, such determination requires more than a scientific and statistical inquiry into the seriousness of the potential harm and the likelihood that such injury to health will actually be caused by the inmate's exposure to such risk. It also requires the court to assess whether society considers the risk that the inmate complains of to be so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk. In other words, the prisoner must show that the risk of which he or she complains of is not one that today's society chooses to tolerate.[42]

On the other hand, the subjective factor should involve an inquiry of the prison authorities' attitude and conduct in dealing with the risk complained of by the inmate, i.e., whether or not such attitude and conduct are tainted with deliberate indifference to the serious medical needs of the inmate. On this note, further US case law suggests that the existence of "deliberate indifference" on the part of prison authorities involves a "state-of-mind" inquiry on their part.[43] Such deliberate indifference "can be evidenced by 'repeated examples of negligent acts which disclose a pattern of conduct by the prison medical staff or it can be demonstrated by 'proving that there are such systematic and gross deficiencies in staffing, facilities, equipment, or procedures that the inmate population is effectively denied access to adequate medical care.'"[44]

While the relief portion of the instant petition prays for petitioners' temporary release on recognizance or in the alternative, bail, petitioners also ask this Court that they be released through "other non-custodial measures,"[45] asserting their right to life, and not to be subjected to cruel and unusual punishment based on the Bill of Rights of our Constitution. As implied by the ponencia's disposition, the Court has not turned a blind eye away from these pleas that are, after all, founded on our fundamental law. Thus, similar to the referral of petitioners' applications for bail/recognizance, the Court has adopted the proposal to instead, treat the instant petition as petitioners' motions for suitable but practicable confinement arrangements. In my own view, I submit that these motions should be adjudged according to the above-mentioned parameters of deliberate indifference.

Nonetheless, it must be highlighted that in the same way that the Court is unequipped to make a factual determination on whether or not the evidence of guilt against any of the petitioners is strong, it is equally unequipped to make a factual determination of whether or not the State has breached the "deliberate indifference" standard with respect to the confinement conditions of each petitioner. The jail conditions of each petitioner vis-à-vis their own medical status are distinct from one another and cannot be sweepingly assumed without the benefit of a dedicated proceeding for the purpose. Hence, the Court cannot just yet grant petitioners any form of temporary release outside the traditional modes of bail or recognizance, without the benefit of a full-blown hearing therefor. As earlier intimated, the petition must therefore be referred to the respective trial courts in order for them to ascertain the peculiarities of each petitioner's situation and assess the same in accordance with the parameters stated above. Once it is determined that there exists a "deliberate indifference" on the part of the State, these courts may then accord the accused confinement arrangements that are logistically practicable under the given situation (e.g., transfers to other detention facilities, directive to minimize capacity in the accused's jail, isolation, etc.), taking into account not only the side of the accused but also the submissions of the State, in particular, the prison officials in charge of the custody of the accused. This is clearly warranted, considering the averments of respondents that the BuCor and the BJMP have implemented various health policies, protocols, and measures to ensure that they will be able to take care of their inmates should the latter catch COVID-19, and that the Court, through Office of the Court Administrator Circular No. 91-2020[46] in relation to A.M. No. 12-11-2-SC,[47] has already provided guidelines towards decongesting penal facilities and humanizing conditions of PDLs pending hearing of their cases.[48] Notably, the accused may choose to assail the ruling of the trial courts on this score, as well as on their respective bail applications should they be dissatisfied, although the same must be coursed through the proper proceeding in accordance with our rules of procedure.

III. Prayer for the Creation of a Prisoner Release Committee.

Petitioners also pray for the creation of a Prisoner Release Committee[49] which would be tasked to urgently study and implement the release of all other prisoners. However, it is beyond the power of the Court to institute policies that are not judicial in nature. Unlike the reliefs discussed above that entail (1) the relaxation of procedural rules and (2) the enforcement of the Bill of Rights, this measure is tantamount to a directive that squarely interferes with institutional administration, which the Court cannot do. There is simply no legal or equitable basis for the Court to dictate the establishment of an administrative body that will study and implement the release of all other prisoners. While the Court understands the plight of petitioners in light of this unprecedented public health emergency, the creation of a similar Prisoner Release Committee is a policy matter best left to the discretion of the political branches of government.

The other permissible reliefs discussed above are, however, herein accorded in order to assuage petitioners' health concerns, subject to the trial courts' determinations through the proper findings of fact for the purpose.

WHEREFORE, I vote to: (a) TREAT the petition as petitioners Dionisio S. Almonte, et al.'s respective applications for bail and motions for other confinement arrangements as discussed in this Opinion; (b) REFER the bail applications and motions to the trial courts for further proceedings in accordance with the parameters herein stated; and (c) DENY the prayer for the creation of a Prisoner Release Committee.

[1] Petition, p. 57.

[2] *Leviste v. Court of Appeals*, 629 Phil. 587, 593 (2010).

[3] *Enrile v. Sandiganbayan*, 767 Phil. 147, 166 (2015).

[4] See Section 3 of Republic Act No. (RA) 10389, entitled "AN ACT INSTITUTIONALIZING RECOGNIZANCE AS A MODE OF GRANTING THE RELEASE OF AN INDIGENT PERSON IN CUSTODY AS AN ACCUSED IN A CRIMINAL CASE AND FOR OTHER PURPOSES," otherwise known as "RECOGNIZANCE ACT OF 2012," approved on March 14, 2013.

[5] Section 13, Article III of the 1987 CONSTITUTION reads:

Section 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

[6] Section 5 of RA 10389 reads:

Section 5. Release on Recognizance as a Matter of Right Guaranteed by the Constitution. - The release on recognizance of any person in custody or detention for the commission of an offense is a matter of right when the offense is not punishable by death, reclusion perpetua, or life imprisonment: Provided, That the accused or any person on behalf of the accused files the application for such:

(a) Before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court; and

(b) Before conviction by the Regional Trial Court: Provided, further, That a person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law, or any modifying circumstance, shall be released on the person's recognizance.

[7] See Section 2, Rule I of the "PPA-DOJ INTERNAL GUIDELINES FOR THE IMPLEMENTATION OF REPUBLIC ACT No. 10389" (2014).

[8] 344 Phil. 415 (1997).

[9] Id. at 423-424.

[10] See Section 20, Rule 114 of the Rules of Criminal Procedure.

[11] See Sections 6 to 8, RA 10389.

[12] Petitioners are charged with the following crimes:

(1) Dionisio S. Almonte - a) Kidnapping with Murder/Rebellion; b) violation of Presidential Decree No. (PD) 1866; and c) Arson/Robbery.

(2) Ireneo O. Atadero, Jr. - violation of RA 9516.

(3) Alexander Ramonita K. Birondo - a) violation of PD 1866/ RA 10591; b) Obstruction of Justice; c) Direct Assault.

(4) Winona Marie O. Birondo - a) violation of RA 9516/ RA 10591; b) Obstruction of Justice; c) Direct Assault.

(5) Rey Claro Casambre - a) Murder and Attempted Murder; b) violation of PD 1866; c) violation of RA 10591.

(6) Ferdinand T. Castillo - a) Double Murder and Multiple Attempted Murder; b) violation of RA 10591.

(7) Francisco O. Fernandez - a) violation of PD 1866; b) violation of Commission on Elections Resolution No. 10466; c) violation of RA 10591; d) violation of RA 9516; e) Murder; f) three (3) counts of Robbery.

(8) Renante M. Gamara - a) Kidnapping with Murder; b) Murder and Frustrated Murder; c) violation of PD 1866; d) violation of RA 10591.

- (9) Vicente P. Ladlad - a) fifteen (15) counts of Murder; b) violation of PD 1866; c) violation of RA 9516/RA 10591.
- (10) Ediesel R. Legaspi - a) violation of RA 9516/RA 10591.
- (11) Adelberto A. Silva - a) fifteen (15) counts of Murder; b) Frustrated Murder; c) violation of RA 10591; d) violation of RA 9516.
- (12) Alberto L. Villamor - a) violation of PD 1866; b) violation of RA 9516/ RA 10591.
- (13) Virginia B. Villamor - a) violation of P.D. No. 1866; b) Swindling/Estafa; c) violation of RA 10591.
- (14) Cleofe Lagatapon - a) violation of PD 1866; b) violation of RA 9516/ RA 10591; c) Murder; d) Multiple Murder and Robbery; e) Robbery.
- (15) Ge-ann C. Perez - a) violation of RA 9516/ RA 10591; b) Murder; c) Robbery.
- (16) Emmanuel M. Bacarra - a) Murder; b) Multiple Frustrated Murder; c) Multiple Frustrated Murder; d) violation of RA 10591.
- (17) Oliver B. Rosales - a) violation of RA 10591; b) violation of RA 9516.
- (18) Norberto A. Murillo - fifteen (15) counts of Murder.
- (19) Reina Mae A. Nasino - violation of RA 9516/ RA 10591.
- (20) Dario B. Tomada - fifteen (15) counts of Murder.
- (21) Oscar Belleza - fifteen (15) counts of Murder.
- (22) Lilia Bucatcat - Arson (convicted). (see Separate Opinion of Associate Justice Edgardo L. Delos Santos, pp. 9-12).

[13] Namely, petitioner Lilia Bucatcat.

[14] *Viva Shipping Lines, Inc. v. Keppel Philippines Marine, Inc.* 781 Phil. 95, 121 (2016); citing *GF Equity, Inc. v. Valenzona*, 501 Phil. 153, 166 (2005).

[15] *Supra* note 3.

[16] See *id.* at 173.

[17] *Id.*

[18] *Id.* at 161-163.

[19] In *De la Rama v. People's Court* [77 Phil 461, 465-466 (1946)], therein petitioner was afflicted with, among others, active pulmonary tuberculosis, an ailment which was, at that time, still had no known cure. In granting bail, the Court held:

Considering the report of the Medical Director of the Quezon Institute to the effect that the petitioner "is actually suffering from minimal, early, unstable type of pulmonary tuberculosis, and chronic, granular pharyngitis," and that in said institute they "have seen many similar cases, latter progressing into advance stages when treatment and medicine are no longer of any avail;" taking into consideration that the petitioner's previous petition for bail was denied by the People's Court on the ground that the petitioner was suffering from quiescent and not active tuberculosis, and the implied purpose of the People's Court in sending the petitioner to the Quezon Institute for clinical examination and diagnosis of the actual condition of his lungs, was evidently to verify whether the petitioner is suffering from active tuberculosis, in order to act accordingly in deciding his petition for bail; and considering further that the said People's Court has adopted and applied the well-established doctrine cited in our above-quoted resolution in several cases, among them, the cases against Pio Duran (case No. 3324) and Benigno Aquino (case No. 3527), in which the said defendants were released on bail on the ground that they were ill and their continued confinement in New Bilibid Prison would be injurious to their health or endanger their life; it is evident and we consequently hold that the People's Court acted with grave abuse of discretion in refusing to release the petitioner on bail.

[20] See Section 9, Rule 114 of the Rules of Criminal Procedure.

[21] See Petition, p. 1.

[22] Section 6, Rule 135 of the Rules of Court states:

Section 6. Means to carry jurisdiction into effect. — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules. (Emphasis supplied)

Relatedly, Section 5, Article VIII of the 1987 Constitution states:

Section 5. The Supreme Court shall have the following powers:

x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court. (Emphasis supplied)

[23] CIVIL CODE, Article 9.

[24] CIVIL CODE, Article 10.

[25] Entitled "AN ACT STRENGTHENING THE BUREAU OF CORRECTIONS (BUCOR) AND PROVIDING FUNDS THEREFOR," otherwise known as "THE BUREAU OF CORRECTIONS ACT OF 2013," approved on May 24, 2013.

[26] <https://www.un.org/en/events/mandeladay/mandela_rules.shtml> (last visited on July 14, 2020).

[27] Refer to Rules 1 to 5 of the United Nations Standard Minimum Rules (SMRs).

[28] Refer to Rules 2, 5(2), 39(3), 55(2) and 109-110 of the United Nations SMRs.

[29] Refer to Rules 24-27, 29-35 of the United Nations SMRs.

[30]<https://www.unodc.org/documents/iustice-and-prison-reform/Brochure_on_the_UN_SMRs.pdf> (last visited July 17, 2020).

[31] 561 Phil. 386 (2007).

[32] Id. at 397-398 and 406.

[33] See Separate Opinion of Associate Justice Edgardo L. Delos Santos, pp. 52-55.

[34] Record of the 1986 Constitutional Commission No. 034 (July 19, 1986).

[35] 481 US 739 (1987)

[36] Id.

[37] *Deshaney v. Winnebago County Dept. of Social Services*, 489 US 189 (1989).

[38] 429 US 97 (1976).

[39] See *Erickson v. Pardus*, 551 US 89 (2007); *Balisok v. Fleck*, 87 F.3d 1317 (9[th] Cir. 1996); *Helling v. McKinney*, 509 US 25 (1993); *Hudson v. McMillian*, 503 US 1 (1992); *Wilson v. Seiter*, 501 US 294 (1991); Unpublished Disposition, 937 F.2d 613 (9[th] Cir. 1991); *Wellman v. Faulkner*, 715 F.2d 269 (7[th] Cir. 1983); and *Deshaney*, supra note 37.

[40] *Id.*

[41] See also *Wilson v. Adams*, 901 F.3d 816 (7th Cir. 2018); *Petties v. Carter*, 836 F.3d 722 (7th Cir. 2016); *Farmer v. Brennan*, 511 U.S. 825 (1994); *Wilson v. Seiter*, *id.*; and *Estelle*, supra note 38.

[42] See *Helling*, supra note 39.

[43] *Wilson v. Seiter*, supra note 39.

[44] *Wellman v. Faulkner*, supra note 39; emphasis supplied.

[45] Petition, p. 57.

[46] Entitled "RELEASE OF QUALIFIED PERSONS DEPRIVED OF LIBERTY" dated April 20, 2020.

[47] Entitled "GUIDELINES FOR DECONGESTING HOLDING JAILS BY ENFORCING THE RIGHTS OF ACCUSED PERSONS TO BAIL AND TO SPEEDY TRIAL," dated March 18, 2014.

[48] See Comment, p. 32.

[49] Petition, p. 57.

SEPARATE OPINION**LEONEN, J.:**

Our country's perennial jail congestion has made persons deprived of liberty all the more vulnerable to the most virulent of infectious diseases, including COVID-19. Thus, in view of the Petition's factual assertions and broad arguments, I concur with the unanimous decision of this Court to refer this case to the trial courts to determine, upon the parties' proper motion or petition, whether there are factual bases to support their temporary release.

Nonetheless, consistent with our constitutional duty to recognize the intrinsic value of every human being, as well as our power to provide guidance to the Bench and Bar, we should clarify the following:

First, the traditional mode of securing the release of any accused on trial or on appeal is through bail or recognizance. As Chief Justice Diosdado Peralta (Chief Justice Peralta) said, trial courts should conscientiously and consistently implement all of this Court's applicable guidelines on fixing the amount of bail to plea bargaining.[1] I reiterate my opinion in *Enrile v. Sandiganbayan*[2] that a release on bail or recognizance should comply with the Constitution, laws, and rules and regulations. Any release contrary to these cannot be countenanced. Thus, in seeking release on bail or recognizance, petitioners should go to the trial courts to determine the facts that would entitle them to the relief.

Second, persons deprived of liberty should be able to file an action for violations of their constitutional right against cruel, inhuman, and degrading punishment, and their rights to life, health, and security. As proposed by Senior Associate Justice Estela Perlas-Bernabe (Justice Perlas-Bernabe), we should not diminish the possibility

that they may avail of these rights.[3] This Court is not powerless to ensure that these fundamental rights are respected and implemented. It is why this Court exists. This aspect of judicial review, to measure the constitutionality of a government act or inaction vis-a-vis a legal right, is even more established than the expanded jurisdiction now contained in Article VIII, Section 1 of the 1987 Constitution.

Thus, I opine that Article III, Section 19 of the Bill of Rights, which addresses the conditions of detention and service of sentence, may be invoked by a detainee or a convict through either mode: (1) a motion for release when the case is still on trial or on appeal; or (2) a petition for habeas corpus as a post-conviction remedy, consistent with *Gumabon v. Director of Prisons*.[4]

Nonetheless, mere invocation of the violation of constitutional rights is not enough for the courts to afford relief. One must allege and provide factual basis showing: (a) the existing inhuman, degrading, or cruel conditions not organic or consistent with the statutory punishment imposed; (b) the violation of a clear, enforceable statutory or constitutional provision, including those which may refer to judicially discernable international standards adopted in this jurisdiction; (c) a clear demand on the relevant agencies of government to address the grievance; and (d) the intentional or persistent refusal or negligence on the part of the government agency—whether the warden, director of prisons, local government unit, or Congress—to address the proven situation and statutory or constitutional provisions.

We should emphasize that all provisions in the Bill of Rights are justiciable. However, in deference to the other constitutional organs, a violation of the constitutional rights of persons deprived of liberty anchored on existing jail or health conditions should first be addressed by the executive and legislative branches. Thus, before a court may give due course to such a cause of action, there must be a showing that the movant or petitioner has made a clear demand on the relevant agencies, and that there has been a denial or unreasonable negligence on their part.

Finally, as a distinguishing initiative of the Peralta Court, I suggest a measure that is grounded on social justice: a writ of *kalayaan*. This will be similar to the writ of *kalikasan* or the writ of continuing mandamus in environmental cases, but geared toward addressing jail congestion. It shall be issued when all the requirements to establish cruel, inhuman, and degrading punishment are present. It shall also provide an order of precedence to bring the occupation of jails to a more humane level. Upon constant supervision by an executive judge, the order of release will prioritize those whose penalties are the lowest and whose crimes are brought about not by extreme malice but by the indignities of poverty.

Jail congestion affects so many individuals, most of them poor and invisible. The dawn of the COVID-19 pandemic has made this a more urgent concern. It is time that we, as the Supreme Court, address this through the clearest guidance to our lower courts.

Indeed, this case is unprecedented, for we are given the opportunity to define the limitations of the expanded executive power during a pandemic, as well as to address jail congestion—a longstanding problem that has pervaded our justice system. The issues involved here bear upon not only the role of the Judiciary, but also our collective humanity, as we adapt to the unique circumstances brought upon by the pandemic.

In this case, petitioners are detainees who pray for their temporary release on recognizance or on bail, invoking humanitarian considerations on account of their advanced age and compromised health conditions, as well as the spread of COVID-19 in congested jails. They ask that their release be allowed while the country is in the state of public health emergency, national calamity, lockdown, and community quarantine. They also pray for the creation of a "prisoner release committee" that shall issue ground rules and implement the release of all those similarly situated.[5]

With many of them sick, elderly, and pregnant—those most vulnerable to the disease—petitioners maintain that their continuing detention threatens their life and health. This, they assert, transgresses their right against cruel, degrading, and inhuman punishment under Article III, Section 1 of the 1987 Constitution.[6]

Petitioners likewise invoke their rights under international law principles and conventions, including: (1) the International Covenant on Civil and Political Rights; (2) the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; (3) the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);[7] (4) the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); and (5) the United Nations Principles for Older Persons.[8]

Petitioners also point out that the United Nations High Commissioner for Human Rights has recommended the decongestion of jails by releasing the most vulnerable prisoners. They point out how the governments of Ethiopia, Sudan, Germany, Canada, India, Iran, Afghanistan, Turkey, Australia, and New Jersey in the United States have begun releasing prisoners upon acknowledging the gravity of the pandemic.[9]

As such, petitioners pray that this Court apply equity in their situation. They assert that their release will not prejudice the State or the prosecution, and will lessen state costs and health risks to jail personnel. They insist that they are not flight risks, citing the quarantine and their advanced age, physical conditions, and lack of resources to avoid trial.[10] They further point out that they are not hardened criminals, as the charges against them are due to political beliefs.[11] They likewise stress that they have not yet been convicted, and are thus presumed innocent.[12]

Furthermore, petitioners cite the Implementing Rules and Regulations of Republic Act No. 10575, which states that this Court may order the release or transfer of any inmate, especially if not yet convicted.[13]

Petitioners maintain prisoners' vulnerability to COVID-19.[14] They point out that social distancing is impossible in jails, with some housing up to 534% capacity.[15] They assert that the national government has not provided adequate health measures in detention facilities.[16] While recognizing some measures set up in jails, they insist that these are not sufficient to prevent the disease's spread.[17] They also raise mental health issues, their contact with the outside world having been more limited.[18]

Finally, petitioners assert that this Court has allowed bail on humanitarian grounds in *Enrile v. Sandiganbayan*[19] and *Dela Rama v. People*,[20] after accounting for the petitioners' health conditions.[21]

In an April 17, 2020 Resolution, this Court required respondents to submit their comment and their verified reports on the necessary interim preventive measures in response to the COVID-19 pandemic.

For their part, respondents pray that the Petition be outright dismissed for petitioners' failure to comply with the doctrine of hierarchy of courts. They maintain that petitioners should have gone to the court where their criminal cases are pending.[22] Moreover, respondents argue that the Petition raises questions of facts which only the lower courts may determine. Humanitarian grounds and the COVID-19 pandemic are allegedly not compelling reasons to seek direct recourse to this Court.[23]

Respondents also claim that petitioners cannot be temporarily released on recognizance or on bail. They say recognizance cannot be granted as petitioners have all been charged with offenses punishable by reclusion perpetua.[24] Specifically, petitioners are allegedly members of the Communist Party of the Philippines-New People's Army-National Democratic Front (CPP-NPA-NDF), which has been identified as a terrorist organization in 2017.[25] As to bail, respondents point out that it is a matter of discretion which requires notice and hearing, in line with due process.[26]

Respondents maintain that petitioners cannot rely on Enrile because it is a pro hac vice ruling. It does not apply to petitioners who are all high-ranking leaders of CPP-NPA-NDF, a terrorist organization. Moreover, since petitioners had previously violated the terms of their provisional release, respondents say they are flight risks and not entitled to temporary release.[27]

Respondents assert that petitioners invoke preferential treatment. They claim that granting the Petition will violate the equal protection clause, there being no substantial difference between petitioners and the other prisoners who are also languishing in jail despite the threat of COVID-19.[28] They characterize the Petition as a tool of deception used by the CPP-NPA-NDF by taking advantage of the pandemic to justify the release of its high-profile members.[29]

Finally, respondents allege that the government has taken several health and protection measures to ensure the safety of persons deprived of liberty.[30] They assert that the Philippines is not required to follow suit with foreign governments.[31] The provisions on release of prisoners and prison congestion, they maintain, is not one of the grounds for release.[32]

In reply, petitioners justify their direct recourse to this Court because of the novel question of law brought about by the COVID-19 pandemic. While they admit that their medical conditions are questions of fact, they maintain that this Court may resolve the legality of releasing the elderly, sickly, and those in critical conditions based on humanitarian considerations.[33] They allege that this Court, exercising its equity jurisdiction, may grant their provisional release because of the lack of speedy and adequate remedies in the lower courts, as with the ravaging effects of the COVID-19 pandemic in highly congested jail systems.[34]

Petitioners argue that a substantial distinction exists for this Court to allow them provisional liberty because of their status as detainees yet to be convicted, their advanced ages, and existing medical conditions. They plead that such classification of detainees be applied to others similarly situated who must also be allowed temporary release for the duration of the COVID-19 pandemic.[35]

Petitioners claim that respondents failed to curtail the spread of COVID-19 in several of its institutions, as the issue of physical distancing, a key measure to prevent a COVID-19 outbreak in prisons, remains unaddressed. Petitioners pray for this Court to take judicial notice of the overcrowding and subhuman conditions in correctional facilities in the Philippines, and to rule that prison systems are not equipped with medical and health care facilities to address the COVID-19 pandemic.[36]

I join this Court in referring this matter to the appropriate trial courts, which will determine whether there are factual bases to support petitioners' temporary release. In the trial courts, petitioners may pray for their provisional release by: (a) applying for bail or recognizance; or (b) filing an action for a violation of their constitutional rights.[37]

I

The traditional mode of securing provisional release of an accused pending trial or appeal is through bail or recognizance.

Article III, Section 13 of the 1987 Constitution provides:

SECTION 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

Under the Revised Rules of Criminal Procedure, bail is the security given by or on behalf of a person in custody so that they may be provisionally released. It is meant to ensure their appearance before any court.[38]

Generally, all persons are entitled to the right to be released on bail.[39] However, the grant of bail is subject to several conditions,[40] requirements,[41] procedures,[42] and qualifications.[43] Likewise, there are circumstances when release on bail shall not be granted.[44]

In *People v. Escobar*,[45] this Court explained that the right to bail is premised on the presumption of innocence:

Bail is the security given for the temporary release of a person who has been arrested and detained but "whose guilt has not yet been proven" in court beyond reasonable doubt. The right to bail is cognate to the fundamental right to be presumed innocent. In *People v. Fitzgerald*:

The right to bail emanates from the [accused's constitutional] right to be presumed innocent. It is accorded to a person in the custody of the law who may, by reason of the presumption of innocence he [or she] enjoys, be allowed provisional liberty upon filing of a security to guarantee his [or her] appearance before any court, as required under specified conditions. . . . (Citations omitted)

Bail may be a matter of right or judicial discretion. The accused has the right to bail if the offense charged is "not punishable by death, reclusion perpetua or life imprisonment" before conviction by the Regional Trial Court. However, if the accused is charged with an offense the penalty of which is death, reclusion perpetua, or life imprisonment — "regardless of the stage of the criminal prosecution" — and when evidence of one's guilt is not strong, then the accused's prayer for bail is subject to the discretion of the trial court.[46] (Citations omitted)

There are instances when posting bail is no longer required, but these must be provided in the law or in the Rules of Court. Rule 114, Section 16 of the Rules of Court provides such instances:

When a person has been in custody for a period equal to or more than the possible maximum imprisonment prescribed for the offense charged, he shall be released immediately, without prejudice to the continuation of the trial or the proceedings on appeal. If the maximum penalty to which the accused may be sentenced is *destierro*, he shall be released after thirty (30) days of preventive imprisonment.

A person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law or any modifying circumstance, shall be released on a reduced bail or on his own recognizance, at the discretion of the court. (16a)

In 2014, this Court, through A.M. No. 12-11-2-SC, issued guidelines to enforce the accused's rights to bail and speedy trial to decongest holding jails and to humanize the conditions of detainees.[47] Section 5 provides:

SECTION 5. Release After Service of Minimum Imposable Penalty. — The accused who has been detained for a period at least equal to the minimum of the penalty for the offense charged against him shall be ordered released, *motu proprio* or on motion and after notice and hearing, on his own recognizance without prejudice to the continuation of the proceedings against him. [Sec. 16, Rule 114 of the Rules of Court and Sec. 5(b) of R.A. 10389]

Meanwhile, release on recognizance is generally allowed if it is provided by law or the Rules of Court.[48] Rule 114, Section 15 of the Revised Rules of Criminal Procedure states:

SECTION 15. Recognizance. — Whenever allowed by law or these Rules, the court may release a person in custody on his own recognizance or that of a responsible person.

In *People v. Abner*,[49] this Court defined recognizance as a record entered in court allowing for the release of an accused subject to the condition that they will appear for trial:

Section 1, Rule 110, of the Rules of Court, provides that "bail is the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance." Under this, there are two methods of taking bail: (1) by bail bond and (2) by recognizance. A bail bond is an obligation given by the accused with one or more sureties, with the condition to be void upon the performance by the accused of such acts as he may legally be required to perform. A recognizance is an obligation of record, entered into before some court or magistrate duly authorized to take it, with the condition to do some particular act, the most usual condition in criminal cases being the appearance of the accused for trial. (Moran, Comments on the Rules of Court, 2d ed., Vol. II, page 592.) In *U. S. vs. Sunico et al.*, 48 Phil., 826, 834, this court, citing *Lamphire vs. State*, 73 N. H., 462; 62 Atl., 786; 6 Am. & Eng. Ann. Cas., 615, defined a recognizance as "a contract between the sureties and the State for the production of the principal at the required time." [50] (Emphasis supplied)

Under Republic Act No. 10389, or the Recognizance Act of 2012, release on recognizance is allowed if any person in custody or detention "is unable to post bail due to abject poverty." [51] It is a matter of right when the offense is not punishable by death, reclusion perpetua, or life imprisonment, so long as the application is timely filed. [52]

Republic Act No. 10389 further enumerates the procedure, requirements, and disqualifications for release on recognizance. [53]

In *Espiritu v. Jovellanos*, [54] this Court enumerated the instances when release on recognizance is allowed under Rule 114 of the Revised Rules of Criminal Procedure:

Under Rule 114, §15 of the Rules of Court, the release on recognizance of any person under detention may be ordered only by a court and only in the following cases: (a) when the offense charged is for violation of an ordinance, a light felony, or a criminal offense, the imposable penalty for which does not exceed 6 months imprisonment and/or P2,000 fine, under the circumstances provided in R.A. No. 6036; (b) where a person has been in custody for a period equal to or more than the minimum of the imposable principal penalty, without application of the Indeterminate Sentence Law or any modifying circumstance, in which case the court, in its discretion, may allow his release on his own recognizance; (c) where the accused has applied for probation, pending resolution of the case but no bail was filed or the accused is incapable of filing one; and (d) in case of a youthful offender held for physical and mental examination, trial, or appeal, if he is unable to furnish bail and under the circumstances envisaged in P.D. No. 603, as amended (Art. 191). [55] (Citation omitted)

The other modes of release are reflected in the Bureau of Corrections Operating Manual, which provides the following:

SECTION 1. Basis for Release of an Inmate. — An inmate may be released from prison:

- upon the expiration of his sentence;
- by order of the Court or of competent authority; or
- after being granted parole, pardon or amnesty.

SECTION 2. Who May Authorize Release. — The following are authorized to order or approve the release of inmates:

- the Supreme Court or lower courts, in cases of acquittal or grant of bail;
- the President of the Philippines, in cases of executive clemency or amnesty;
- the Board of Pardons and Parole, in parole cases; and
- the Director, upon the expiration of the sentence of the inmate.

Similarly, the Revised Bureau of Jail Management and Penology Comprehensive Operations Manual provides the modes and guidelines for the release of inmates. Section 31 states in part:

SECTION 31. Modes and Guidelines for Release. — The following modes and guidelines shall be observed when inmates are to be released from detention:

1. An inmate may be released through:

- Service of sentence;
- Order of the Court;
- Parole;
- Pardon; and
- Amnesty.

....

3. No inmate shall be released on a mere verbal order or an order relayed via telephone. The release of an inmate by reason of acquittal, dismissal of case, payment of fines and/or indemnity, or filing of bond, shall take effect only upon receipt of the release order served by the court process server. The court order shall bear the full name of the inmate, the crime he/she was charged with, the criminal case number and such other details that will enable the officer in charge to properly identify the inmate to be released;

4. Upon proper verification from the court of the authenticity of the order, an inmate shall be released promptly and without unreasonable delay.

Incidentally, alternative custodial arrangements are in place for specific instances. Case in point, temporary leave from jail for serious illness is allowed; however, this leave is not a release on bail, but a hospitalization leave that requires court approval:

SECTION 65. Leave from Jail. — Leave from jail shall be allowed in very meritorious cases, like the following:

1. Death or serious illness of spouse, father, mother, brother, sister, or children.

2. Inmates who are seriously ill or injured may, under proper escort, be allowed hospitalization leave or medical attendance. However, such leave shall require prior approval of the Courts having jurisdiction over them;

Provided, however, that in life and death cases where immediate medical attention is imperative, the warden, at his/her own discretion, may allow an inmate to be hospitalized or moved out of jail for medical treatment; Provided further, that when the emergency has ceased as certified by the attending physician, the warden shall cause the inmate's immediate transfer back to the jail, except when there is a court order directing him to continue the inmates confinement in a hospital until his/her recovery or upon order of the Court for his/her immediate return to the jail.[56]

In *Trillanes v. Pimentel*,^[57] this Court acknowledged that prisoners may be granted temporary leaves from imprisonment upon a court order. However, a prisoner must first establish an emergency or compelling reason.

Here, petitioners pray for their temporary release on recognizance or on bail, invoking humanitarian considerations and this Court's exercise of its equity jurisdiction, on account of their advanced age, compromised health conditions, the nature of COVID-19, and our current jail conditions.

However, there are no legal provisions that provide for the release of detainees based on humanitarian grounds.

Neither does the Constitution nor any statute allow for the automatic grant of bail or release on recognizance for inmates who are of vulnerable health.

Petitioners know this. They themselves concede that humanitarian considerations are not grounds for bail.[58] This is precisely why they invoke this Court's discretion on the ground of compassion,[59] filing their Petition as an exception to the rules on bail or recognizance.[60] They pray that this Court exercise its equity jurisdiction on account of a gap in the law that it can legitimately remedy.[61] Petitioners rely on *Enrile v. Sandiganbayan*,[62] where the majority of this Court allowed the petitioner's bail for humanitarian considerations.[63]

In his opinion, Justice Delos Santos points out that courts cannot grant reliefs, invent remedies, or recognize implied rights without a law providing for it.[64] He holds that to allow petitioners' release will intrude into the powers of the legislature, and is contrary to the civil law tradition of deciding cases based on express provisions of law.

He and Justice Jose Reyes, Jr. (Justice Reyes) both opine that this Court cannot grant the release of petitioners on the ground of equity, especially if it contravenes law. They add that the case presents several questions of facts that must be lodged with the trial courts. To allow the automatic release of detainees on a single factor, without evaluating other factors, will create a substantive right and predetermine an entitlement to a provisional liberty, which courts have no power to do.[65] Justice Reyes also notes that petitioners' allegations are not sufficient to justify a direct recourse to this Court.[66]

I agree with my colleagues that this Court cannot exercise its equity jurisdiction to supplant the express provisions on bail and recognizance.

A court's exercise of equity jurisdiction often comes into play when special circumstances reveal an inflexibility in its statutory or legal jurisdiction, or an inadequacy in available laws, such that it is unable to render substantive justice. In *Reyes v. Lim*: [67]

Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction. Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate.[68] (Citations omitted)

Equity jurisdiction finds basis in Article 9 of the Civil Code, which states that "[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws." [69] Essentially, equity "fills the open spaces in the law." [70]

This Court's equity jurisdiction has been exercised in cases where the absence or insufficiency of an express provision or procedural rule will result in unjust enrichment or prevent rightful restitution.[71] It has also been applied where a strict application of procedural rules will overrule "strong considerations of substantial justice[.]" [72] In *Orata v. Intermediate Appellate Court*, [73] this Court held:

Be that as it may, this Court has in a number of cases, in the exercise of equity jurisdiction decided to disregard technicalities in order to resolve the case on its merits based on the evidence.

Furthermore, it is well settled that litigations should, as much as possible, be decided on their merits and not on technicalities; that every party-litigant must be afforded the amplest opportunity for the proper and just determination of his case, free from unacceptable plea of technicalities. This Court has ruled further that being a few days late in the filing of the petition for review does not merit automatic dismissal thereof. And even assuming that a petition for review is filed a few days late, where strong considerations of substantial justice are manifest in the petition, this Court may relax the stringent application of technical rules in the exercise of its equity jurisdiction. In addition to the basic merits of the main case, such a petition usually embodies

justifying circumstances which warrant Our heeding the petitioner's cry for justice, inspite of the earlier negligence of counsel.[74] (Citations omitted)

However, this Court has repeatedly clarified that equity only applies when there is an absence in the law. It cannot overrule, infringe, or disregard express provisions of law. In *Heirs of Soriano v. Court of Appeals*:[75]

As often held by this Court, equity is available only in the absence of law and not as its replacement. All abstract arguments based only on equity should yield to positive rules, (judicial rules of procedure) which pre-empt and prevail over such persuasions. Moreover, a court acting without jurisdiction cannot justify its assumption thereof by invoking its equity jurisdiction.[76] (Citations omitted)

In *Samedra v. Court of Appeals*:[77]

This Court, while aware of its equity jurisdiction, is first and foremost, a court of law. Hence, while equity might tilt on the side of the petitioners, the same cannot be enforced so as to overrule a positive provision of law in favor of private respondents.[78]

In *Antioquia Development Corporation v. Rabacal*:[79]

We stress that equity, which has been aptly described as "justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure. Positive rules prevail over all abstract arguments based on equity contra legem. For all its conceded merit, equity is available only in the absence of law and not as its replacement. . .[80] (Citations omitted)

The law has positive provisions on bail and recognizance. This Court cannot supplant such provisions on the sole basis of its equity jurisdiction. These grounds, processes, and requirements are provided under the Constitution, laws, and Rules of Court, and must still earn respect.

This is precisely why I dissented in *Enrile*.

I (A)

Justice Delos Santos holds that *Enrile* does not apply here because petitioners are charged with heinous crimes related to national security and are also members of the CPP-NPA-NDF and its affiliates.[81] He notes of a possibility of endangering the community: a person with deteriorating health may still conspire to commit rebellion, and given modern technology, strategize anti-government measures or give aid to active comrades by providing intelligence reports.[82]

To Justice Delos Santos, unlike in *Enrile*, petitioners here failed to show that they filed their respective bail applications,[83] leaving this Court with no way of knowing whether the evidence of guilt is strong. He points out that petitioners likewise did not provide the pertinent information such as the crimes against them, the status of their cases, or medical records, among others.[84] In any case, he maintains that the determination of such information should still be lodged with the trial courts.[85]

Chief Justice Peralta states that petitioners cannot rely on *Enrile* because they have not filed their respective motions for bail in the lower courts.[86] Further, this Court cannot take judicial notice of their respective health and medical conditions. Finally, he opines that the petitioner in *Enrile* has proven that he was neither a danger to the community nor a flight risk.

I agree that *Enrile* does not apply in this case. However, my reasons differ from those of Chief Justice Peralta and Justice Delos Santos.

In *Enrile v. Sandiganbayan*,[87]the petitioner, then Senator Juan Ponce Enrile (*Enrile*), was charged with plunder,

punished by reclusion perpetua. Later, when a warrant for his arrest was served, he proceeded to the Criminal Investigation and Detection Group of the Philippine National Police and filed a Motion to Fix Bail. He asserted that his voluntary surrender and age were extenuating circumstances that would lower the impossible penalty to reclusion temporal. He also argued that he was not a flight risk because of his age and physical condition.

While his Motion was pending, Enrile filed a Motion for Detention at the Philippine National Police General Hospital or in another medical facility, "arguing that 'his advanced age and frail medical condition' merited hospital arrest."^[88] This was granted until further orders from the Sandiganbayan. Later, the Sandiganbayan denied Enrile's Motion to Fix Bail for being premature, stating that he has not applied for bail and, thus, no bail hearing had been had.

When the case was brought to this Court, the majority allowed Enrile to post bail on account of his fragile health and advanced age. I dissented, for several reasons.

First, the laws, rules, and doctrines on bail clearly require a hearing.^[89] Contrary to Chief Justice Peralta's opinion, there was no bail hearing in Enrile. As aptly pointed out by Justice Perlas-Bernabe, the absence of a bail hearing was precisely why the Sandiganbayan rejected the Motion to Fix Bail for being premature.^[90]

Furthermore, I opined that medical conditions requiring special treatment should be pleaded and heard in the bail hearing, because: (1) these are questions of fact which must be proven and authenticated; and (2) the prosecution should have the right to due process by being given an opportunity to rebut or verify the allegations. In that case, Enrile's medical condition, or any other humanitarian reason, was not raised as a ground for bail in any of his pleadings. Yet, the majority still granted his bail by taking judicial notice of a doctor's certification.

Second, I opined that bail for humanitarian considerations is not found in the Constitution, or in any law or rule of procedure. There is likewise no specific international law that compels the release of an accused on account of his medical condition.

Thus, I discussed that the release of detainees on humanitarian grounds needs clear legal basis and guidelines. Otherwise, it will simply be based on the court's discretion—"unpredictable, partial, and solely grounded on the presence or absence of human compassion on the day that justices of this court deliberate and vote."^[91] Thus, bail cannot be granted solely by invoking a human right principle. Constitutional rights apply to all, but it should not be upheld by disregarding or suspending the rule of law.

Still, Justice Lazaro-Javier asserts that the standards applied in Enrile were clear-cut. She opines that Enrile provided a two-step test to authorize the grant of discretionary bail: "(1) the detainee will not be a flight risk or danger to the community; (2) there are special, humanitarian, and compelling circumstances."^[92]

I disagree. In fact, Enrile's release raised several questions that reveal the lack of clear guidelines: Is his release because of his advanced age? Is it because he suffers from medical conditions or because those conditions were aggravated by incarceration? Is it due to a medical emergency? Can the release on bail be shortened once the medical emergency has been addressed? What medical conditions allow for the release on bail? Does it apply only to those on trial for plunder, or to others with crimes punished by reclusion perpetua or life imprisonment? Does it apply only to senators or those of similar stature? Incidentally, these are the very questions that the Petition now before this Court seeks to test.

Third, I noted that, when hospital treatment is necessary, courts usually do not grant bail, but only modify the conditions for one's detention. The accused's release should also not be longer than the time needed to address the medical condition. Yet, the majority in Enrile granted bail even if the Sandiganbayan did not find Enrile suffering from a unique and debilitating disease. The majority even permitted him to undergo hospital arrest.

Finally, I discussed that alternative custodial arrangements should not favor only wealthy, powerful, and networked detainees. The right to liberty applies to all individuals. Special privileges should be granted only under clear, transparent, and reasoned circumstances. The majority's grant of bail was clearly a special accommodation for Enrile. It lacked neutrality and impartiality as it found a better argument for the petitioner, at the expense of the prosecution.

I note Chief Justice Peralta's opinion that the ruling in Enrile is not a pro hac vice ruling since pro hac vice rulings have been declared illegal in *Knights of Rizal v. DMCI Homes, Inc.*[93] I also note Justice Lazaro-Javier's opinion that Enrile forms part of the law of the land as a legally binding decision, and her refusal to treat it as pro hac vice ruling to avoid the notion that this Court lays down doctrines that solely serve the powerful and privileged.[94]

I, however, join Justices Caguioa and Perlas-Bernabe in reaffirming that Enrile is a pro hac vice ruling, applicable only to the unique considerations accorded to Enrile.[95] I agree that the ruling in Enrile does not support the Constitution, the rules, and jurisprudence. It is a stray decision[96] that cannot be a binding precedent, because there was no hearing to determine whether the evidence of his guilt was not strong.

I maintain my opinion in Enrile here. Release on bail for humanitarian considerations or medical conditions is not found in the Constitution, in any local or international law, or in any rule of procedure. While petitioners enjoy the constitutional rights to life and health, these rights do not result in the automatic grant of bail for those who are of advanced age and frail health.

Detainees cannot be allowed temporary release without following the law. If petitioners or any other detainees seek to be released on bail, a hearing is necessary to determine the amount of bail. If they are charged with a crime punishable by reclusion perpetua or life imprisonment, a hearing is necessary to determine whether the evidence of guilt is strong.

Should a new ground for temporary release be allowed or an alternative custodial arrangement be provided, the rule must be clear as to who are qualified: What age? What medical conditions or health concerns? What crimes? For how long? In any case, the right to equal protection of the laws must always be kept in mind, so that no special privilege or accommodation would be extended to anyone else, as what happened in Enrile. Alternative custodial arrangements should be granted only under clear, transparent, and reasoned circumstances. They must always bow to the relevant laws and rules of procedure, subject to continuous review by the trial court.

Thus, this Petition should be referred to the proper trial courts to determine whether there is basis for their release on bail or recognizance. Before petitioners may be released, they must first establish before the trial courts the facts, circumstances, and qualifications that will warrant their release on bail or recognizance.

I (B)

Justices Perlas-Bernabe and Delos Santos both hold that there is wisdom in depriving the accused of liberty pending trial. Their continued detention ensures the court's jurisdiction over them, secures their participation in the proceedings, and prevents them from committing another crime.[97]

However, Justice Delos Santos concludes that detaining the criminally accused pending the determination of their guilt is part of police power.[98] I qualify his conclusion.

The State's "capacity to prosecute and punish crimes" is part of its police power. In *Tawahig v. Hon. Lapinid*:[99]

A crime is "an offense against society." It "is a breach of the security and peace of the people at large[.]"

A criminal action, where "the State prosecutes a person for an act or omission punishable by law," is thus pursued "to maintain social order." It "punish[es] the offender in order to deter him [or her] and others from committing the same or similar offense, . . . isolate[s] him [or her] from society, reform[s] and rehabilitate[s] him [or her]." One who commits a crime commits an offense against all the citizens of the state penalizing a given act or omission: "a criminal offense is an outrage to the very sovereignty of the State[.]" Accordingly, a criminal action is prosecuted in the name of the "People" as plaintiff. Likewise, a representative of the State, the public prosecutor, "direct[s] and control[s] the prosecution of [an] offense." As such, a public prosecutor is:

[T]he representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he [or she] is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.

The capacity to prosecute and punish crimes is an attribute of the State's police power. It inheres in "the sovereign power instinctively charged by the common will of the members of society to look after, guard and defend the interests of the community, the individual and social rights and the liberties of every citizen and the guaranty of the exercise of his rights." [100] (Emphasis supplied, citations omitted)

Police power cannot justify denying a person's right to provisional liberty. The Constitution provides that all persons, except those punished with reclusion perpetua whose evidence of guilt is strong, have a right to provisional liberty.[101] What justifies the accused's deprivation of liberty is the determination that the evidence of guilt is strong:

In the present case, it is uncontroverted that petitioner's application for bail and for release on recognizance was denied. The determination that the evidence of guilt is strong, whether ascertained in a hearing of an application for bail or imported from a trial court's judgment of conviction, justifies the detention of an accused as a valid curtailment of his right to provisional liberty. This accentuates the proviso that the denial of the right to bail in such cases is "regardless of the stage of the criminal action." Such justification for confinement with its underlying rationale of public self defense applies equally to detention prisoners like petitioner or convicted prisoners appellants like Jalosjos. As the Court observed in *Alejano v. Cabuay*, it is impractical to draw a line between convicted prisoners and pre-trial detainees for the purpose of maintaining jail security; and while pre-trial detainees do not forfeit their constitutional rights upon confinement, the fact of their detention makes their rights more limited than those of the public. The Court was more emphatic in *People v. Hon. Maceda*:

As a matter of law, when a person indicted for an offense is arrested, he is deemed placed under the custody of the law. He is placed in actual restraint of liberty in jail so that he may be bound to answer for the commission of the offense. He must be detained in jail during the pendency of the case against him unless he is authorized by the court to be released on bail or on recognizance. Let it be stressed that all prisoners whether under preventive detention or serving final sentence cannot practice their profession nor engage in any business or occupation, or hold office, elective or appointive, while in detention. This is a necessary consequence of arrest and detention.

These inherent limitations, however, must be taken into account only to the extent that confinement restrains the power of locomotion or actual physical movement. It bears noting that in *Jalosjos*, which was decided en banc one month after *Maceda*, the Court recognized that the accused could somehow accomplish legislative results. The trial court thus correctly concluded that the presumption of innocence does not carry with it the full enjoyment of civil and political rights.[102] (Emphasis supplied)

Justice Delos Santos even advances the following parameters in determining whether the State's police power should be exercised during an emergency:

(1)

Such encroachment shall be incidental to public safety and shall not enter the bounds of arbitrariness;

(2)

Measures pursued or concerns protected by the State should be reasonably related or linked to the attainment of its legitimate objectives consistent with general welfare; and

(3)

The measure undertaken or concern addressed for the benefit of the majority pursuant to an exercise of police power must not be unnecessarily oppressive on the minority.[103]

Thus, Justice Delos Santos justifies petitioners' continued detention by invoking public safety. He claims that the serious nature of the crimes charged against them, being related to their alleged membership in the CPP-NPA-NDF, makes their continued confinement "a legitimate and vital concern of national security." [104]

He is ready to make a pronouncement on petitioners' participation as alleged key members of CPP-NPA-NDF and declare them as terrorists,[105] albeit limited to determining "a reasonable link or relation between the assailed government measures or concerns and the legitimate objectives regarding general welfare in times of emergency." [106] From this, he infers that petitioners' continued detention is justified because releasing them without bail hearings would endanger national security.

I cannot find the reasonable link that Justice Delos Santos claims to exist between the continued detention of petitioners as alleged members of CPP-NPA-NDF and the State's objective of suppressing the pandemic. We cannot take judicial notice of the news reports of alleged armed attacks against the military and police distributing relief goods.[107] Simply, these are not proper matters of judicial notice, whether mandatory or discretionary.

Rather, as Justice Reyes notes, this Court must refrain from making conclusions on the merits of petitioners' pending cases,[108] as it is premature to make pronouncements based on unverified information.[109] Both he and Justice Lazaro-Javier share the opinion that petitioners' membership in the CPP-NP-NDF is an allegation that is still being litigated.[110]

I echo their sentiments. There being no bail hearings, the evidence of petitioners' guilt has not yet been established.

To use the nature of the alleged crimes to justify petitioners' continued confinement denies them not only of due process, but also of their right to be presumed innocent until proven guilty. As Justice Perlas-Bernabe states, "an accused cannot just be left to perish and die in the midst of a devastating global pandemic, without any recourse whatsoever." [111] National security and public safety are no blanket excuses to violate the accused's constitutional rights.

Thus, without the appropriate hearing in the trial courts, this Court should not conclude if petitioners are entitled to release on bail or recognizance based on the crimes charged against them.

II

Persons deprived of liberty ought to be able to file a case for violations of their right against cruel, inhuman, and degrading punishment and other related constitutional rights.

In keeping with our constitutional duty to recognize the intrinsic value of every human being, as well as our

power to provide guidance to Bench and Bar, I discuss the following causes of action submitted by petitioners: (1) the right against cruel, degrading, and inhuman punishment; (2) the right to life and health; and (3) the rights of prisoners and detainees under international law principles and conventions and our own local laws, rules, and procedures.

II (A)

The 1987 Constitution guards against the infliction of any cruel, degrading, or inhuman punishment. Its Article III, Section 19 states:

SECTION 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

In *Alejano v. Cabuay*,^[112] this Court defined punishment as a chastisement that causes suffering through harm or incapacitation that is more severe than the discomfort of detention:

An action constitutes a punishment when (1) that action causes the inmate to suffer some harm or "disability," and (2) the purpose of the action is to punish the inmate. Punishment also requires that the harm or disability be significantly greater than, or be independent of, the inherent discomforts of confinement.^[113] (Citations omitted)

Despite a few statutes and rules promoting the rehabilitation of offenders, our criminal justice system is primarily punitive, seeking to deter and penalize felonies and crimes through imprisonment and fines. Thus, the Constitution does not prohibit retributive justice in itself. What it prohibits is cruel, degrading, or inhuman punishment.

The previous constitutions did not include punishment that is "degrading or inhuman." Both the 1935 and 1973 Constitutions respectively read:

SECTION 1 (19). Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted.^[114]

SECTION 21. Excessive fines shall not be imposed nor cruel or unusual punishment inflicted.^[115]

With the enactment of the 1987 Constitution, the words "degrading or inhuman punishment" were added to the prohibition.

In *David v. Senate Electoral Tribunal*,^[116] this Court discussed that interpreting the text of the Constitution involves reviewing how the text has evolved from its previous iterations. The formulation of provisions usually involves a reassessment of old ones in order to better address any shortcomings the old rules failed to account for:

Interpretation grounded on textual primacy likewise looks into how the text has evolved. Unless completely novel, legal provisions are the result of the re-adoption — often with accompanying re-calibration — of previously existing rules. Even when seemingly novel, provisions are often introduced as a means of addressing the inadequacies and excesses of previously existing rules.

One may trace the historical development of text: by comparing its current iteration with prior counterpart provisions, keenly taking note of changes in syntax, along with accounting for more conspicuous substantive changes such as the addition and deletion of provisos or items in enumerations, shifting terminologies, the use of more emphatic or more moderate qualifiers, and the imposition of heavier penalties. The tension between consistency and change galvanizes meaning.^[117]

The adding of "inhuman" and "degrading" to the prohibited punishment reveals that these words are meant to be treated separately from cruel or unusual punishment, and meant to address different circumstances.

In *People v. Dionisio*,^[118] this Court explained that punishment is cruel and unusual when the penalties imposed are inhuman, barbarous, and shocking to the conscience:

Neither fines nor imprisonment constitute in themselves cruel and unusual punishment, for the constitutional stricture has been interpreted as referring to penalties that are inhuman and barbarous, or shocking to the conscience and fines or imprisonment are definitely not in this category.

Nor does mere severity constitute cruel and unusual punishment. In *People vs. Estoista*, 93 Phil. 655, this Court ruled:

"It takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the Constitution. The fact that the punishment authorized by the statute is severe does not make it cruel and unusual.' Expressed in other terms, it has been held that to come under the ban, the punishment must be 'flagrantly and plainly oppressive,' 'wholly disproportionate to the nature of the offense as to shock the moral sense of the community.' (Idem.) Having in mind the necessity for a radical measure and the public interest at stake, we do not believe that five years' confinement for possessing firearms, even as applied to appellant's and similar cases, can be said to be cruel and unusual, barbarous, or excessive to the extent of being shocking to public conscience. It is of interest to note that the validity on constitutional grounds of the Act in question was contested neither at the trial nor in the elaborate printed brief for the appellant; it was raised for the first time in the course of the oral argument in the Court of Appeals. It is also noteworthy, as possible gauge of popular and judicial reaction the duration of the imprisonment stipulated in the statute, that some members of the court at first expressed opposition to any recommendation for executive clemency for the appellant, believing that he deserved imprisonment within the prescribed range."^[119] (Citations omitted)

In *Maturan v. Commission on Elections*,^[120] this Court reiterated that it is the punishment's character, not its severity, that makes it cruel and inhuman. It would have to be an infliction of "corporeal or psychological punishment that strips the individual of [their] humanity":

We have already settled that the constitutional proscription under the Bill of Rights extends only to situations of extreme corporeal or psychological punishment that strips the individual of his humanity. The proscription is aimed more at the form or character of the punishment rather than at its severity, as the Court has elucidated in *Lim v. People*, to wit:

Settled is the rule that a punishment authorized by statute is not cruel, degrading or disproportionate to the nature of the offense unless it is flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community. It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution. Based on this principle, the Court has consistently overruled contentions of the defense that the penalty of fine or imprisonment authorized by the statute involved is cruel and degrading.

In *People vs. Tongko*, this Court held that the prohibition against cruel and unusual punishment is generally aimed at the form or character of the punishment rather than its severity in respect of its duration or amount, and applies to punishments which never existed in America or which public sentiment regards as cruel or obsolete. This refers, for instance, to those inflicted at the whipping post or in the pillory, to burning at the stake, breaking on the wheel, disemboweling and the like. The fact that the penalty is severe provides insufficient basis to declare a law unconstitutional and does not, by that circumstance alone, make it cruel and inhuman.^[121] (Emphasis in the original, citation omitted)

The constitutional right thus necessarily ensures that all persons are protected against all forms of torture. Republic Act No. 9745,^[122] otherwise known as the Anti-Torture Act, outlines what constitutes torture and other

types of cruel and degrading treatment or punishment:

SECTION 3. Definitions. — For purposes of this Act, the following terms shall mean:

(a) "Torture" refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

(b) "Other cruel, inhuman and degrading treatment or punishment" refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter.[123]

....

SECTION 4. Acts of Torture. — For purposes of this Act, torture shall include, but not be limited to, the following:

(a) Physical torture is a form of treatment or punishment inflicted by a person in authority or agent of a person in authority upon another in his/her custody that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:

(1)

Systematic beating, headbanging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;

(2)

Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;

(3)

Electric shock;

(4)

Cigarette burning; burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s):

(5)

The submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation;

(6)

Being tied or forced to assume fixed and stressful bodily position;

(7)

Rape and sexual abuse, including the insertion of foreign objects into the sex organ or rectum, or electrical torture of the genitals;

(8)

Mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue, etc.;

(9)

Dental torture or the forced extraction of the teeth;

(10)

Pulling out of fingernails;

(11)

Harmful exposure to the elements such as sunlight and extreme cold;

(12)

The use of plastic bag and other materials placed over the head to the point of asphyxiation;

(13)

The use of psychoactive drugs to change the perception, memory, alertness or will of a person, such as:

- (i) The administration of drugs to induce confession and/or reduce mental competency; or
- (ii) The use of drugs to induce extreme pain or certain symptoms of a disease; and

(14)

Other analogous acts of physical torture; and

(b) "Mental/Psychological Torture" refers to acts committed by a person in authority or agent of a person in authority which are calculated to affect or confuse the mind and/or undermine a person's dignity and morale, such as:

(1)

Blindfolding;

(2)

Threatening a person(s) or his/her relative(s) with bodily harm, execution or other wrongful acts;

(3)

Confinement in solitary cells or secret detention places;

(4)

Prolonged interrogation;

(5)

Preparing a prisoner for a "show trial", public display or public humiliation of a detainee or prisoner;

(6)

Causing unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he/she shall be summarily executed;

(7)

Maltreating a member/s of a person's family;

(8)

Causing the torture sessions to be witnessed by the person's family, relatives or any third party;

(9)

Denial of sleep/rest;

(10)

Shame infliction such as stripping the person naked, parading him/her in public places, shaving the victim's head or putting marks on his/her body against his/her will;

(11)

Deliberately prohibiting the victim to communicate with any member of his/her family; and

(12)

Other analogous acts of mental/psychological torture.

SECTION 5. Other Cruel, Inhuman and Degrading Treatment or Punishment. — Other cruel, inhuman or degrading treatment or punishment refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against another person in custody, which attains a level of severity sufficient to cause suffering, gross humiliation or debasement to the latter. The assessment of the level of severity shall depend on all the circumstances of the case, including the duration of the treatment or punishment, its physical and mental effects and, in some cases, the sex, religion, age and state of health of the victim.[124]

Cruel, inhuman, and degrading punishment involves causing suffering, gross humiliation, or debasement to a person in custody. Torture, on the other hand, generally involves intentionally causing severe mental or physical agony for a specific purpose or for any reason based on discrimination.

The right against torture and cruel, inhuman, and degrading punishment is absolute. It is protected in all cases—even in times of war or a public emergency:

SECTION 6. Freedom from Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, an Absolute Right. — Torture and other cruel, inhuman and degrading treatment or punishment as criminal acts shall apply to all circumstances. A state of war or a threat of war, internal political instability, or any other public emergency, or a document or any determination comprising an "order of battle" shall not and can never be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment.

Accordingly, the law provides remedies for victims of torture or other cruel, degrading, and inhuman treatment or punishment:

SECTION 9. Institutional Protection of Torture Victims and Other Persons Involved. — A victim of torture shall have the following rights in the institution of a criminal complaint for torture:

(a) To have a prompt and an impartial investigation by the CHR and by agencies of government concerned such as the Department of Justice (DOJ), the Public Attorney's Office (PAO), the PNP, the National Bureau of Investigation (NBI) and the AFP. A prompt investigation shall mean a maximum period of sixty (60) working days from the time a complaint for torture is filed within which an investigation report and/or resolution shall be completed and made available. An appeal whenever available shall be resolved within the same period prescribed herein;

(b) To have sufficient government protection against all forms of harassment, threat and/or intimidation as a consequence of the filing of said complaint or the presentation of evidence therefor. In which case, the State through its appropriate agencies shall afford security in order to ensure his/her safety and all other persons involved in the investigation and prosecution such as, but not limited to, his/her lawyer, witnesses and relatives; and

(c) To be accorded sufficient protection in the manner by which he/she testifies and presents evidence in any for a in order to avoid further trauma.

SECTION 10. Disposition of Writs of Habeas Corpus, Amparo and Habeas Data Proceedings and Compliance

with a Judicial Order. — A writ of habeas corpus or writ of amparo or writ of habeas data proceeding, if any, filed on behalf of the victim of torture or other cruel, degrading and inhuman treatment or punishment shall be disposed of expeditiously and any order of release by virtue thereof, or other appropriate order of a court relative thereto, shall be executed or complied with immediately.

SECTION 11. Assistance in Filing a Complaint — The CHR and the PAO shall render legal assistance in the investigation and monitoring and/or filing of the complaint for a person who suffers torture and other cruel, inhuman and degrading treatment or punishment, or for any interested party thereto.

The victim or interested party may also seek legal assistance from the Barangay Human Rights Action Center (BHRAC) nearest him/her as well as from human rights nongovernment organizations (NGOs).[125]

From these provisions alone, it is clear that the State is meant to protect its people's right against cruel, degrading, and inhuman punishment.

II (B)

Petitioners likewise invoke their rights to life and health, which they claim are being threatened by the COVID-19 pandemic. They allege that by being detained in inhumane prison conditions, their lives are at risk of catching the disease.

All persons enjoy the right to life. This is enshrined under Article III, Section I of the 1987 Constitution:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

In *Secretary of National Defense v. Manalo*,^[126] this Court granted the first petition for a writ of amparo, recognizing the right to life, liberty, and security of victims of enforced disappearances. It clarified that the right to life is not only a guarantee of the right to live, but to live securely, assured that the State will protect the security of one's life and property:

While the right to life under Article III, Section 1 guarantees essentially the right to be alive — upon which the enjoyment of all other rights is preconditioned — the right to security of person is a guarantee of the secure quality of this life, viz.: "The life to which each person has a right is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler. Rather, it is a life lived with the assurance that the government he established and consented to, will protect the security of his person and property. The ideal of security in life and property. . . pervades the whole history of man. It touches every aspect of man's existence." In a broad sense, the right to security of person "emanates in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. It includes the right to exist, and the right to enjoyment of life while existing, and it is invaded not only by a deprivation of life but also of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual."^[127] (Emphasis supplied, citations omitted)

In the same case, this Court expounded that the right to security, as an adjunct of the right to life, is broken down to its essential components: (1) freedom from fear; (2) guarantee of "bodily and psychological integrity or security"; and (3) government protection of rights:

A closer look at the right to security of person would yield various permutations of the exercise of this right.

First, the right to security of person is "freedom from fear". In its "whereas" clauses, the Universal Declaration of Human Rights (UDHR) enunciates that "a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people." Some scholars postulate that "freedom from fear" is not only an aspirational principle, but essentially an

individual international human right. It is the "right to security of person" as the word "security" itself means "freedom from fear". Article 3 of the UDHR provides, viz.:

Everyone has the right to life, liberty and security of person.

In furtherance of this right declared in the UDHR, Article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR) also provides for the right to security of person, viz.:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

The Philippines is a signatory to both the UDHR and the ICCPR.

....

Second, the right to security of person is a guarantee of bodily and psychological integrity or security. Article III, Section II of the 1987 Constitution guarantees that, as a general rule, one's body cannot be searched or invaded without a search warrant. Physical injuries inflicted in the context of extralegal killings and enforced disappearances constitute more than a search or invasion of the body. It may constitute dismemberment, physical disabilities, and painful physical intrusion. As the degree of physical injury increases, the danger to life itself escalates. Notably, in criminal law, physical injuries constitute a crime against persons because they are an affront to the bodily integrity or security of a person.

Physical torture, force, and violence are a severe invasion of bodily integrity. When employed to vitiate the free will such as to force the victim to admit, reveal or fabricate incriminating information, it constitutes an invasion of both bodily and psychological integrity as the dignity of the human person includes the exercise of free will. Article III, Section 12 of the 1987 Constitution more specifically proscribes bodily and psychological invasion, viz.:

(2) No torture, force, violence, threat or intimidation, or any other means which vitiate the free will shall be used against him (any person under investigation for the commission of an offense). Secret detention places, solitary, incommunicado or other similar forms of detention are prohibited.

Parenthetically, under this provision, threat and intimidation that vitiate the free will—although not involving invasion of bodily integrity—nevertheless constitute a violation of the right to security in the sense of "freedom from threat" as afore-discussed.

Article III, Section 12 guarantees freedom from dehumanizing abuses of persons under investigation for the commission of an offense. Victims of enforced disappearances who are not even under such investigation should all the more be protected from these degradations.

An overture to an interpretation of the right to security of person as a right against torture was made by the European Court of Human Rights (ECHR) in the recent case of *Popov v. Russia*. In this case, the claimant, who was lawfully detained, alleged that the state authorities had physically abused him in prison, thereby violating his right to security of person. Article 5(1) of the European Convention on Human Rights provides, viz.: "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law ..." (emphases supplied) Article 3, on the other hand, provides that "(n)o one shall be subjected to torture or to inhuman or degrading treatment or punishment." Although the application failed on the facts as the alleged ill-treatment was found baseless, the ECHR relied heavily on the concept of security in holding, viz.:

. . . the applicant did not bring his allegations to the attention of domestic authorities at the time when they could reasonably have been expected to take measures in order to ensure his security and to investigate the circumstances in question.

. . . .

. . . the authorities failed to ensure his security in custody or to comply with the procedural obligation under Art. 3 to conduct an effective investigation into his allegations.

The U.N. Committee on the Elimination of Discrimination against Women has also made a statement that the protection of the bodily integrity of women may also be related to the right to security and liberty, viz.:

. . . gender-based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under specific human rights conventions is discrimination within the meaning of article 1 of the Convention (on the Elimination of All Forms of Discrimination Against Women). These rights and freedoms include . . . the right to liberty and security of person.

Third, the right to security of person is a guarantee of protection of one's rights by the government. In the context of the writ of amparo, this right is built into the guarantees of the right to life and liberty under Article III, Section 1 of the 1987 Constitution and the right to security of person (as freedom from threat and guarantee of bodily and psychological integrity) under Article III, Section 2. The right to security of person in this third sense is a corollary of the policy that the State "guarantees full respect for human rights" under Article II, Section 11 of the 1987 Constitution. As the government is the chief guarantor of order and security, the Constitutional guarantee of the rights to life, liberty and security of person is rendered ineffective if government does not afford protection to these rights especially when they are under threat. Protection includes conducting effective investigations, organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats thereof) and/or their families, and bringing offenders to the bar of justice. The Inter-American Court of Human Rights stressed the importance of investigation in the Velasquez Rodriguez Case, viz.:

(The duty to investigate) must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.[128] (Emphasis supplied, citations omitted)

In his separate opinion in *People v. Echegaray*,^[129] Justice Artemio V. Panganiban discussed that the right to life includes the right to enjoy it with dignity and honor:

So too, all our previous Constitutions, including the first one ordained at Malolos, guarantee that "(n)o person shall be deprived of life, liberty or property without due process of law." This primary right of the people to enjoy life — life at its fullest, life in dignity and honor — is not only reiterated by the 1987 Charter but is in fact fortified by its other pro-life and pro-human rights provisions. Hence, the Constitution values the dignity of every human person and guarantees full respect for human rights, expressly prohibits any form of torture which is arguably a lesser penalty than death, emphasizes the individual right to life by giving protection to the life of the mother and the unborn from the moment of conception and establishes the people's rights to health, a balanced ecology and education.

This Constitutional explosion of concern for man more than property, for people more than the state, and for life more than mere existence augurs well for the strict application of the constitutional limits against the revival of death penalty as the final and irreversible exaction of society against its perceived enemies.

Indeed, volumes have been written about individual rights to free speech, assembly and even religion. But the most basic and most important of these rights is the right to life. Without life, the other rights cease in their enjoyment, utility and expression.[130] (Emphasis supplied)

An essential component of the right to life, and equally fundamental, is the right to health. In *Spouses Imbong v. Ochoa, Jr.*:[131]

A component to the right to life is the constitutional right to health. In this regard, the Constitution is replete with provisions protecting and promoting the right to health.

Section 15, Article II of the Constitution provides:

Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

A portion of Article XIII also specifically provides for the States' duty to provide for the health of the people, viz.:

HEALTH

Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

Section 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health, manpower development, and research, responsive to the country's health needs and problems.

Section 13. The State shall establish a special agency for disabled persons for their rehabilitation, self-development, and self-reliance, and their integration into the mainstream of society.[132]

The right to life and the right to health are guaranteed in our international laws. Article 25 of the Universal Declaration of Human Rights provides that everyone has a right to health, well-being, and medical care:

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. (Emphasis supplied)

The International Covenant on Economic and Social and Cultural Rights also provides that everyone has the right to attain the highest standard of physical and mental health. To this end, state parties shall undertake all measures to prevent, treat, and control epidemics. Article 12 states:

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness. (Emphasis supplied)

II (C)

These rights—the right against torture, cruel, degrading, and inhuman punishment; and the rights to life and health—are all anchored on the State's policy to value human dignity and to guarantee full respect for human rights.[133]

Reiterating the State's policy, the Anti-Torture Act[134] extends these rights to all persons, including those detained, jailed, imprisoned, or held under custody:

SECTION 2. Statement of Policy. — It is hereby declared the policy of the State:

- (a) To value the dignity of every human person and guarantee full respect for human rights;
- (b) To ensure that the human rights of all persons, including suspects, detainees and prisoners are respected at all times; and that no person placed under investigation or held in custody of any person in authority or, agent of a person in authority shall be subjected to physical, psychological or mental harm, force, violence, threat or intimidation or any act that impairs his/her free will or in any manner demeans or degrades human dignity;
- (c) To ensure that secret detention places, solitary, incommunicado or other similar forms of detention, where torture may be carried out with impunity, are prohibited; and
- (d) To fully adhere to the principles and standards on the absolute condemnation and prohibition of torture as provided for in the 1987 Philippine Constitution; various international instruments to which the Philippines is a State party such as, but not limited to, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and all other relevant international human rights instruments to which the Philippines is a signatory.[135]

This State policy is likewise found in the laws and rules governing the two (2) agencies tasked with the safekeeping and reformation of inmates and detainees: (1) the Bureau of Corrections; and (2) the Bureau of Jail Management and Penology.

Created under Republic Act No. 10575, the Bureau of Corrections is in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three years.[136] It is a line bureau and a constituent unit of the Department of Justice, which has supervisory powers over its regulatory and quasi-judicial functions.[137]

Section 2 of the law declares that every prisoner's basic rights should be safeguarded and their general welfare promoted:

SECTION 2. Declaration of Policy. — It is the policy of the State to promote the general welfare and safeguard the basic rights of every prisoner incarcerated in our national penitentiary. It also recognizes the responsibility of the State to strengthen government capability aimed towards the institutionalization of highly efficient and competent correctional services.

Towards this end, the State shall provide for the modernization, professionalization and restructuring of the Bureau of Corrections (BuCor) by upgrading its facilities, increasing the number of its personnel, upgrading

the level of qualifications of their personnel and standardizing their base pay, retirement and other benefits, making it at par with that of the Bureau of Jail Management and Penology (BJMP).

Under Section 3 of the law, the Bureau of Corrections is duty bound to provide the inmates' basic needs and to take measures for their reformation and reintegration into society:

SECTION 3. Definition of Terms. —

(a) Safekeeping, which is the custodial component of the BuCors present corrections system, shall refer to the act that ensures the public (including families of inmates and their victims) that national inmates are provided with their basic needs, completely incapacitated from further committing criminal acts, and have been totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the premises of the national penitentiary. This act also includes protection against illegal organized armed groups which have the capacity of launching an attack on any prison camp of the national penitentiary to rescue their convicted comrade or to forcibly amass firearms issued to prison guards.

(b) Reformation, which is the rehabilitation component of the BuCor's present corrections system, shall refer to the acts which ensure the public (including families of inmates and their victims) that released national inmates are no longer harmful to the community by becoming reformed individuals prepared to live a normal and productive life upon reintegration to the mainstream society.

As provided in Section 4, the inmates' basic needs include "decent provision of quarters, food, water and clothing in compliance with established United Nations standards." The Bureau of Corrections shall likewise institute several reformation programs, as follows:

SECTION 4. The Mandates of the Bureau of Corrections. — The BuCor shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years.

(a)

Safekeeping of National Inmates — The safekeeping of inmates shall include decent provision of quarters, food, water and clothing in compliance with established United Nations standards. The security of the inmates shall be undertaken by the Custodial Force consisting of Corrections Officers with a ranking system and salary grades similar to its counterpart in the BJMP.

(b)

Reformation of National Inmates — The reformation programs, which will be instituted by the BuCor for the inmates, shall be the following:

(1)

Moral and Spiritual Program;

(2)

Education and Training Program;

(3)

Work and Livelihood Program;

(4)

Sports and Recreation Program;

(5)

Health and Welfare Program; and

(6)

Behavior Modification Program, to include Therapeutic Community.

The rights and privileges of inmates and detainees^[138] are further specified in the Bureau of Corrections Operating Manual. Its Book I, Part II, Chapter 4, Section 4 includes provisions for standards of prison accommodation:

SECTION 4. Prison Accommodation Standards. —

- a. All accommodations for the use of inmates shall meet requirements of sanitation and hygiene with emphasis on adequate ventilation, living space and lighting.
- b. Bathrooms and washing areas shall be provided in every prison facility.
- c. All areas regularly used by inmates shall be properly maintained and kept clean at all times.
- d. Beds and clothing shall be neatly made up in a uniform manner at all times. Beds and buildings occupied by inmates shall be thoroughly disinfected at least once a month.
- e. Cleanliness shall be maintained at all times in all dormitories or cells specially toilet and baths.
- f. As often as it is necessary, an inmate shall send his dirty clothes to the laundry.
- g. Every Sunday and holiday, if weather permits, inmates will expose their clothes, beds, bedding and so forth in the sunshine in an area designated for the purpose. Cleanliness of the premises of the dormitories and their surroundings shall be strictly enforced. Littering is prohibited.
- h. Inmates shall be served meals three (3) times a day. Breakfast shall be served not more than fourteen (14) hours after the previous day's dinner.

Book I, Part IV, Chapter 2, Section 3 further provides the inmates protection from institutional abuse:

SECTION 3. Protection of Inmate from Institutional Abuse. — An inmate shall be treated with respect and fairness by prisons employees.

He shall be protected against the following:

- a. the imposition of any cruel, unusual or degrading act as a form of disciplinary punishment.
- b. corporal punishment;
- c. the use of physical force by correctional officers, except in cases where the latter act in self-defense, to protect another person from imminent physical attack, or to prevent a riot or escape;
- d. deprivation of clothing, bed and bedding, light, ventilation, exercise, food or hygienic facilities; and
- e. forced labor.

On the other hand, the Bureau of Jail Management and Penology was created under Republic Act No. 6975, a line bureau of the Department of the Interior and Local Government.^[139] Its primary function is to exercise control and supervision over all district, city, and municipal jails that detain "any fugitive from justice, or person detained

awaiting investigation or trial and/or transfer to the national penitentiary, and/or violent mentally ill person . . . pending the transfer to a medical institution." [140]

The Bureau of Jail Management and Penology classifies persons deprived of liberty as either a prisoner or a detainee. A prisoner is a person convicted by a final judgment. [141] Prisoners are further classified depending on their prison sentence:

CLASSIFICATION OF PRISONER

PRISON SENTENCE

Insular prisoner

three (3) years and one (1) day to reclusion perpetua or life imprisonment

Provincial prisoner

six (6) months and one (1) day to three (3) years;

City prisoner

one (1) day to three (3) years;

Municipal prisoner

(1) day to six (6) months. [142]

On the other hand, a detainee is a person undergoing investigation, trial, or awaiting final judgment from a court. [143]

In any case, the Bureau of Jail Management and Penology is tasked with supervising and controlling all district, city, and municipal jails, guided by the principle of humane treatment in the safekeeping and development of persons deprived of liberty. Thus, it shall provide their basic needs, conduct rehabilitation activities, and improve jail facilities and conditions. It shall ensure adequately equipped sanitary facilities and quality services for their custody, safekeeping, rehabilitation, and development. [144]

All persons deprived of liberty under the custody of the Bureau of Jail Management and Penology likewise have specific rights and privileges. These include the rights to be treated as human beings; to not be subjected to corporal punishment; to adequate food, space and ventilation, rest and recreation; to avail themselves of medical, dental, and other health services. They likewise have the privilege of being visited and treated anytime by a doctor of their choice, or treated in a government or private hospital if necessary and allowed by the rules. [145]

Moreover, under the same Manual, the Bureau of Jail Management and Penology shall aim to "improve the living conditions of offenders, in accordance with the accepted standards set by the United Nations." [146]

The Manual expressly references the United Nations Standard Minimum Rules for the Treatment of Prisoners, [147] or the Nelson Mandela Rules, on the rule on segregation of prisoners and the treatment of prisoners with special needs, which include senior citizens, infirm inmates with contagious diseases, pregnant women, and female inmates with infants. Rule IV, Section 34 provides the following guidelines:

SECTION 34. Handling Inmates with Special Needs. — The following guidelines shall be observed in handling inmates with special needs:

. . . .

11. Senior Citizen Inmates

- a. Senior citizen inmates should be segregated and close supervised to protect them from maltreatment and other forms of abuse by other inmates;
- b. Individual case management strategies should be developed and adopted to respond to the special needs of elderly inmates;
- c. Collaboration with other government agencies and community- based senior citizen organizations should be done to ensure that the services due the senior citizen inmates are provided; and d. Senior citizen inmates should be made to do tasks deemed fit and appropriate, their age, capability, and physical condition considered.

12. Infirm Inmates

- a. Inmates with contagious diseases must be segregated to prevent the spread of said contagious diseases;
- b. Infirm inmates should be referred to the jail physician or nurse for evaluation and management; and
- c. Infirm inmates must be closely monitored and provide with appropriate medication and utmost care.

13. Pregnant Inmates/Female Inmates with Infants

- a. Pregnant inmates must be referred to jail physician or nurse for pre-natal examination;
- b. They should be given tasks that are deemed fit and proper, their physical limitations, considered;
- c. During active labor, pregnant inmates should be transferred nearest government hospital;
- d. Treatment of mother and her infant/s shall be in accordance with the BJMP Policy (Refer to DIWD Manual); and
- e. Female inmates with infants shall be provided with ample privacy during breastfeeding activity.

III

The constitutional rights to life and health, the prohibition against torture and cruel, inhuman, and degrading treatment, and the State policy to guarantee full respect for human dignity are affirmed in the international laws and standards that bind us. These fundamental rights, anchored on the recognition of the inherent dignity of every human being, have acquired the status of universal application as *jus cogens*, or 'compelling law'.^[148]

The Universal Declaration of Human Rights prohibits "cruel, inhuman or degrading treatment or punishment"^[149] and declares that every human being is entitled to "the right to life, liberty, and security of persons."^[150]

Moreover, the International Covenant on Civil and Political Rights^[151] expressly provides that persons deprived of liberty do not shed their "inherent dignity." Article 10 states:

Article 10

- 1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- 2.
 - (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
 - (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status. (Emphasis supplied)

The inherent dignity of persons deprived of liberty as human beings, as with their humane treatment, is a "fundamental and universally applicable rule." [152] It applies without any distinction, and does not depend on the available material resources of a state party.

The Basic Principles for the Treatment of Prisoners [153] provides that all prisoners retain all their rights under the Universal Declaration of Human Rights and other international covenants where a state is a member party:

5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

Furthermore, on December 9, 1975, the United Nations General Assembly declared that no state may permit torture or other cruel, inhuman, or degrading punishment. [154] Not even exceptional circumstances such as war, internal political instability, and other public emergency can justify any of these prohibited acts. [155]

On December 9, 1988, the United Nations General Assembly also adopted the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, [156] which upholds the human rights of persons under any form of detention or imprisonment:

Principle 3

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

On May 13, 1977, the United Nations Economic and Social Council adopted the Standard Minimum Rules for the Treatment of Prisoners, which set the universally accepted minimum standards for prisoner treatment and prison management. [157] These rules are "generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions." [158]

Recently, on December 17, 2015, the United Nations General Assembly revised the rules to reflect the changes in international law and the advances in correctional science and good management practices in correctional institutions. From then on, the revised rules were called the Nelson Mandela Rules, which contains provisions for minimum standards in prison accommodations, personal hygiene, food and nutrition, access to health care services, among others. [159]

Incidentally, Justice Delos Santos states that Article 38 of the Statute of the International Court of Justice provides the sources of international law, which are traditionally characterized as either peremptory or non-peremptory in nature. [160] He discusses that in order to have domestic application, these norms will have to either be incorporated or transformed into domestic law. Citing the UN Charter, he proceeds to characterize the Nelson Mandela Rules as merely recommendatory, with no binding effect.

I disagree.

The peremptoriness of a norm is not a mere categorization of international law. [161] Jus cogens, or peremptory

norms, are the "highest category of customary international law." [162] A prominent modern definition is that "(t)he rules of jus cogens [are] those rules which derive from principles that the legal conscience of [hu]mankind deem[s] absolutely essential to coexistence in the international community." [163]

These definitions have been incorporated in *Bayan Muna v. Romulo*: [164]

"The term 'jus cogens' means the 'compelling law.'" Corollary, "a jus cogens norm holds the highest hierarchical position among all other customary norms and principles." As a result, jus cogens norms are deemed "peremptory and non-derogable." When applied to international crimes, "jus cogens crimes have been deemed so fundamental to the existence of a just international legal order that states cannot derogate from them, even by agreement."

These jus cogens crimes relate to the principle of universal jurisdiction, i.e., "any state may exercise jurisdiction over an individual who commits certain heinous and widely condemned offenses, even when no other recognized basis for jurisdiction exists." "The rationale behind this principle is that the crime committed is so egregious that it is considered to be committed against all members of the international community" and thus granting every State jurisdiction over the crime. [165] (Citations omitted)

Among the fundamental rights established as jus cogens are the right to life and the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment. [166] These non-derogable international customary norms have been reiterated in several conventions that the Philippines signed and ratified, as previously discussed.

In any case, the non-derogable international laws are not the only rules governing the international community. For instance, a treaty creating the World Trade Organization, or a Security Council Resolution defining a terrorist organization, are non-peremptory in that accession is optional; yet, they still have significant effects on the international community. As elegantly captured in Justice Antonio Carpio's dissent in *Bayan Muna*:

Some customary international laws have been affirmed and embodied in treaties and conventions. A treaty constitutes evidence of customary law if it is declaratory of customary law, or if it is intended to codify customary law. In such a case, even a State not party to the treaty would be bound thereby. A treaty which is merely a formal expression of customary international law is enforceable on all States because of their membership in the family of nations. For instance, the Vienna Convention on Consular Relations is binding even on non-party States because the provisions of the Convention are mostly codified rules of customary international law binding on all States even before their codification into the Vienna Convention. Another example is the Law of the Sea, which consists mostly of codified rules of customary international law, which have been universally observed even before the Law of the Sea was ratified by participating States.

Corollarily, treaties may become the basis of customary international law. While States which are not parties to treaties or international agreements are not bound thereby, such agreements, if widely accepted for years by many States, may transform into customary international laws, in which case, they bind even non-signatory States. [167] (Citations omitted)

Therefore, the Nelson Mandela Rules and its precedent, the United Nations Minimum Standard on the Treatment of Prisoners, cannot simply be disregarded as non-binding norms. The principles and fundamental rights on which these declarations are based—the right to life, the prohibition of torture, and the prohibition of cruel and unusual punishment—have attained a jus cogens status. These Rules have been adhered to and transformed into local legislation and incorporated in our penal institutions.

To view a resolution adopted by the United Nations General Assembly as not being jus cogens, only being recommendatory, is limited. It fails to consider that a resolution of the United Nations General Assembly may be any of the following: (1) an articulation of a customary international norm; (2) a reiteration of existing treaty obligations; (3) a reflection of emerging international norms and standards, or commonly referred to as "soft law";

or (4) a binding source of obligation that is judicially enforceable once acceded to by a member state.

First, the Nelson Mandela Rules articulates customary international norms on the treatment of prisoners. These are based on one's fundamental dignity, including those under confinement. These are codified into several declarations and conventions that the Philippines have ratified.

In *Razon v. Tagitis*,^[168] this Court recognized "resolutions relating to legal questions in the [United Nations] General Assembly" as material sources of international customs:

The most widely accepted statement of sources of international law today is Article 38 (1) of the Statute of the International Court of Justice, which provides that the Court shall apply "international custom, as evidence of a general practice accepted as law." The material sources of custom include State practice, State legislation, international and national judicial decisions, recitals in treaties and other international instruments, a pattern of treaties in the same form, the practice of international organs, and resolutions relating to legal questions in the UN General Assembly. Sometimes referred to as "evidence" of international law, these sources identify the substance and content of the obligations of States and are indicative of the "State practice" and "opinio juris" requirements of international law.^[169] (Citations omitted)

It is erroneous to dismiss the Nelson Mandela Rules just because the United Nations General Assembly resolutions are only recommendatory. The preambulatory clauses of Resolution No. 70/175,^[170] which adopted the Nelson Mandela Rules, state that the precedent United Nations Minimum Standard on the Treatment of Prisoners has already attained the status of a "universally acknowledged minimum standards for the detention of prisoners and that they have been of significant value and influence."^[171]

Second, a resolution of the United Nations General Assembly may reiterate an existing treaty obligation, as in the preambulatory clause of Resolution No. 70/175:

Taking into account the progressive development of international law pertaining to the treatment of prisoners since 1955, including in international instruments such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto [.]

Notably, the Philippines acceded^[172] to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.^[173] This embraces the following obligations:

Article 2

1.

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2.

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3.

An order from a superior officer or a public authority may not be invoked as a justification of torture.

....

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture

....

Article 16

1.

Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2.

The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion. (Emphasis supplied)

The Philippines also acceded to the Optional Protocol to the Convention against Torture.[174] Among its objectives is to establish regular visits of detention places and prisons from international and domestic bodies to prevent torture and other cruel, inhuman, or degrading punishment or treatment.

Third, the Nelson Mandela Rules reflects emerging international norms and standards, or commonly referred to as "soft law." It partakes of "new soft law standards" that function as a "significant normative reference for national legislators, courts, correctional administrators, and advocates on a range of prison conditions issues." [175]

In *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, [176] this Court held that a "soft law," while not necessarily binding, has great political influence:

"Soft law" does not fall into any of the categories of international law set forth in Article 38, Chapter III of the 1946 Statute of the International Court of Justice. It is, however, an expression of non-binding norms, principles, and practices that influence state behavior. Certain declarations and resolutions of the UN General Assembly fall under this category. The most notable is the UN Declaration of Human Rights, which this Court has enforced in various cases, specifically, *Government of Hongkong Special Administrative Region v. Olalia*, *Mejoff v. Director of Prisons*, *Mijares v. Rañada* and *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*

The World Intellectual Property Organization (WIPO), a specialized agency attached to the UN with the mandate to promote and protect intellectual property worldwide, has resorted to soft law as a rapid means of

norm creation, in order "to reflect and respond to the changing needs and demands of its constituents." Other international organizations which have resorted to soft law include the International Labor Organization and the Food and Agriculture Organization (in the form of the Codex Alimentarius).

WHO has resorted to soft law. This was most evident at the time of the Severe Acute Respiratory Syndrome (SARS) and Avian flu outbreaks.

Although the IHR Resolution does not create new international law binding on WHO member states, it provides an excellent example of the power of "soft law" in international relations. International lawyers typically distinguish binding rules of international law-"hard law"-from non-binding norms, principles, and practices that influence state behavior-"soft law." WHO has during its existence generated many soft law norms, creating a "soft law regime" in international governance for public health.

The "soft law" SARS and IHR Resolutions represent significant steps in laying the political groundwork for improved international cooperation on infectious diseases. These resolutions clearly define WHO member states' normative duty to cooperate fully with other countries and with WHO in connection with infectious disease surveillance and response to outbreaks.

This duty is neither binding nor enforceable, but, in the wake of the SARS epidemic, the duty is powerful politically for two reasons. First, the SARS outbreak has taught the lesson that participating in, and enhancing, international cooperation on infectious disease controls is in a country's self interest . . . if this warning is heeded, the "soft law" in the SARS and IHR Resolution could inform the development of general and consistent state practice on infectious disease surveillance and outbreak response, perhaps crystallizing eventually into customary international law on infectious disease prevention and control.[177] (Citations omitted)

Finally, the Nelson Mandela Rules could not be ignored, precisely because the Philippines adopted these standards through its express adherence to the established standards of the United Nations under Republic Act No. 10575, or the Bureau of Corrections Act of 2013. Section 4 states:

SECTION 4. The Mandates of the Bureau of Corrections. — The BuCor shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years.

(a) Safekeeping of National Inmates — The safekeeping of inmates shall include decent provision of quarters, food, water and clothing in compliance with established United Nations standards. The security of the inmates shall be undertaken by the Custodial Force consisting of Corrections Officers with a ranking system and salary grades similar to its counterpart in the BJMP.

....

SECTION 5. Operations of the Bureau of Corrections. — (a) The BuCor shall operate with a directorial structure. It shall undertake reception of inmates through its Directorate for Reception and Diagnostics (DRD), formerly Reception and Diagnostic Center (RDC), provide basic needs and security through its Security and Operations Directorates, administer reformation programs through its Reformation Directorates, and prepare inmates for reintegration to mainstream society through its Directorate for External Relations (DER), formerly External Relations Division (ERD).

....

(c) Aside from those borne of the provisions under Rule 8, Part I, Rules of General Application of the United Nations Standard Minimum Rules for the Treatment of Prisoners and that of the existing regulation of the BuCor on security classification (i.e., maximum, medium and minimum security risk), inmates shall also be internally classified by the DRD and segregated according to crimes committed based on the related penal codes such as Crimes Against Persons, Crimes Against Properties, Crimes Against Chastity, so on and so forth,

as well as by other related Special Laws, Custom and Immigration Laws. (Emphasis supplied)

While the law was enacted in 2013, prior to the adoption of the Nelson Mandela Rules in 2015, its express wording refers to standards adopted by the United Nations.

Yet, Justice Delos Santos opines that with the sorry state of our penal institutions, we can only dream of complying with the Nelson Mandela Rules.[178] Thus, while he recognizes that the Philippines adhered to the United Nations standards in safekeeping its prisoners under Section 4, he notes that these standards cannot be judicially enforced.[179]

As such, he declares[180] that this Court is not empowered to compel the Bureau of Corrections to implement Section 4(a), which requires safekeeping of persons deprived of liberty that complies "with established United Nations standards." He finds this provision not self-executing, as it confers no rights that can be judicially enforced, being "so generic" and silent as to its implementation. He states that the provision simply provides guidelines for executive action as to how inmates will be accommodated.[181]

Justice Delos Santos further discusses that the words used in the Nelson Mandela Rules are so vague that the ministerial duty sought to be enforced through an injunctive writ cannot be determined.[182] He asserts that a court cannot simply invent parameters for what constitutes "reasonable" or "special" accommodations, or adjust any implementing rule or regulation on equitable considerations.[183]

I disagree. This Court has the power to compel the Bureau of Corrections to implement Section 4 of Republic Act No. 10575.

Judicial action on the enforcement of a law is based on a cause of action, which is "the act or omission by which a party violates the right of another." [184] Article VIII, Section 1 of the 1987 Constitution states:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

What determines judicial power is the existence of one's right and its violation by another person or entity. This power is not restricted by the vagueness of the words used in the law, or the absence of parameters as to what constitutes a violation of the right.

Regardless, Section 4 of Republic Act No. 10575 clearly creates a right and indicates the standards by which that right is fleshed out. Petitioners assert a violation of that right. There is, thus, a cause of action that calls for the exercise of judicial power.

I oppose creating a distinction between self-executing provisions and not self-executing provisions in statutes. I had previously maintained that this should not be made in any of the constitutional provisions, as it "creates false second-order constitutional provisions":

I do not agree, however, in making distinctions between self-executing and non-self-executing provisions.

A self-executing provision of the Constitution is one "complete in itself and becomes operative without the aid of supplementary or enabling legislation." It "supplies [a] sufficient rule by means of which the right it grants may be enjoyed or protected." "[I]f the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms,

and there is no language indicating that the subject is referred to the legislature for action," the provision is self-executing.

On the other hand, if the provision "lays down a general principle," or an enabling legislation is needed to implement the provision, it is not self-executing.

To my mind, the distinction creates false second-order constitutional provisions. It gives the impression that only self-executing provisions are imperative.

All constitutional provisions, even those providing general standards, must be followed. Statements of general principles and policies in the Constitution are frameworks within which branches of the government are to operate. The key is to examine if the provision contains a prestation and to which branch of the government it is directed. If addressed either to the legislature or the executive, the obligation is not for this Court to fulfill.

. . . .

There are no second-order provisions in the Constitution. We create this category when we classify the provisions as "self-executing" and "non-self executing." Rather, the value of each provision is implicit in their normative content.[185] (Citations omitted)

The same can be said of all statutes. Mandatory provisions should be deemed as imperative, and their authoritative or operative effect should not be diminished on account of their "vagueness" or the lack of parameters. It cannot be assumed that a statute is not meant to be complied with. To do so is to nullify the mandatory language of the provision and render legislative power useless.

Compliance with legal provisions cannot solely depend on the presence of specific implementing rules and regulations. Justice Delos Santos recognized this himself when he discussed that the implementing rules and regulations—containing matters related to the standards under the Nelson Mandela Rules—is subordinate legislation, which is not a source of substantive rights and obligations.[186]

As Justice Lazaro-Javier says, laws that use general terms, like the Nelson Mandela Rules, do not make them any less judicially enforceable.[187] Even if a certain law lacks a degree of specificity, the executive branch must still comply with its mandate. Similarly, courts should not shy away from interpreting what constitutes compliance with the law using the rules on statutory construction. Courts are not meant to create new parameters, but to interpret statutes. We can neither shirk from this duty nor excuse the other government branches' failure to comply with their legal mandates.

I also agree with Justice Lazaro-Javier's position that budgetary restrictions, while it may be a factor in implementation, do not determine the existence and enforceability of a right.[188] As she aptly points, this Court should not be restricted by the State's budget concerns in determining the existence and enforcement of a right.[189]

It is not the Nelson Mandela Rules as written that should be in focus. What is relevant are the founding principles of international law on which the Nelson Mandela Rules are based. The first sentence of the Nelson Mandela Rules' preambulatory clause states that in its adoption, the United Nations General Assembly was guided by the "fundamental human rights, in the dignity and worth of the human person, without distinction of any kind." [190] These fundamental human rights include the right to life and the prohibition against torture and other cruel, inhuman, or degrading punishment, both of which are anchored on one's inherent dignity.[191]

These principles are affirmed by the 1987 Constitution as a State policy.[192] Thus, persons deprived of liberty must be treated with humanity and with respect for their inherent dignity. Furthermore, "provisions on the right to life, prohibition from torture, inhuman and degrading treatment, and slavery remain free from any derogation

whatsoever, having acquired a jus cogens character." [193]

More important, the Philippines' compliance with the United Nations standards should be assessed based on how the country understood the implications of adherence to these standards. This is done by examining the texts of applicable local legislations and administrative issuances of penal institutions. These local and international rules and standards operationalize the State's duty on the safekeeping of its prisoners and affirm how the inherent dignity of a person is to be valued, even when deprived of liberty.

As discussed at length earlier, our local laws and the international standards we have adhered to reveal that while our prisoners and detainees' right to liberty is restricted, their right to be treated humanely, including their right to reasonably safe, sanitary, and sufficient provisions and facilities, is not suspended and is not merely recommendatory. Thus, no extraordinary circumstance, not even the global COVID-19 pandemic, can justify actions violating these fundamental rights.

IV

Considering the various sources of rights of persons deprived of liberty, incarcerated individuals may file an appropriate action based on a violation of these rights.

Violations of the constitutional right against cruel, degrading, and inhuman punishment, the rights to life and health, the rights of prisoners and detainees under international law principles and conventions, and our own local laws, rules, and procedures are justiciable matters.

I agree with Justice Perlas-Bernabe that we should not diminish the possibility that persons deprived of liberty may avail of their rights as listed in the Bill of Rights, including their right to be protected against cruel, inhuman, and degrading punishment. [194]

Under Article VIII, Section 1 of the 1987 Constitution, courts are given judicial power "to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." [195]

The Bill of Rights is an enumeration of rights that are legally demandable and enforceable. Courts will hear and decide cases involving violations of these rights, or any statute providing standards to comply with these rights. This aspect of judicial review, to measure the constitutionality of a government act or inaction vis-a-vis an enumeration of an individual or group right, is even more established than the expanded jurisdiction now contained in Article VIII, Section 1.

Thus, with respect to actual controversies involving violations of fundamental constitutional rights, this Court is not powerless to ensure its respect and implementation. It is precisely why this Court exists.

I thus disagree with Justice Delos Santos' statement that "only Congress has the constitutional power to address subhuman conditions that plague our penal institutions." [196] He would have this Court "defer to the political branches as regards the matter of selecting the most appropriate strategy to maintain public order and preserve public safety." [197] Such position reduces the Judiciary's role in relation to the Constitution, especially the Bill of Rights.

First, petitioners' cause of action calls for this Court's interpretation of constitutional text. When this Court interprets the Constitution and fleshes out its text, its decisions form part of the law of the land. The Judiciary's constitutional interpretations are guided not only by the Constitution itself, but by precedents that have construed the text and articulated its intent through particular circumstances. In *David v. Senate Electoral Tribunal*: [198]

Reading a certain text includes a consideration of jurisprudence that has previously considered that exact same text, if any. Our legal system is founded on the basic principle that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form part of [our] legal system." Jurisprudence is not an independent source of law. Nevertheless, judicial interpretation is deemed part of or written into the text itself as of the date that it was originally passed. This is because judicial construction articulates the contemporaneous intent that the text brings to effect. Nevertheless, one must not fall into the temptation of considering prior interpretation as immutable.[199] (Citations omitted)

Since petitioners anchor their cause of action on their constitutionally protected rights, courts have the power to settle the controversy, and to articulate and apply what the Constitution, statutes, and rules and regulations provide in relation to the right.

Furthermore, the vagueness of the Bill of Rights' provisions does not detract from their enforceability. In fact, they were written so to leave room for future instances that can shed further light on how the provisions are to be interpreted. The Constitution is not meant to pertain to a specific moment that would restrict its application to a limited set of facts. Rather, it is meant to encapsulate circumstances that may go beyond what was initially imagined by its framers. Thus, when faced with a justiciable controversy, the Judiciary has the power to define what constitutes a violation of these provisions.

In *J. M. Tuason & Company, Inc. v. Land Tenure Administration*: [200]

It could thus be said of our Constitution as of the United States Constitution, to borrow from Chief Justice Marshall's pronouncement in *M'Culloch v. Maryland* that it is "intended to endure for ages to come and consequently, to be adapted to the various crisis of human affairs." It cannot be looked upon as other than, in the language of another American jurist, Chief Justice Stone, "a continuing instrument of government." Its framers were not visionaries, toying with speculations or theories, but men of affairs, at home in statecraft, laying down the foundations of a government which can make effective and operative all the powers conferred or assumed, with the corresponding restrictions to secure individual rights and, anticipating, subject to the limitations of human foresight, the problems that events to come in the distant days ahead will bring. Thus a constitution, to quote from Justice Cardozo, "states or ought to state not rules for the passing hour, but principles for an expanding future."

To that primordial intent, all else is subordinated. Our Constitution, any constitution, is not to be construed narrowly or pedantically, for the prescriptions therein contained, to paraphrase Justice Holmes, are not mathematical formulas having their essence in their form, but are organic living institutions, the significance of which is vital nor formal. There must be an awareness, as with Justice Brandeis, not only of what has been, but of what may be. The words employed by it are not to be construed to yield fixed and rigid answers but as impressed with the necessary attributes of flexibility and accommodation to enable them to meet adequately whatever problems the future has in store. It is not, in brief a printed finality but a dynamic process.[201] (Citations omitted)

In *Secretary of Justice v. Lantion*: [202]

The due process clauses in the American and Philippine Constitutions are not only worded in exactly identical language and terminology, but more importantly, they are alike in what their respective Supreme Courts have expounded as the spirit with which the provisions are informed and impressed, the elasticity in their interpretation, their dynamic and resilient character which make them capable of meeting every modern problem, and their having been designed from earliest time to the present to meet the exigencies of an undefined and expanding future. The requirements of due process are interpreted in both the United States and the Philippines as not denying to the law the capacity for progress and improvement. Toward this effect and in order to avoid the confines of a legal straitjacket, the courts instead prefer to have the meaning of the due process clause "gradually ascertained by the process of inclusion and exclusion in the course of the decisions

of cases as they arise" (Twining vs. New Jersey, 211 U.S. 78). Capsulized, it refers to "the embodiment of the sporting idea of fair play" (Ermita-Malate Hotel and Motel Owner's Association vs. City Mayor of Manila, 20 SCRA 849 [1967]). It relates to certain immutable principles of justice which inhere in the very idea of free government (Holden vs. Hardy, 169 U.S. 366).[203]

Thus, in my separate opinion in *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, [204] emphasized that the right to life and liberty under the Bill of Rights evolves and expands to our current realities:

It is in this sense that the constitutional listing of the objects of due process protection admits amorphous bounds. The constitutional protection of life and liberty encompasses a penumbra of cognate rights that is not fixed but evolves — expanding liberty — alongside the contemporaneous reality in which the Constitution operates. *People v. Hernandez* illustrated how the right to liberty is multi-faceted and is not limited to its initial formulation in the due process clause:

[T]he preservation of liberty is such a major preoccupation of our political system that, not satisfied with guaranteeing its enjoyment in the very first paragraph of section (1) of the Bill of Rights, the framers of our Constitution devoted paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (18), and (21) of said section (1) to the protection of several aspects of freedom.

While the extent of the constitutional protection of life and liberty is dynamic, evolving, and expanding with contemporaneous realities, the mechanism for preserving life and liberty is immutable: any intrusion into it must be with due process of law and must not run afoul of the equal protection of the laws.[205] (Citations omitted)

In *Social Weather Stations, Inc. v. Commission on Elections*, [206] this Court discussed that judicial interpretation entails a holistic approach—considering both the history and the contemporary, the realities and the ideals, as effected by the Constitution and statutes:

Interestingly, both COMELEC and petitioners appeal to what they (respectively) construe to be plainly evident from Section 5.2(a)'s text: on the part of COMELEC, that the use of the words "paid for" evinces no distinction between direct purchasers and those who purchase via subscription schemes; and, on the part of petitioners, that Section 5.2(a)'s desistance from actually using the word "subscriber" means that subscribers are beyond its contemplation. The variance in the parties' positions, considering that they are both banking on what they claim to be the Fair Election Act's plain meaning, is the best evidence of an extant ambiguity.

Second, statutory construction cannot lend itself to pedantic rigor that foment absurdity. The dangers of inordinate insistence on literal interpretation are commonsensical and need not be belabored. These dangers are by no means endemic to legal interpretation. Even in everyday conversations, misplaced literal interpretations are fodder for humor. A fixation on technical rules of grammar is no less innocuous. A pompously doctrinaire approach to text can stifle, rather than facilitate, the legislative wisdom that unbridled textualism purports to bolster.

Third, the assumption that there is, in all cases, a universal plain language is erroneous. In reality, universality and uniformity in meaning is a rarity. A contrary belief wrongly assumes that language is static.

The more appropriate and more effective approach is, thus, holistic rather than parochial: to consider context and the interplay of the historical, the contemporary, and even the envisioned. Judicial interpretation entails the convergence of social realities and social ideals. The latter arc meant to be effected by the legal apparatus, chief of which is the bedrock of the prevailing legal order: the Constitution. Indeed, the word in the vernacular that describes the Constitution — *saligan* — demonstrates this imperative of constitutional primacy.

Thus, we refuse to read Section 5.2(a) of the Fair Election Act in isolation. Here, we consider not an abstruse provision but a stipulation that is part of the whole, i.e., the statute of which it is a part, that is aimed at realizing the ideal of fair elections. We consider not a cloistered provision but a norm that should have a

present authoritative effect, to achieve the ideals of those who currently read, depend on, and demand fealty from the Constitution.[207] (Emphasis supplied, citations omitted)

Bearing in mind its functions in constitutional interpretation, it cannot be said that the Judiciary is powerless in any capacity to address the subhuman conditions in our jails and prisons.

Still, Justice Delos Santos argues that only Congress has the power to address the state of our penal institutions. He cites the constitutional deliberations in discussing that it is the legislature that determines what constitutes a violation of the right against cruel and inhuman punishment.[208]

In David,[209] this Court discussed that a resort to these deliberations should be the last option, as doing so would be prone to "subjective interpretation" and "the greatest errors":

In the hierarchy of the means for constitutional interpretation, inferring meaning from the supposed intent of the framers or fathoming the original understanding of the individuals who adopted the basic document is the weakest approach.

These methods leave the greatest room for subjective interpretation. Moreover, they allow for the greatest errors. The alleged intent of the framers is not necessarily encompassed or exhaustively articulated in the records of deliberations. Those that have been otherwise silent and have not actively engaged in interpellation and debate may have voted for or against a proposition for reasons entirely their own and not necessarily in complete agreement with those articulated by the more vocal. It is even possible that the beliefs that motivated them were based on entirely erroneous premises. Fathoming original understanding can also misrepresent history as it compels a comprehension of actions made within specific historical episodes through detached, and not necessarily better-guided, modern lenses.[210]

Moreover, the original intent of the Constitution's framers is not always uniform with the original understanding of the people who ratified it. In *Civil Liberties Union v. Executive Secretary*:[211]

While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framer's understanding thereof.[212](Emphasis supplied, citations omitted)

Thus, it cannot be assumed that violations of the petitioners' constitutional right against cruel, unusual, and degrading punishment is solely left for Congress to address.

V

Considering that the violation of constitutional rights is a justiciable matter, aggrieved persons deprived of liberty can file an action in the proper trial court.[213]

If yet to be convicted, such that the case is still on trial or on appeal, detainees should be able to file a motion for release invoking a violation of their constitutional right. If already convicted with finality, a prisoner should be able to file for a writ of habeas corpus. This is in line with *Gumabon v. Director of the Bureau of Prisons*:[214] where this Court allowed the release of prisoners after a finding that their detention violated their constitutional right to equal protection of the laws:

1. The fundamental issue, to repeat, is the availability of the writ of habeas corpus under the circumstances disclosed. Its latitudinarian scope to assure that illegality of restraint and detention be avoided is one of the truisms of the law. It is not known as the writ of liberty for nothing. The writ imposes on judges the grave responsibility of ascertaining whether there is any legal justification for a deprivation of physical freedom. Unless there be such a showing, the confinement must thereby cease. If there be a valid sentence it cannot, even for a moment, be extended beyond the period provided for by law. Any deviation from the legal norms call for the termination of the imprisonment.

. . . .

2. Where, however, the detention complained of finds its origin in what has been judicially ordained, the range of inquiry in a habeas corpus proceeding is considerably narrowed. For if "the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order," the writ does not lie. That principle dates back to 1902, when this Court announced that habeas corpus was unavailing where the person detained was in the custody of an officer under process issued by a court or magistrate. That is understandable, as during the time the Philippines was under American rule, there was necessarily an adherence to authoritative doctrines of constitutional law there followed.

One such principle is the requirement that there be a finding of jurisdictional defect. As summarized by Justice Bradley in *Ex parte Siebold*, an 1880 decision: "The only ground on which this court, or any court, without some special statute authorizing it, will give relief on habeas corpus to a prisoner under conviction and sentence of another court is the want of jurisdiction in such court over the person or the cause, or some other matter rendering its proceedings void."

There is the fundamental exception though, that must ever be kept in mind. Once a deprivation of a constitutional right is shown to exist, the court that rendered the judgment is deemed ousted of jurisdiction and habeas corpus is the appropriate remedy to assail the legality of the detention.

3. Petitioners precisely assert a deprivation of a constitutional right, namely, the denial of equal protection. According to their petition: "In the case at bar, the petitioners were convicted by Courts of First Instance for the very same rebellion for which Hernandez, Geronimo, and others were convicted. The law under which they were convicted is the very same law under which the latter were convicted. It had not and has not been changed. For the same crime, committed under the same law, how can we, in conscience, allow petitioners to suffer life imprisonment, while others can suffer only prison mayor?"

They would thus stress that, contrary to the mandate of equal protection, people similarly situated were not similarly dealt with. What is required under this constitutional guarantee is the uniform operation of legal norms so that all persons under similar circumstances would be accorded the same treatment both in the privileges conferred and the liabilities imposed. As was noted in a recent decision: "Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances, which if not identical are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group equally binding on the rest."

The argument of petitioners thus possesses a persuasive ring. The continued incarceration after the twelve-year period when such is the maximum length of imprisonment in accordance with our controlling doctrine, when others similarly convicted have been freed, is fraught with implications at war with equal protection. That is not to give it life. On the contrary, it would render it nugatory. Otherwise, what would happen is that for an identical offense, the only distinction lying in the finality of the conviction of one being before the Hernandez ruling and the other after, a person duly sentenced for the same crime would be made to suffer different penalties. Moreover, as noted in the petition before us, after our ruling in *People v. Lava*, petitioners who were

mere followers would be made to languish in jail for perhaps the rest of their natural lives when the leaders had been duly considered as having paid their penalty to society, and freed. Such a deplorable result is to be avoided.[215] (Citations omitted)

However, to be entitled to the reliefs mentioned, one must first allege and prove the following: (a) the existing inhuman, degrading, or cruel conditions not organic or consistent with the statutory punishment imposed; (b) the violation of a clear, enforceable constitutional provision or a local or international law; (c) a clear demand on the relevant agencies of government; and (d) the intentional or persistent refusal or negligence on the part of the government agency or official to address the cruel conditions of the violation of the statutory or constitutional provisions.

Justice Perlas-Bernabe finds that our laws addressing jail congestion are lacking, and the rules on release on bail or recognizance do not expressly consider the conditions of confinement.[216] Thus, she and Justice Caguioa borrow the "deliberate indifference standard" used in the United States cases of *Estelle v. Gamble*[217] and *Helling v. McKinney*. [218]

While I agree that those cases may be relevant to this case, these are only persuasive to this Court.[219] Rather, the guidelines in *Alejano v. Cabuay*, [220] the same case where this Court discussed punishment, may be used in granting reliefs against violations of the right against cruel, degrading, and inhuman punishment, right to life, and right to health of persons deprived of liberty.

In the 2005 case of *Alejano*, junior military officers staged a mutiny against the then President and took control of Oakwood Premier Luxury Apartments. After a failed attempt, they voluntarily surrendered and were taken in custody. Later, they filed a petition for habeas corpus, alleging that their confinement conditions violated their right against cruel and unusual punishment. They specifically cry afoul on the bars that separated them from their visitors and the iron grills and plywood in their individual cells.

This Court dismissed the petition, as the petitioners failed to convince the court to infer punishment from the inherent restrictions of confinement:

Petitioners further argue that the bars separating the detainees from their visitors and the boarding of the iron grills in their cells with plywood amount to unusual and excessive punishment. This argument fails to impress us. *Bell v. Wolfish* pointed out that while a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law, detention inevitably interferes with a detainee's desire to live comfortably. The fact that the restrictions inherent in detention intrude into the detainees' desire to live comfortably does not convert those restrictions into punishment. It is when the restrictions are arbitrary and purposeless that courts will infer intent to punish. Courts' will also infer intent to punish even if the restriction seems to be related rationally to the alternative purpose if the restriction appears excessive in relation to that purpose. Jail officials are thus not required to use the least restrictive security measure. They must only refrain from implementing a restriction that appears excessive to the purpose it serves.

We quote *Bell v. Wolfish*:

One further point requires discussion. The petitioners assert, and respondents concede, that the "essential objective of pretrial confinement is to insure the detainees' presence at trial." While this interest undoubtedly justifies the original decision to confine an individual in some manner, we do not accept respondents' argument that the Government's interest in ensuring a detainee's presence at trial is the only objective that may justify restraints and conditions once the decision is lawfully made to confine a person. "If the government could confine or otherwise infringe the liberty of detainees only to the extent necessary to ensure their presence at trial, house arrest would in the end be the only constitutionally justified form of detention." The Government also has legitimate interests that stem from its need to manage the facility in which the individual is detained.

These legitimate operational concerns may require administrative measures that go beyond those that are, strictly speaking, necessary to ensure that the detainee shows up at trial. For example, the Government must be able to take steps to maintain security and order at the institution and make certain no weapons or illicit drugs reach detainees. Restraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment, even if they are discomforting and are restrictions that the detainee would not have experienced had he been released while awaiting trial. We need not here attempt to detail the precise extent of the legitimate governmental interests that may justify conditions or restrictions of pretrial detention. It is enough simply to recognize that in addition to ensuring the detainees' presence at trial, the effective management of the detention facility once the individual is confined is a valid objective that may justify imposition of conditions and restrictions of pretrial detention and dispel any inference that such restrictions are intended as punishment.

An action constitutes a punishment when (1) that action causes the inmate to suffer some harm or "disability," and (2) the purpose of the action is to punish the inmate. Punishment also requires that the harm or disability be significantly greater than, or be independent of, the inherent discomforts of confinement.

Block v. Rutherford, which reiterated Bell v. Wolfish, upheld the blanket restriction on contact visits as this practice was reasonably related to maintaining security. The safety of innocent individuals will be jeopardized if they are exposed to detainees who while not yet convicted are awaiting trial for serious, violent offenses and may have prior criminal conviction. Contact visits make it possible for the detainees to hold visitors and jail staff hostage to effect escapes. Contact visits also leave the jail vulnerable to visitors smuggling in weapons, drugs, and other contraband. The restriction on contact visits was imposed even on low-risk detainees as they could also potentially be enlisted to help obtain contraband and weapons. The security consideration in the imposition of blanket restriction on contact visits was ruled to outweigh the sentiments of the detainees.

Block v. Rutherford held that the prohibition of contact visits bore a rational connection to the legitimate goal of internal security. This case reaffirmed the "hands-off" doctrine enunciated in Bell v. Wolfish, a form of judicial self-restraint, based on the premise that courts should decline jurisdiction over prison matters in deference to administrative expertise.

In the present case, we cannot infer punishment from the separation of the detainees from their visitors by iron bars, which is merely a limitation on contact visits. The iron bars separating the detainees from their visitors prevent direct physical contact but still allow the detainees to have visual, verbal, non-verbal and limited physical contact with their visitors. The arrangement is not unduly restrictive. In fact, it is not even a strict noncontact visitation regulation like in Block v. Rutherford. The limitation on the detainees' physical contacts with visitors is a reasonable, non-punitive response to valid security concerns.

The boarding of the iron grills is for the furtherance of security within the ISAFP Detention Center. This measure intends to fortify the individual cells and to prevent the detainees from passing on contraband and weapons from one cell to another. The boarded grills ensure security and prevent disorder and crime within the facility. The diminished illumination and ventilation are but discomforts inherent in the fact of detention, and do not constitute punishments on the detainees.

We accord respect to the finding of the Court of Appeals that the conditions in the ISAFP Detention Center are not inhuman, degrading and cruel. Each detainee, except for Capt. Nicanor Faeldon and Capt. Gerardo Gambala, is confined in separate cells, unlike ordinary cramped detention cells. The detainees are treated well and given regular meals. The Court of Appeals noted that the cells are relatively clean and livable compared to the conditions now prevailing in the city and provincial jails, which are congested with detainees. The Court of Appeals found the assailed measures to be reasonable considering that the ISAFP Detention Center is a high-risk

detention facility. Apart from the soldiers, a suspected New People's Army ("NPA") member and two suspected Abu Sayyaf members are detained in the ISAFP Detention Center.[221] (Emphasis supplied, citations omitted)

In *Alejano*, this Court adopted the tests in the United States case of *Bell v. Wolfish*[222] in determining the "intent to punish" from the restrictions and conditions of confinement: (1) if these are arbitrary, purposeless, and do not satisfy a government interest; (2) assuming that there is an alternative government interest (i.e. facilities' operational concerns), if the conditions appear "excessive in relation to that purpose."

Applying these tests, this Court held that the bar installation was not unduly restrictive, and intended to secure the detainees. Also, the illumination and ventilation were held to be "inherent in the fact of detention, and do not constitute punishments on the detainees." Moreover, this Court held that their overall conditions—their individual confinement, regular meals, clean and livable cells—were not inhuman, degrading, and cruel, as compared to the congested city and provincial jails. Thus, this Court did not infer an intent to punish in their case.

I maintain that persons deprived of liberty have a cause of action for violation of the right against cruel, degrading, and inhuman punishment if their current state of detention is no longer organic to the fact of their detention. As Justice Caguioa pointed out,[223] *Alejano* affirmed that the violations of the constitutional rights of persons deprived of liberty are within the court's power of review. In *Alejano*:

The ruling in this case, however, does not foreclose the right of detainees and convicted prisoners from petitioning the courts for the redress of grievances. Regulations and conditions in detention and prison facilities that violate the Constitutional rights of the detainees and prisoners will be reviewed by the courts on a case-by-case basis. The courts could afford injunctive relief or damages to the detainees and prisoners subjected to arbitrary and inhumane conditions. However, habeas corpus is not the proper mode to question conditions of confinement. The writ of habeas corpus will only lie if what is challenged is the fact or duration of confinement. (Citations omitted)[224]

Contrary to *Alejano*, however, I view that a petition for habeas corpus may also be a proper remedy to question conditions of confinement.

Thus, in allowing petitioners' temporary release, the ultimate issue to be resolved is whether or not the State has been maintaining their jail or detention facilities in compliance with the Constitution, local laws, and international standards on the rights of persons deprived of liberty.

However, a mere allegation that constitutional rights have been violated is insufficient. I agree with Justice Caguioa that the causal link between notorious jail conditions and a person deprived of liberty's exclusion from the standard of care available to a free person must be proven first. This is necessary to sustain a cause of action anchored on the right against cruel and inhuman punishment and relevant international laws.[225]

Thus, to reiterate, petitioners must be able to satisfy the following requisites: (a) the existing inhuman, degrading, or cruel conditions not organic or consistent with the statutory punishment imposed; (b) the violation of a clear, enforceable constitutional provision or a local or international law; (c) a clear demand on the relevant government agency; and (d) the government agency's intentional or persistent refusal or negligence to address the cruel conditions of the violation of the statutory or constitutional provisions.

I emphasize the third and fourth requisites: before the court can conclude a violation of constitutional rights, there must have been a clear demand on the relevant government agency, and in turn, a wanton denial or unreasonable negligence on the agency's part. This is in keeping with the doctrine of separation of powers. As Justice Caguioa correctly puts it, addressing jail congestion is a "policy question and formulation" under the jurisdiction of the executive and legislative branches of government.[226] Thus, the courts must first defer to the capabilities of the other constitutional organs.

VI

In this case, the claims of petitioners in relation to these standards clearly require the presentation of evidence in the trial court. Several factual determinations must be made before a ruling can be had on whether there is a violation of their constitutional rights.

It is correct that this Court may take judicial notice of the nature of COVID-19 and the longstanding jail congestion which has plagued the Philippine jails. This unresolved crisis is a significant threat to the right to life, health, and security of persons in congested penal facilities, whose conditions make social distancing impossible.

While factual allegations must be proven by evidence, courts may take judicial notice of particular circumstances. Rule 129, Sections 1 to 3 of the Rules of Court state:

SECTION 1. Judicial notice, when mandatory. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

SECTION 2. Judicial notice, when discretionary. — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

SECTION 3. Judicial notice, when hearing necessary. — During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case. (Emphasis supplied)

From these, this Court has summed up the requisites of judicial notice. In *State Prosecutors v. Muro*:^[227]

Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety.^[228] (Citations omitted)

Thus, this Court may take judicial notice of the state of jail congestion in the Philippines, the nature of transmission of COVID-19, and its deadly effects.

VI (A)

The available government data on prisons and jails reveal the appalling state of congestion and overcapacity in the Philippines.

The Bureau of Corrections' statistics show that as of January 2020, all prison facilities within its jurisdiction are overcrowded:

Prison Facilities

PDL Population

Capacity

Occupancy Rate

Congestion Rate

New Bilibid Prison

29,173

6,435

453%

353%

CIW- Mandaluyong

3,422

1,008

340%

240%

Iwahig Prison & Penal Farm

2,783

675

412%

312%

Davao Prison & Penal Farm

6,607

1,354

488%

388%

CIW- Mindanao

579

102

567%

467%

San Ramon Prison & Penal Farm

2,329

733

318%

218%

Sablayan Prison & Penal Farm

2,646

994

266%

166%

Leyte Regional Prison

2,045

679

301%

201%[229]

The occupancy rate is obtained through dividing the number of detainees by 4.7 square meters, which is the ideal habitable floor area per inmate, according to the Bureau of Jail Management and Penology's Revised Manual on Habitat, Water, Sanitation and Kitchen in Jails.[230] If the quotient is above 100, it means the jail is congested.[231]

Meanwhile, the Bureau of Jail Management and Penology has neither published its data on jail congestion nor included it in the Verified Report it submitted to this Court. Nonetheless, based on the Commission on Audit's annual review on the Bureau's facilities, as of December 31, 2018, the total occupancy rate is at 439.48%. It is broken down as follows:[232]

Office/RO

Jail

Population

Total Ideal

Capacity

Variance

Congestion Rate

NCR

36,035

5,237

30,799

588%

CAR

1,214

423

791

187%

R.O. I

4,364

1,085

3,279

302%

R.O. II

2,771

656

2,115

323%

R.O. III

10,035

1,548

8,487

548%

R.O. IV-A

21,128

2,925

18,203

622%

R.O. IVB

1,627

504

1,123

223%

R.O. V

2,882

785

2,097

267%

R.O. VI

9,056

4,231

4,825

114%

R.O. VII

19,751

2,665

17,086

641%

R.O. VIII

2,804

551

2,253

409%

R.O. IX

5,709

766

4,943

645%

R.O. X

4,633

950

3,683

387%

R.O. XI

6,253

1,069

5,184

485%

R.O. XII

5,064

910

4,154

457%

R.O. XIII

2,845

860

1,985

231%

ARMM

143

103

40

39%

Total

136,314

25,268

111,046

439.48%

The Commission on Audit found that the jail populations increased because of the increase in drug-related cases, pendency of cases, and non-release on bail due to poverty.[233] It noted that this congestion results in unhealthy living conditions of inmates, which goes against the requirements of its governing Manual and the United Nations standards.[234]

Based on its findings, the Commission on Audit recommended the following actions for the Bureau of Jail Management and Penology:

We recommended that Management:

- (a) continue its efforts in making representations with concerned government agencies in addressing the congestion problems in all jail facilities;
 - (b) prioritize acquisition of lots and construction programs and projects aimed at improving the jail facilities;
 - (c) require the Regional Bids and Awards Committee to ensure timely completion of all procurement activities pertaining to the construction and/or improvement of all jail facilities in order to decongest overcrowded jails;
- and

(d) enhance and intensify the GCTA process and give more emphasis on the Recognizance Act for detainees early release without necessarily completing their sentence which could significantly reduce jail population and congestion.[235]

According to the World Prison Brief, the Philippines' occupancy level is at 463.6%, the second highest among all the prisons in the world.[236]

In 2012, the United Nations Committee Against Torture alerted the Philippines to provide information on measures undertaken to address overcrowding in penitentiary institutions.[237] In 2016, it raised its concern against the deplorable living conditions in jails, detention centers, and police lock-up cells, which may qualify as ill treatment or torture:

Conditions of detention

27. The Committee is concerned at the persistence of appalling conditions of detention prevailing in the State party, both in police lock-up cells and the jails and detention facilities run by the Bureau of Jail Management and Penology, which do not meet minimum international standards and may constitute ill-treatment or torture. It is particularly concerned at the persistence of critical and chronic overcrowding in all detention facilities, some of which may be operating at 380 percent of capacity. Conditions in all places of deprivation of liberty include dilapidated and small cells, in some of which detainees are forced to sleep while sitting or standing, unsanitary conditions, inadequate amounts of food, poor nutrition, insufficient natural and artificial lighting and poor ventilation, which cause inter-prisoner violence and the spread of infectious diseases such as tuberculosis, the incidence of which is extremely high. The Committee is particularly alarmed at information that tuberculosis eradication programmes were not a priority in the past because they were seen as irrelevant to the maintenance of security. The Committee is concerned about sexual violence against detained persons and about the treatment of detainees belonging to minorities (arts. 2, 11 and 16).[238] (Emphasis supplied)

VI (B)

COVID-19 is an infectious disease caused by a new type of coronavirus called severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Generally, coronaviruses cause respiratory infections to humans, which range from mild to severe. The Middle East Respiratory Syndrome and Severe Acute Respiratory Syndrome, both viral outbreaks that had swept the Philippines years ago, were both caused by coronaviruses.

COVID-19 was first encountered in Wuhan, China last December 2019.[239] On January 9, 2020, its first death was publicly recorded.[240]

The common symptoms of this disease include fever, dry cough, and tiredness. Some manifestations include aches and pains, nasal congestion, sore throat, diarrhea, anosmia (loss of smell), and dysgeusia (loss of taste).[241] These signs begin mildly and may gradually progress.[242]

According to the World Health Organization, 80% of infected persons recover from COVID-19 without needing hospital treatment. However, one of every five people becomes seriously ill and develops difficulty breathing. Any person can be seriously ill, but those who are of advanced age, and those with underlying medical problems such as high blood pressure, heart and lung problems, diabetes, cancer, or immunosuppression have a higher chance of worsening conditions.[243]

COVID-19 is highly contagious.[244] Some get infected but do not develop any symptoms or feel unwell; some only experience mild symptoms. However, even those with zero to very mild symptoms can transmit the virus if they carry it.[245] In fact, COVID-19 has since spread worldwide, prompting the World Health Organization to declare it a pandemic—the first one caused by a coronavirus.[246]

The World Health Organization had initially found that the virus spreads when a COVID-19-positive person expels small droplets from the nose or mouth through speaking, coughing, or sneezing. People can catch COVID-19 "if they breathe in these droplets," or if they touched objects or surfaces on which the droplets are expelled and then they touched their eyes, nose, or mouth. It later noted that "airborne transmission of the virus can occur in health care settings where specific medical procedures, called aerosol generating procedures, generate very small droplets called aerosols." It also reported that some outbreaks in indoor crowded spaces suggested the possibility of combined aerosol and droplet transmission, citing examples such as during choir practice, in restaurants or in fitness classes.[247]

Thus, the World Health Organization lists several recommendations to prevent transmission. These include frequent hand hygiene, physical distancing, respiratory etiquette, avoiding "crowded places, close-contact settings and confined and enclosed spaces with poor ventilation," wearing fabric masks, and "good environmental ventilation in all closed settings and appropriate environmental cleaning and disinfection." [248]

As of now, there is no vaccine against the SARS-CoV-2 virus, and no proven cure for COVID-19.[249]

All these factors have caused the entire world to undergo extraordinary changes to cope with the situation.

In the Philippines, where the first case of COVID-19 was reported on January 30, 2020,[250] the Department of Health has recommended measures to slow its spread, including personal hygiene, social distancing, environmental cleanliness, and food safety.[251] It also advised against public events and gatherings.[252]

The government has imposed travel bans,[253] raised the COVID-19 Alert to Code Red sublevel 2—the highest level of national response management[254]—announced a state of calamity throughout the country for six months,[255] and declared a national emergency. President Rodrigo Duterte was also given emergency powers to address the state of public health emergency.[256]

Several levels of community quarantine measures—general, enhanced, to extreme enhanced along with their modified versions—were imposed all over the country, depending on each locality's situation. Notably, work was suspended in the executive branch, and the other branches were encouraged to follow suit. Private enterprises made flexible work arrangements. Land, domestic air, and domestic sea travel to and from Metro Manila were suspended.[257] Local governments started imposing curfews, implementing quarantine passes, providing support to health workers, and distributing relief goods.[258]

Quarantine was extended several times,[259] and was subsequently modified based on the locality after consideration of the developments of the COVID-19 epidemiological curve, health capacity, and economic, security, and social factors.

Yet, based on publicly available Department of Health data, the total number of cases continues to rise. In particular, Moreover, several news reports announced positive cases of and deaths related to COVID-19 in jails.[260]

While the Bureau of Corrections and the Bureau of Jail Management and Penology submitted Verified Reports on the measures taken to address the disease, they admit that social distancing is necessary to disrupt the spread of the virus. They also concede that this is unachievable in all of the penal facilities in the Philippines.[261] Petitioners invoke the general absence of adequate medical and healthcare facilities to respond to basic needs of prisoners.[262]

Clearly, the nature of COVID-19 and the jail congestion in this country are matters that all courts may take judicial notice of. The fact of overcrowding in jails and the transmissibility of COVID-19 no longer need further

proof. However, even if this Court takes judicial notice of these circumstances, there are several facts that must first be determined in relation to the confinement of petitioners or any other person deprived of liberty seeking release.

This includes, among others, the latest data on jail congestion and measures taken to address the chronic problem of jail overcapacity; the capabilities of the prison systems where petitioners are detained to prevent the spread of COVID-19; the demands made by petitioners to the detention facilities; any unjustified refusal or negligence on the part of the detention facilities to act on their concerns.

Courts cannot grant a blanket release without determining these facts. Petitioners must establish the basis for their temporary release. To be released based on a violation of their constitutional rights, petitioners must still show the circumstances of their own detention and prove they are deprived of the basic and minimum standards of imprisonment. They should establish the individual conditions of their confinement which are not organic or consistent with the punishment imposed on them. They must invoke which constitutional rights are violated. They must show they have made a clear demand on the relevant government agencies, and that the latter intentionally or persistently refused or negligently failed to act on their concerns. They must ultimately show that the responsible government instrumentality has been compliant or negligent with constitutional, international, and local provisions and standards protecting their rights.

Justice Lazaro-Javier opines that while this Court may take judicial notice of jail congestion,[263] the infringement of the minimum standards required under the law do not constitute cruel and inhuman punishment. To her, while it affects the severity of the punishment, it is merely incidental to the punishment.[264]

She also agrees that jail congestion has a bigger impact on petitioners' right to life during the pandemic.[265] However, she finds that it cannot be said that the increased risks caused by COVID-19 on their right to life, security and health are the fault of respondents, such that the violation can be attributed to them. She holds that respondents committed no positive act to increase petitioners' risks or worsen the situation.[266] Neither are they guilty of inaction or idleness since they have taken positive measures to minimize the spread of the virus and infection among the prisoners. Even assuming their measures were not sufficient, the inadequacy is attributable to other factors beyond the control and authority of respondents, including the unpredictability of the pandemic.[267]

Similarly, without trial on the merits, Justice Delos Santos is ready to conclude that petitioners' continued detention is not unnecessarily oppressive because they failed to show that the State has been "indifferent to their clinical needs." [268]

These are already factual conclusions that may only be determined in a proper hearing in the trial courts. I suggest that before this Court make any finding, a full-blown hearing is necessary. Without it, it cannot be established that jail congestion and the general lack of adequate medical facilities preclude respondents from preventing the spread of COVID-19 in its facilities. Without it, the question of whether petitioners' constitutional rights were violated remains unanswered.

VII

Finally, I suggest a measure grounded on social justice: that this Court provide a remedy called the writ of kalayaan.

I recognize the many efforts and feats of this Court under Chief Justice Peralta's leadership to facilitate the release of qualified persons deprived of liberty.[269]

However, I urge this Court to move even further. In recognition of the pervasiveness of congestion in our jails, this Court should fashion a remedy called the writ of kalayaan similar to the writ of kalikasan or the writ of continuing mandamus in environmental cases.

This Court is not without precedent in formulating rules to address pervasive and urgent violations of constitutional rights with transcendental effects. In *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*,^[270] this Court issued, for the first time, a writ of continuing mandamus ordering various administrative agencies to fulfill their respective mandates to clean up and restore Manila Bay. Having appreciated the extraordinary circumstances, the urgency of the situation, and the extreme environmental degradation of Manila Bay, this Court upheld the right to a balanced and healthful ecology through the writ.

This Court likewise recognized that it needed to formulate special rules of procedure to enforce environmental laws and finally address the continuing violations of these laws. On April 10, 2010, it promulgated the Rules of Procedure for Environmental Cases for the enforcement or violations of environmental and other related rules.^[271] The Rules provide the procedure for the issuance of a writ of kalikasan,^[272] an "extraordinary remedy that covers environmental damages the magnitude of which transcends both political and territorial boundaries."^[273] The Rules also provide the issuance of a continuing mandamus,^[274] a "distinct procedure than that of ordinary civil actions for the enforcement/violation of environmental laws."^[275]

This time, a writ of kalayaan should be issued when all the requirements to establish cruel, inhuman, and degrading punishment are present. This is necessary considering that the continued and malicious congestion of our jails does not affect only one individual. Its issuance is grounded on this Court's rule-making authority and the extreme situation brought upon by the COVID-19 pandemic. As in *Metropolitan Manila Development Authority*, this Court is again being called to address a systemic problem that even the most basic health protocols to prevent the spread of the virus cannot, address. Jail congestion is as virulent as COVID-19 itself, especially in the face of an unprecedented global pandemic.

The writ of kalayaan may require a more constant supervision by an executive judge for the traditional or extraordinary releases of convicts or detainees. It should provide an order of precedence in order to bring the occupation of jails to a more humane level. Those whose penalties are the lowest and whose crimes are brought about, not by extreme malice, but by the indignities of poverty may be prioritized.

Certainly, the writ of kalayaan will be the distinguishing initiative of the Peralta Court—a measure that is grounded on social justice.

Persons deprived of liberty do not shed their humanity once they are taken into custody, yet the perennial congestion that plague our jails do not reflect this. Instead, they reveal our failure to respect the very fundamental rights that the State has guaranteed to protect. This wrong, which we have allowed to persist, is all the more pressing in the face of a highly contagious and deadly disease. Persons deprived of liberty are in need of more remedies to ensure that their detention do not prejudice their right to live.

Jail congestion harms so many individuals—most of them poor, and therefore, invisible. The dawn of the COVID-19 pandemic has only made this a more urgent concern. We cannot just watch and sit idly by.

ACCORDINGLY, I vote that the Petition be referred to the appropriate trial courts to determine, upon proper motion or petition of the parties, whether there are factual bases supporting the temporary release of petitioners on the following grounds:

First, they are entitled to release on bail or recognizance, if still applicable; or

Second, there is a violation of their constitutional right against cruel, inhuman, and degrading punishment or other related constitutional rights, such that they may file either: (1) a motion for release if the case is still on trial or on appeal; or (2) petition a writ of habeas corpus as a post-conviction remedy. The grant of these remedies is subject to the establishment of the following requisites: (a) existing inhuman, degrading, or cruel conditions not organic or consistent with the statutory punishment imposed; (b) the conditions violate clear, enforceable statutory or constitutional provisions including judicially discernable international standards adopted in this jurisdiction; (c) a clear demand on the relevant government agency to address their grievance; and (d) the conditions are the result of intentional or persistent refusal or negligence on the part of the government agency, be it the warden, director of prisons, local government unit, or Congress.

I also vote that this Court En Banc create a subcommittee under the Committee on Rules to immediately draft a proposal for a writ of kalayaan to set the clearest guidance for the lower courts in adjudicating proven violations of the right against cruel, inhuman, and degrading punishment as a result of continuous congestion of detention centers or jails.

[1] C.J. Peralta, Separate Opinion, p. 8.

[2] 767 Phil. 147 (2015) [Per J. Bersamin, En Banc].

[3] J. Perlas-Bernabe, Separate Opinion, p. 10.

[4] 147 Phil. 362 (1971) [Per J. Fernando, First Division]

[5] Petition, p. 57.

[6] Id. at 5-6 and 34.

[7] Petitioners assert these are recognized in the Philippines as they are referred in Republic Act No. 10575 or the Bureau of Corrections Act and the Jail Manual of Operations.

[8] Petition, pp. 40-52.

[9] Id. at 48-52.

[10] Id. at 11 and 54.

[11] Id. at 55.

[12] Id. at 41.

[13] Id. at 42. The Petition states "Republic Act No. 10375."

[14] Id. at 40.

[15] Id. at 3, 27 and 30.

[16] Id. at 27.

[17] Id. at 56.

[18] Id.

[19] 767 Phil. 147 (2015) [Per J. Bersamin, En Banc].

[20] 77 Phil. 461 (1946) [Per J. Feria, En Banc].

[21] Petition, pp. 53-54.

[22] Comment, pp. 17-18.

[23] Id. at 20-22.

[24] Id. at 22-24.

[25] Id. at 10.

[26] Id. at 24-26.

[27] Id. at 27-29.

[28] Id. at 29-33.

[29] Id. at 38.

[30] Id. at 33-36.

[31] Id. at 36-38.

[32] Id. at 40.

[33] Reply, pp. 4-5.

[34] Id. at 5-11.

[35] Id. at 12-16.

[36] Id. at 50-56.

[37] Should they avail of the second remedy, a detainee whose conviction is not yet final should file a motion for release, while a convicted prisoner may file a petition for a writ of habeas corpus.[37] The movant or petitioner must show: (a) the existing inhuman, degrading, or cruel conditions not organic or consistent with the statutory punishment imposed; (b) the violation of a clear, enforceable constitutional provision or a local or international law; (c) a clear demand made on the relevant agencies of government; (d) the intentional or persistent refusal or negligence on the part of the relevant agencies of government to address the cruel conditions of the violation of the statutory or constitutional provisions.

[38] Rules of Court, Rule 114, sec. 1.

[39] RULES OF COURT, Rule 114, sec. 4 provides:

SECTION 4. Bail, a Matter of Right; Exception. — All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment.

[40] RULES OF COURT, Rule 114, sec. 2 provides:

SECTION 2. Conditions of the Bail; Requirements. — All kinds of bail are subject to the following conditions: (a) The undertaking shall be effective upon approval, and unless cancelled, shall remain in force at all stages of the case until promulgation of the judgment of the Regional Trial Court, irrespective of whether the case was originally filed in or appealed to it; (b) The accused shall appear before the proper court whenever required by the court or these Rules;

- (c) The failure of the accused to appear at the trial without justification and despite due notice shall be deemed a waiver of his right to be present thereat. In such case, the trial may proceed in absentia; and
 - (d) The bondsman shall surrender the accused to the court for execution of the final judgment.
- The original papers shall state the full name and address of the accused, the amount of the undertaking and the conditions required by this section. Photographs (passport size) taken within the last six (6) months showing the face, left and right profiles of the accused must be attached to the bail. (2a)

[41] RULES OF COURT, Rule 114, sec. 17 provides:

SECTION 17. Bail, Where Filed. — (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any regional trial court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein. (b) Where the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application may only be filed in the court where the case is pending, whether on preliminary investigation, trial, or appeal. (c) Any person in custody who is not yet charged in court may apply for bail with any court in the province, city, or municipality where he is held. (17a)

[42] RULES OF COURT, Rule 114, secs. 8 and 18 provide:

SECTION 8. Burden of Proof in Bail Application. — At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, reclusion perpetua, or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify.

SECTION 18. Notice of Application to Prosecutor. — In the application for bail under section 8 of this Rule, the court must give reasonable notice of the hearing to the prosecutor or require him to submit his recommendation. (18a)

[43] RULES OF COURT, Rule 114, sec. 5 provides

SECTION 5. Bail, When Discretionary. — Upon conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

- (a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
- (b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;
- (c) That he committed the offense while under probation, parole, or conditional pardon;
- (d) That the circumstances of his case indicate the probability of flight if released on bail; or

(e) That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu proprio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case. (5a)

[44] RULES OF COURT, Rule 114, sec. 7 provides

SECTION 7. Capital Offense or an Offense Punishable by Reclusion Perpetua or Life Imprisonment, not Bailable. — No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution. (7a)

[45] 814 Phil. 840 (2017) [Per J. Leonen, Second Division].

[46] *Id.* at 884.

[47] A.M. No. 12-11-2-SC (2014), Third Whereas Clause. Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial.

[48] Rules of Court, Rule 114, sec. 15 provides:

SECTION 15. Recognizance. — Whenever allowed by law or these Rules, the court may release a person in custody on his own recognizance or that of a responsible person. (15a)

[49] 87 Phil. 566 (1950) [Per J. Paras, En Banc].

[50] *Id.* at 569-570.

[51] Republic Act No. 10389 (2013), sec. 3.

[52] Republic Act No. 10389 (2013), sec. 5 provides:

SECTION 5. Release on Recognizance as a Matter of Right Guaranteed by the Constitution. — The release on recognizance of any person in custody or detention for the commission of an offense is a matter of right when the offense is not punishable by death, reclusion perpetua, or life imprisonment: Provided, That the accused or any person on behalf of the accused files the application for such:

(a) Before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court; and

(b) Before conviction by the Regional Trial Court: Provided, further, That a person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law, or any modifying circumstance, shall be released on the person's recognizance.

[53] Republic Act No. 10389 (2013), secs. 6 and 7 provide:

SECTION 6. Requirements. — The competent court where a criminal case has been filed against a person covered under this Act shall, upon motion, order the release of the detained person on recognizance to a qualified custodian: Provided, That all of the following requirements are complied with:

(a) A sworn declaration by the person in custody of his/her indigency or incapacity either to post a cash bail or proffer any personal or real property acceptable as sufficient sureties for a bail bond;

(b) A certification issued by the head of the social welfare and development office of the municipality or city where the accused actually resides, that the accused is indigent;

(c) The person in custody has been arraigned;

(d) The court has notified the city or municipal sanggunian where the accused resides of the application for recognizance. The sanggunian shall include in its agenda the notice from the court upon receipt and act on the

request for comments or opposition to the application within ten (10) days from receipt of the notice. The action of the sanggunian shall be in the form of a resolution, and shall be duly approved by the mayor, and subject to the following conditions:

....

(e) The accused shall be properly documented, through such processes as, but not limited to, photographic image reproduction of all sides of the face and fingerprinting: Provided, That the costs involved for the purpose of this subsection shall be shouldered by the municipality or city that sought the release of the accused as provided herein, chargeable to the mandatory five percent (5%) calamity fund in its budget or to any other available fund in its treasury; and

(f) The court shall notify the public prosecutor of the date of hearing therefor within twenty-four (24) hours from the filing of the application for release on recognizance in favor of the accused: Provided, That such hearing shall be held not earlier than twenty-four (24) hours nor later than forty-eight (48) ours from the receipt of notice by the prosecutor: Provided, further, That during said hearing, the prosecutor shall be ready to submit the recommendations regarding the application made under this Act, wherein no motion for postponement shall be entertained.

SECTION 7. Disqualifications for Release on Recognizance. — Any of the following circumstances shall be a valid ground for the court to disqualify an accused from availing of the benefits provided herein:

(a) The accused had made untruthful statements in his/her sworn affidavit prescribed under Section 5(a):

(b) The accused is a recidivist, quasi-recidivist, habitual delinquent, or has committed a crime aggravated by the circumstance of reiteration;

(c) The accused had been found to have previously escaped from legal confinement, evaded sentence or has violated the conditions of bail or release on recognizance without valid justification; SCEDAI

(d) The accused had previously committed a crime while on probation, parole or under conditional pardon;

(e) The personal circumstances of the accused or nature of the facts surrounding his/her case indicate the probability of flight if released on recognizance;

(f) There is a great risk that the accused may commit another crime during the pendency of the case; and

(g) The accused has a pending criminal case which has the same or higher penalty to the new crime he/she is being accused of.

[54] 345 Phil. 823 (1997) [Per J. Mendoza, En Banc].

[55] *Id.* at 832-833.

[56] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule VIII, sec. 65.

[57] 578 Phil. 1002 (2008) [Per J. Carpio Morales, En Banc].

[58] Petition, p. 8.

[59] *Id.* at 6.

[60] *Id.* at 7.

[61] *Id.*

[62] 767 Phil. 147 (2015) [Per J. Bersamin, En Banc].

[63] Petition, pp. 53-55.

[64] J. Delos Santos, Separate Opinion, pp. 41-43.

[65] *Id.* at 56, 59, and 66-67; J. Reyes, Separate Opinion, pp. 3-4.

[66] J. Reyes, Separate Opinion, p. 3.

[67] 456 Phil. 1 (2003) [Per J. Carpio, First Division]. See also *Regulus Development, Inc. v. Dela Cruz*, 779 Phil. 75 (2016) [Per J. Brion, Second Division].

[68] *Id.* at 10.

[69] *Reyes v. Lim*, 456 Phil. 1 (2003) [Per J. Carpio, First Division].

[70] *Id.* at 10.

[71] *Id.* See also *Regulus Development, Inc. v. Dela Cruz*, 779 Phil. 75 (2016) [Per J. Brion, Second Division].

[72] *Orata v. Intermediate Appellate Court*, 263 Phil. 846, 852 (1990) [Per J. Paras, Second Division].

[73] 263 Phil. 846 (1990) [Per J. Paras, Second Division].

[74] *Id.* at 851-852.

[75] 275 Phil. 597 (1991) [Per J. Medialdea, First Division].

[76] *Id.* at 604.

[77] 330 Phil. 1074 (1996) [Per J. Padilla, First Division].

[78] *Id.* at 1081.

[79] 694 Phil. 223 (2012) [Per J. Villarama, Jr., First Division].

[80] *Id.* at 224-225.

[81] J. Delos Santos, *Separate Opinion*, pp. 79-81.

[82] *Id.* at 81.

[83] *Id.* at 83.

[84] *Id.*

[85] *Id.* at 84.

[86] C.J. Peralta, *Separate Opinion*, p. 5.

[87] 767 Phil. 147 (2015) [Per J. Bersamin, *En Banc*].

[88] J. Leonen, *Dissenting Opinion in Enrile v. Sandiganbayan*, 767 Phil. 147, 183 (2015) [Per J. Bersamin, *En Banc*].

[89] If the crime charged is punishable by reclusion perpetua or life imprisonment, the court having jurisdiction must determine if the evidence of guilt is strong. Otherwise, the mandatory hearing is only for determining the amount of bail.

[90] Perlas-Bernabe, *Separate Opinion*, pp. 6-7.

[91] *Id.* at 181.

[92] J. Lazaro-Javier, *Separate Opinion*, p. 8.

[93] 809 Phil. 453 (2017) [Per J. Carpio, *En Banc*].

[94] J. Lazaro-Javier, *Separate Opinion*, p. 12.

[95] J. Caguioa, Separate Opinion, p. 8; J. Perlas-Bernabe, Separate Opinion, p. 5.

[96] Id. at 10.

[97] J. Perlas-Bernabe, Separate Opinion, pp. 14-15; J. Delos Santos, Separate Opinion, p. 96.

[98] J. Delos Santos, Separate Opinion, p. 96.

[99] G.R. No. 221139, March 20, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145>> [Per J. Leonen, Third Division].

[100] Id.

[101] CONST, art. 3, sec. 13 states:

SECTION 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

[102] Trillanes v. Pimentel, 578 Phil. 1014-1015 (2008) [Per J. Carpio Morales, En Banc] citing People v. Hon. Maceda, 380 Phil. 1 (2000) [Per J. Pardo, Third Division].

[103] J. Delos Santos, Separate Opinion, p. 97.

[104] Id. at 98.

[105] Id. at 98-99.

[106] Id. at 99.

[107] Id. at 58.

[108] J. Reyes, Separate Opinion, p. 7.

[109] Id. at 6.

[110] Id. at 6; J. Lazaro-Javier, Separate Opinion, p. 32.

[111] J. Perlas-Bernabe, Separate Opinion, p. 14.

[112] 505 Phil. 298 (2005) [Per J. Carpio, En Banc] citing Fisher v. Winter, 564 F Supp. 281 (1983).

[113] Id. at 315.

[114] 1935 CONST., art. I, sec. 1(19).

[115] 1973 CONST., art. IV, sec. 1.

[116] 795 Phil. 529 (2016) [Per J. Leonen, En Banc].

[117] Id. at 572-573.

[118] 131 Phil. 408 (1968) [Per J. J.B.L. Reyes, En Banc].

[119] Id. at 411.

[120] 808 Phil. 86 (2017) [Per J. Bersamin, En Banc].

[121] Id. at 94.

[122] Republic Act No. 9745 (2009), the Anti-Torture Act of 2009.

[123] These definitions of torture and other cruel, inhuman, and degrading treatment or punishment under Republic Act No. 9745 were adopted from the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the Philippines ratified on June 18, 1986.

[124] Republic Act No. 9745 (2009), secs. 3-5.

[125] Republic Act No. 9745 (2009), secs. 9-1.

[126] 589 Phil. 1 (2008) [Per J. Puno, En Banc].

[127] *Id.* at 50.

[128] *Id.* at 50-55.

[129] 335 Phil. 343 (1999) [Per Curiam, En Banc].

[130] J. Panganiban, Separate Opinion in *People v. Echegaray*, 335 Phil. 343, 407 (1999) [Per Curiam, En Banc].

[131] 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].

[132] *Id.* at 156.

[133] CONST., art. II, sec. 11.

[134] Republic Act No. 9745 (2009).

[135] Republic Act No. 9745 (2009), sec. 2.

[136] Republic Act No. 10575 (2013). Bureau of Corrections Act of 2013.

[137] Republic Act No. 10575 (2013), sec. 8 provides:

SECTION 8. Supervision of the Bureau of Corrections. — The Department of Justice (DOJ), having the BuCor as a line bureau and a constituent unit, shall maintain a relationship of administrative supervision with the latter as defined under Section 38 (2), Chapter 7, Book IV of Executive Order No. 292 (Administrative Code of 1987), except that the DOJ shall retain authority over the power to review, reverse, revise or modify the decisions of the BuCor in the exercise of its regulatory or quasi-judicial functions.

[138] Bureau of Corrections Operating Manual (2000), Book I, Part III, ch. I, secs 1-3 provide:

SECTION 1. Rights of an inmate. — An inmate shall have the following basic rights:

- a. to receive compensation for labor he performs;
- b. to be credited with time allowances for good conduct and loyalty;
- c. to send and receive mail matter;
- d. to practice his religion or observe his faith;
- e. to receive authorized visitors;
- f. to ventilate his grievances through proper channels; and
- g. to receive death benefits and pecuniary aid for injuries.

SECTION 2. Privileges of an Inmate. — The following privileges shall also be extended to an inmate:

- a. Attend or participate in any entertainment or athletic activity within the prison reservation;
- b. Read books and other reading materials in the library;
- c. Smoke cigar and cigarettes, except in prohibited places;

- d. Participate in civic, religious and other activities authorized by prison authorities; and
- e. Receive gifts and prepared food from visitors subject to inspection.

SECTION 3. Rights of a Detainee. — A detainee may, aside from the rights and privileges enjoyed by a finally convicted inmate, wear civilian clothes and to grow his hair in his customary style.

[139] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule I, sec. 1:

Section 1. MANDATE - The Bureau of Jail Management and Penology was created on January 2, 1991 pursuant to Republic Act 6975, replacing its forerunner, the Jail Management and Penology Service of the defunct Philippine Constabulary-Integrated National Police. The BJMP exercises administrative and operational jurisdiction over all district, city and municipal jails. It is a line bureau of the Department of the Interior and Local Government (DILG).

[140] Republic Act No. 6975 (1990), sec. 63 provides:

SECTION 63. Establishment of District, City or Municipal Jail. — There shall be established and maintained in every district, city and municipality a secured, clean adequately equipped and sanitary jail for the custody and safekeeping of city and municipal prisoners, any fugitive from justice, or person detained awaiting investigation or trial and/or transfer to the national penitentiary, and/or violent mentally ill person who endangers himself or the safety of others, duly certified as such by the proper medical or health officer, pending the transfer to a medical institution.

The municipal or city jail service shall preferably be headed by a graduate of a four (4) year course in psychology, psychiatry, sociology, nursing, social work or criminology who shall assist in the immediate rehabilitation of individuals or detention of prisoners. Great care must be exercised so that the human rights of this prisoners are respected and protected, and their spiritual and physical well-being are properly and promptly attended to.

[141] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule II, sec. 16.

[142] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule II, sec. 17.

[143] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule II, sec. 16.

[144] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule I, secs. 2, 3, 4, 5, 10, and 11 provide:

SECTION 2. Vision. — The BJMP envisions itself as a dynamic institution highly regarded for its sustained humane safekeeping and development of inmates.

SECTION 3. Mission. — The Bureau aims to enhance public safety by providing humane safekeeping and development of inmates in all district, city and municipal jails.

SECTION 4. Powers. — The BJMP exercises supervision and control over all district, city and municipal jails. As such, it shall ensure the establishment of secure, clean, adequately equipped sanitary facilities; and ensure the provision of quality services for the custody, safekeeping, rehabilitation and development of district, city and municipal inmates, any fugitive from justice, or person detained awaiting or undergoing investigation or trial and/or transfer to the National Penitentiary, and/or violent mentally ill person who endangers him/herself or the safety of others as certified by the proper medical or health officer, pending transfer to a mental institution.

SECTION 5. Functions. — In line with its mission, the Bureau endeavors to perform the following functions:

- a. to enhance and upgrade organizational capability on a regular basis; thus, making all BJMP personnel updated on all advancements in law enforcement eventually resulting in greater crime solution efficiency and decreased inmate population;
- b. to implement strong security measures for the control of inmates;

- c. to provide for the basic needs of inmates;
- d. to conduct activities for the rehabilitation and development of inmates; and
- e. to improve jail facilities and conditions.

....

SECTION 10. Objectives. — The broad objectives of the Bureau are the following:

- a. To improve the living conditions of offenders in accordance with the accepted standards set by the United Nations;
- b. To enhance the safekeeping, rehabilitation and development of offenders in preparation for their eventual reintegration into the mainstream of society upon their release; and
- c. To professionalize jail services.

SECTION 11. Principles. — The following principles shall be observed in the implementation of the preceding sections:

- a. Humane treatment of inmates;
- b. Observance of professionalism in the performance of duties; and
- c. Multi-sectoral approach in the safekeeping and development of inmates can be strengthened through active partnership with other members of the criminal justice system and global advocates of corrections.

[145] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule VIII, secs. 63 and 64 provide:

Section 63. RIGHTS OF INMATES - Although the purpose for committing a person to jail is to deprive him/her of liberty in order to protect society against crime, such person is still entitled to certain rights even while in detention. These rights are:

- 1. The right to be treated as a human being, and not to be subjected to corporal punishment;
- 2. The right to be informed of the regulations governing the detention center;
- 3. The right to adequate food, space and ventilation, rest and recreation;
- 4. The right to avail himself/herself of medical, dental and other health services;
- 5. The right to be visited anytime by his/her counsel, immediate family members, medical doctor or priest or religious minister chosen by him or by his immediate family or by his counsel;
- 6. The right to practice his/her religious beliefs and moral precepts;
- 7. The right to vote unless disqualified by law;
- 8. The right to separate detention facilities or cells particularly for women inmates; and
- 9. If a foreigner, the right to communicate with his/her embassy or consulate. (Emphasis supplied)

SECTION 64. Privileges Allowed the Inmates. — Detainees may enjoy the following privileges:

- A. To wear their own clothes while in confinement;
- B. To write letters, subject to reasonable censorship, provided that expenses for such correspondence shall be borne by them;
- C. To receive visitors during visiting hours. However, visiting privileges may be denied in accordance with the rules and whenever public safety so requires;
- D. To receive books, letters, magazines, newspapers and other periodicals that the jail authorities may allow;
- E. To be treated by their own doctor and dentist at their own expense upon proper request from and approval by appropriate authorities;
- F. To be treated in a government or private hospital, provided it is deemed necessary and allowed by the rules;
- G. To request free legal aid, if available;
- H. To sport hair in their customary style, provided it is decent and allowed by the jail rules;
- I. To receive fruits and prepared food, subject to inspection and approval by jail officials;
- J. To read books and other reading materials available in the library, if any;
- K. To maintain cleanliness in their cells and brigades or jail premises and perform other work as may be necessary for hygienic and sanitary purposes;
- L. To be entitled to Good Conduct Time Allowance (GCTA) as provided by law; and

M. To be utilized as jail aides as designated by the warden himself, with the CONSENT OF THE INMATE/INMATES or upon the recommendation of the personnel.

[146] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule I, sec. 10.

[147] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175 (2015).

[148] J. Leonen, Dissenting Opinion in *Ocampo v. Abando*, 726 Phil. 441, 486-487 (2014) [Per. Sereno, En Banc].

[149] United Nations Universal Declaration of Human Rights, UNGA Res 217 III(A) (1948), art. 5.

[150] United Nations Universal Declaration of Human Rights, UNGA Res 217 III(A) (1948), art. 3.

[151] International Covenant on Civil and Political Rights, A/RES/21/2200 (1966).

The Philippines is a signatory of the International Covenant on Civil and Political Rights. The Philippines signed it on December 19, 1966 and ratified it on October 23, 1986. See UN Treaty Body Database, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, available at <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=E> (last visited on July 6, 2020).

[152] General Comment No. 21, Article 10 (Humane treatment of persons deprived of their liberty), HRI/GEN/1/Rev.9 (Vol. I) (1992), par. 4.

[153] A/RES/45/111 (1990).

[154] Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/30/3452 (1975).

[155] Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A/RES/30/3452 (1975), art. 3 provides:

Article 3. No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

[156] A/RES/43/173 (1988).

[157] Standard Minimum Rules for the Treatment of Prisoners, E/RES/2076(LXII) (1977), Preliminary Observations No. 1.

[158] Standard Minimum Rules for the Treatment of Prisoners, E/RES/2076(LXII) (1977), Preliminary Observations No. 1.

[159] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175 (2015).

[160] J. Delos Santos, Separate Opinion, pp. 24-25.

[161] *Id.* at 24.

[162] Karen Parker, *Jus Cogens: Compelling the Law of Human Rights*, 12 HASTINGS INT'L & COMP. L.

REV. 411, 414 (1989).

[163] Id. at 415 citing U.N. Conference on the Law of Treaties, 1st and 2d Sess. Vienna Mar. 26 - May 24, 1968, U.N. Doc. A/CONF.39/11/Add. 2 (1971), and Statement of Mr. Eduardo Suarez (Mexico) at 294 during the 52nd meeting on May 4, 1968.

[164] 656 Phil. 246 (2011) [Per J. Velasco, En Banc].

[165] Id. at 303-304.

[166] See Karen Parker, Jus Cogens: Compelling the Law of Human Rights, 12 HASTINGS INT'L & COMP. L. REV. 411 (1980).

[167] J. Carpio, Dissenting Opinion in Bayan Muna v. Romulo, 656 Phil. 246. 326-327 (2011) [Per J. Velasco, En Banc].

[168] 621 Phil. 536 (2009) [Per J. Brion, En Banc].

[169] Id. at 600-601.

[170] Adopted by the UN General Assembly on December 17, 2015.

[171] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175 (2015).

[172] UN Treaty Body Database, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, available at <<https://tbinternet.ohchr.org/layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=E>> (last visited on July 6, 2020).

[173] A/RES/39/46(1984).

[174] A/RES/57/199 (2002). Acceded on April 17, 2012.

[175] Jennifer Peirce, Making the Mandela Rules: Evidence, Expertise, and Politics in the Development of Soft Law International Prison Standards, 43 QUEEN'S L.J. 263 (2018).

[176] 561 Phil. 386 (2007) [Per J. Austria-Martinez, En Banc].

[177] Id. at 406-407.

[178] J. Delos Santos, Separate Opinion, p. 34 states: "However, for the Philippines which has been reportedly afflicted with persisting issues of overcrowding, the instance of 'temporary overcrowding' is colloquially 'the stuff of dreams.'"

[179] Id. at 29-30.

[180] Id. at 27-28.

[181] Id. at 30-31.

[182] Id. at 31.

[183] Id. at 31-32.

[184] RULES OF COURT, Rule 2, sec. 2.

[185] J. Leonen, Concurring Opinion in Knights of Rizal v. DMCI Homes, Inc., 809 Phil. 453, 591-592 (2017)

[Per J. Carpio, En Banc].

[186] J. Delos Santos, Separate Opinion, p. 32.

[187] J. Lazaro-Javier, Separate Opinion, p. 26.

[188] Id. at 27.

[189] Id. at 29-30.

[190] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175 (2015).

[191] International Covenant on Civil and Political Rights, A/RES/21/2200 (1966), art. 10.

[192] CONST, art. II, sec. 11.

[193] J. Leonen, Dissenting Opinion in *Ocampo v. Abando*, 726 Phil. 441, 488 (2014) [Per. Sereno, En Banc] citing INGRID DETTER, *THE LAW OF WAR* 162 (2nd ed., 2000) citing International Covenant on Civil and Political Rights, A/RES/21/2200 (1966), art. 6, 7, and 8.

[194] J. Perlas-Bernabe, Separate Opinion, pp. 5 and 7.

[195] CONST., art. VIII, sec. 1.

[196] J. Delos Santos, Separate Opinion, p. 54.

[197] Id. at 98.

[198] 795 Phil. 529 (2016) [Per J. Leonen, En Banc].

[199] Id. at 572.

[200] G.R. No. L-21064, February 18, 1970, 31 SCRA 413 [Per J. Fernando, Second Division].

[201] Id. at 426-427.

[202] 379 Phil. 165 (2000) [Per J. Melo, En Banc].

[203] Id. at 202.

[204] 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].

[205] Id. at 1144-1146.

[206] 757 Phil. 483 (2015) [Per J. Leonen, En Banc].

[207] Id. at 520-522.

[208] J. Delos Santos, Separate Opinion, p. 53.

[209] *David v. Senate Electoral Tribunal*, 795 Phil. 529 (2016) [Per J. Leonen, En Banc].

[210] Id. at 576.

[211] 272 Phil. 147 (1991) [Per J. Fernan, En Banc].

[212] Id. at 169-170.

[213] 147 Phil. 362 (1971) [Per J. Fernando, First Division].

[214] 147 Phil. 362 (1971) [Per J. Fernando, First Division].

[215] Id. at 365-371.

[216] J. Perlas-Bernabe, Separate Opinion, p. 14.

[217] 429 U.S. 97 (1976). In *Estelle*, a prisoner was injured while unloading a bale of cotton from a truck. He filed a civil action for deprivation of rights against the Director of the Department of Corrections, the warden of the prison, and its medical doctors, alleging that the inadequate medical treatment subjected him to cruel and inhuman punishment.

The U.S. Supreme Court recognized the government's responsibility to provide medical care for its prisoners. Failure to do so may constitute a cause of action for cruel and inhuman punishment. First, however, the prisoner must allege "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs," which constitutes "unnecessary and wanton infliction of pain" and in worst cases, "physical torture or a lingering death." Moreover, this deliberate indifference to a prisoner's serious medical needs must be of such nature that offends the contemporary standards of decency as expressed in prison regulations. This means that not every accident or medical malpractice is sufficient. There must be a deliberate disregard of a prisoner's serious medical condition, delay, or complete denial of access to treatment, or intentional interference to a prescribed treatment.

[218] 509 U.S. 25 (1993). In *Helling*, the deliberate indifference test was dissected into its subjective and objective components. The prisoner filed a civil action for damages and injunction against various prison officials. Roomed with another prisoner who daily smoked five packs of cigarettes sold by the prison store, he raised health damage that constituted cruel and unusual punishment.

The U.S. Supreme Court held that the conditions of confinement are included in the scope of the right against cruel and unusual punishment. The reason is that in depriving liberty, the State renders prisoners unable to care for themselves. In a series of cases, the Court had categorically held that the protection against cruel and unusual punishment extends to "sufficiently imminent dangers" such that a "remedy for unsafe conditions need not await a tragic event."

While the Court affirmed that a cause of action exists under cruel and unusual punishment, the case was remanded to the trial courts to prove the objective and subjective components of such right. The objective factor consists of the prisoner's exposure to a grave risk that is not tolerated in the modern society. Moreover, the prisoner's exposure is of the nature that violates contemporary standards of decency. On the other hand, the subjective factor pertains to prison management showing deliberate indifference of the detention officers to the risks and exposure of the prisoner.

[219] *Ejercito v. Commission on Elections*, 748 Phil. 205 (2014) [Per J. Peralta, En Banc] citing *Republic of the Philippines v. Manila Electric Company*, 449 Phil. 118 (2003) [J. Puno, Third Division] and *Central Bank Employees Assoc., Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004) [J. Puno, En Banc].

[220] 505 Phil. 298 (2005) [Per J. Carpio, En Banc] citing *Fisher v. Winter*, 564 F Supp. 281 (1983).

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[222] 441 U.S. 520 (1979).

[223] J. Caguioa, Separate Opinion, p. 23.

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[271] A.M. No. 09-6-8-SC(2010), sec. 2.

[272] A.M. No. 09-6-8-SC (2010), Rule 7, sec. 1 provides:

Section 1. Nature of the Writ. — The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

[273] *Abogado v. Department of Environment and Natural Resources*, G.R. No. 246209, September 3, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65756>> [Per J. Leonen, En Banc].

[274] A.M. No. 09-6-8-SC (2010), Rule 8, sec. 1 provides:

Section 1. Petition for Continuing Mandamus. — When any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto

supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping.

[275] Dolot v. Paje, 716 Phil. 458, 471 (2013) [Per J. Reyes, En Banc].

SEPARATE OPINION

"It is evident that the incredible overcrowding of the prison cells, that taxed facilities beyond measure and the starvation allowance often centavos per meal for each prisoner, must have rubbed raw the nerves and dispositions of the unfortunate inmates, and predisposed them to all sorts of violence to seize from their owners the meager supplies from outsider in order to take out their miserable existence. All this led inevitably to the formation of gangs that preyed like wolf packs on the weak, and ultimately to pitiless gang rivalry for the control of the prisoners, abetted by the inability of the outnumbered guards to enforce discipline, and which culminated in violent riots. The government cannot evade responsibility for keeping prisoners under such subhuman and dantesque conditions. Society must not close its eyes to the fact that if it has the right to exclude from its midst those who attack it, it has no right at all to confine them under circumstances that strangle all sense of decency, reduce convicts to the level of animals, and convert a prison term into prolonged torture and slow death." [1]

CAGUIOA, J.:

I concur.

The dystopian picture above that the Court refused to turn its gaze from was drawn over five decades ago, and yet the insufferable state of affairs in the penitentiary persists even today. So that although we, as a society, may have made dizzying advances in fields we consider of great consequence, because the least of us have continued to groan in unspeakable living conditions, and our detention facilities are constantly breaking at the seams, one must wonder how far we have truly come. Surely, we must have asked at one point if perhaps more than the deficient fiscal scaffolding and authoritative say-so, our institutions suffer the more destructive lack of empathy.

This long-standing problem has been brought to the foreground by the current exigencies the country is facing, and the Court's decision to refer the instant petition to the concerned trial courts for the conduct of bail hearings and other proceedings is agreeably the better approach to take under the circumstances.[2] While I agree that the Court cannot grant the petitioners' prayer for temporary release in the absence of a proper bail hearing, I also remain unconvinced that the Court, on its own, is powerless to protect the most vulnerable among us, especially those who cannot help themselves. Certainly in this case, the Court's mandate as the final and ultimate dispenser of justice must be more real than mere rhetoric. As proof of the Court's capacities, I write this Opinion to highlight the steps that the Court has already swiftly undertaken in response to the current pandemic. I also submit this Opinion to elaborate on my position and to expound on several issues raised by the petitioners, particularly the Court's equity jurisdiction, the propriety of using humanitarian considerations as a ground for the allowance of bail, and the invocation of the petitioners' rights under domestic and international law. This Opinion imagines that there may be no more opportune time for all material institutions to revisit their powers and awaken perceived apathies than now, with both historical underpinnings and the current crisis taking us all to task, by exposing once

more that the unbearable conditions of persons deprived of liberty (PDLs) in our country is neither truly noticed nor new.

I.

The instant Urgent Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the COVID-19 Pandemic directly filed before this Court is essentially an application for bail or recognizance.[3] The petitioners, who are allegedly political prisoners charged with crimes punishable by reclusion perpetua and life imprisonment, seek their provisional release on bail or recognizance on the basis of humanitarian grounds. Citing *Enrile v. Sandiganbayan*[4] (*Enrile*), the petitioners plead that the Court exercise its equity jurisdiction and grant them temporary liberty as their health conditions and continued incarceration make them highly vulnerable to COVID-19.[5]

On the requirements for bail

Bail is the security required and given for the release of a person in custody of the law to guarantee his appearance before the court as may be required under specified conditions.[6] Recognizance, on the other hand, refers to "an obligation of record, entered into before some court or magistrate duly authorized to take it, with the condition to do some particular act, the most usual condition in criminal cases being the appearance of the accused for trial." [7] If a person in custody or detention is unable to post bail due to abject poverty, he may be released on recognizance to the custody of a qualified member of the barangay, city or municipality where the accused resides.[8]

Section 13, Article III of the Constitution states that all persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. As a corollary matter, Section 7, Rule 114 of the Rules of Court provides that regardless of the stage of the criminal prosecution, no person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when evidence of guilt is strong. Further, Republic Act No. (R.A.) 10389[9] or the Recognizance Act of 2012, states that the release on recognizance of any person in custody or detention for the commission of an offense is a matter of right when the offense is not punishable by death, reclusion perpetua, or life imprisonment.[10]

Thus, before conviction, bail is either a matter of right or discretion. It is a matter of right when the offense charged is punishable by any penalty lower than reclusion perpetua. However, bail becomes a matter of judicial discretion if the offense charged is punishable by death, reclusion perpetua, or life imprisonment.[11] The court's discretion is, however, limited only to determining whether or not the evidence of guilt is strong. Consequently, bail is to be granted if evidence of guilt is not strong, and denied if evidence of guilt is strong.[12]

In *Obosa v. Court of Appeals*,[13] the Court reiterated its pronouncement in *De la Camara v. Enage*,[14] on the purpose of bail and the rationale for denying the said relief to persons charged with capital offenses when the evidence of guilt is strong:

x x x Before conviction, every person is bailable except if charged with capital offenses when the evidence of guilt is strong. Such a right flows from the presumption of innocence in favor of every accused who should not be subjected to the loss of freedom as thereafter he would be entitled to acquittal, unless his guilt be proved beyond reasonable doubt. Thereby a regime of liberty is honored in the observance and not in the breach. It is not beyond the realm of probability, however, that a person charged with a crime, especially so where his defense is weak, would just simply make himself scarce and thus frustrate the hearing of his case. A bail is intended as a guarantee that such an intent would be thwarted. It is, in the language of Cooley, a 'mode short of confinement which would, with reasonable certainty, insure the attendance of the accused' for the subsequent

trial. Nor is there anything unreasonable in denying this right to one charged with a capital offense when evidence of guilt is strong, as the likelihood is, rather than await the outcome of the proceeding against him with a death sentence, an ever-present threat, temptation to flee the jurisdiction would be too great to be resisted. x x x [15] (*Italics omitted*)

In cases when bail is a matter of judicial discretion, the grant or denial thereof hinges on the singular issue of whether or not the evidence of guilt of the accused is strong.[16] As observed in the Court's Decision,[17] this necessarily requires the conduct of a bail hearing where the prosecution has the burden to prove that evidence of guilt is strong, subject to the right of the defense to cross-examine witnesses and introduce evidence in its own rebuttal.[18] The Court cannot perform the aforementioned bail hearing because of the well-entrenched principle that it is not a trier of facts. The Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower courts.[19] The discretion to grant or deny bail is primarily lodged with the trial court judge who is mandated under the rules to: (1) conduct a summary hearing and receive the prosecution's evidence; and (2) provide, in its order granting or denying bail, a summary of the evidence for the prosecution and his own assessment thereof.[20]

As mentioned, the petitioners are all charged with offenses that are punishable by reclusion perpetua or life imprisonment. Thus, their entitlement to bail is clearly a matter of judicial discretion. However, there is no showing that any of them had applied for bail or that bail hearings were conducted to determine whether the evidence of guilt against them is strong. Nevertheless, aware of such absence of bail application or hearing, the petitioners have nonetheless proceeded directly to the Court praying for it to grant them temporary liberty through bail or recognizance based on humanitarian grounds, invoking the Court's equity jurisdiction. The petitioners cite the ruling of the Court in *Enrile* to support their cause.

On the invocation of the Court's equity jurisdiction

In order to properly invoke the Court's equity jurisdiction, the controlling test is whether or not a court of law is unable to adapt its judgments to the special circumstances of a case as a result of the inflexibility of its statutory or legal jurisdiction.[21] Its aim is to enable the Court to rule on the basis of substantial justice in an instance when the prescribed or customary forms of ordinary law prove inadequate.[22]

In a number of cases, the Court has found equity jurisdiction as sufficient justification for the relaxation of rules in order to give way to substantial merit and justice. In the early case of *Catigbac v. Leyesa*,[23] equity jurisdiction was invoked in affording a litigant with a remedy through an action that did not exist in the Code of Civil Procedure. The Court ruled that although the existing body of rules no longer provided for such an ancient action, such was deemed to have subsisted by virtue of a substantive right granted under Article 384 of the Civil Code. The Court there held that where there is a right, there is also a remedy, and equity jurisdiction steps in to scaffold the gap between the substantive right granted and a remedy that ensures that right.[24]

In the 1973 case of *De los Reyes v. Ramolete*,[25] involving the question of ownership over a disputed land between bona fide possessors on the one hand, and valid patent holders on the other, the Court found that equity jurisdiction could be used to "set matters right". Still, in the succeeding case of *Serrano v. Court of Appeals*,[26] which concerned the true nature of a purported contract of sale, the Court iterated that procedural rules are not to be applied rigidly at the expense of merit.

Apart from cases of restitution, equity jurisdiction has also been invoked in criminal cases. In *Curammeng v. People*,[27] which involved an erroneous mode of appeal from a conviction, the Court ruled:

Nevertheless, if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice in light of the prevailing circumstances of the case, such as where strong considerations of

substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction. x x x[28]

Further, in *Daan v. Hon. Sandiganbayan (Fourth Division)*,[29] where the accused therein was allowed to enter a plea bargain proposal pursuant to the higher interest of justice and fair play, the Court discussed the concept of equity as follows:

Equity as the complement of legal jurisdiction seeks to reach and do complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent so to do. Equity regards the spirit of and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts.[30]

Even in extradition cases, the equity jurisdiction of the Court was invoked, as seen in *Secretary of Justice v. Lantion*: [31]

We have ruled time and again that this Court's equity jurisdiction, which is aptly described as "justice outside legality," may be availed of only in the absence of, and never against, statutory law or judicial pronouncements (*Smith Bell & Co., Inc. vs. Court of Appeals*, 267 SCRA 530 [1997]; *David-Chan vs. Court of Appeals*, 268 SCRA 677 [1997]). The constitutional issue in the case at bar does not even call for "justice outside legality," since private respondent's due process rights, although not guaranteed by statute or by treaty, are protected by constitutional guarantees. We would not be true to the organic law of the land if we choose strict construction over guarantees against the deprivation of liberty. That would not be in keeping with the principles of democracy on which our Constitution is premised.

Verily, as one traverses treacherous waters of conflicting and opposing currents of liberty and government authority, he must ever hold the oar of freedom in the stronger arm, lest an errant and wayward course be laid.[32]

Ultimately, the Court's equity jurisdiction is found to be a sufficient justification for the relaxation of rules in order to give way to substantial merit of the case and the higher interest of justice.

Indeed, the peculiar nature of the instant petition prays for both prompt and blanket relief to be applied to differentiated cases of the individual petitioners. Thus, while I recognize their plea to resolve the instant petition based on compassion and humanitarian considerations, the want of necessary factual details brought about by a proper bail hearing precludes this Court from a full calibration of each petitioner's eligibility for either release on bail or recognizance.

On the applicability of the ruling in *Enrile*

In this regard, I agree with the position of some of my colleagues that the case of *Enrile* is inapplicable to the instant petition, though my reasoning differs.[33]

To recall, the Court in *Enrile* allowed therein petitioner to post bail on account of his advanced age and frail health – despite the fact that petitioner was charged with plunder and the absence of a proper hearing to determine whether the evidence of guilt against him is strong. This is inconsistent with the unambiguous Constitutional provision, which provides that a person shall not be entitled to bail if s/he is charged with an offense punishable, by reclusion perpetua when evidence of guilt is strong.[34] Moreover, the same is contrary to established rules[35] and settled jurisprudence[36] on the necessity of a hearing for bail application when bail is discretionary. I was not yet part of the Court when the case was decided in 2015. Upon motion for its reconsideration however, being already a member of the Court, I voted to grant the motion and joined the dissent of Associate Justice Marvic M.V.F. Leonen.[37]

Consistent with my dissent therein, it is my position that Enrile should not be considered as having set a precedent inasmuch as it has not since found favor in subsequent decisions by the Court,[38] and the ruling by the majority therein does not find support in the Constitution and well-established rules and jurisprudence on bail proceedings. Hence, I agree with the position of Senior Associate Justice Estela M. Perlas-Bernabe that the ruling in Enrile should be viewed as *pro hac vice* in light of the special and unique considerations accorded to petitioner therein.[39]

For the same reason above, I disagree with the suggestion during deliberations that Enrile laid down a two-step test to authorize the grant of bail when it is discretionary to do so: (a) the detainee will not be a flight risk or a danger to the community; and (b) there exist special, humanitarian and compelling circumstances.[40] The ruling in Enrile deviates from entrenched legal principles concerning bail and it cannot be used to create doctrine for subsequent cases. To reiterate, petitioner therein was allowed to post bail even though he was charged with an offense punishable by reclusion perpetua, without any showing through a hearing that the evidence of his guilt is not strong. Having skirted the minimum requirements under the Constitution regarding bail, the ruling in Enrile should not be used to set precedent for cases involving discretionary bail.

Moreover, the grant of bail in Enrile on the basis of petitioner's age and health rests on shaky ground as the circumstances therein were quite peculiar. As illustrated in Justice Leonen's Dissenting Opinion therein:

Neither was there grave abuse of discretion by the Sandiganbayan when it failed to release accused on bail for medical or humanitarian reasons. His release for medical and humanitarian reasons was not the basis for his prayer in his Motion to Fix Bail filed before the Sandiganbayan. Neither did he base his prayer for the grant of bail in this Petition on his medical condition.

The grant of bail, therefore, by the majority is a special accommodation for petitioner. It is based on a ground never raised before the Sandiganbayan or in the pleadings filed before this court. The Sandiganbayan should not be faulted for not shedding their neutrality and impartiality. It is not the duty of an impartial court to find what it deems a better argument for the accused at the expense of the prosecution and the people they represent.

The allegation that petitioner suffers from medical conditions that require very special treatment is a question of fact. We cannot take judicial notice of the truth contained in a certification coming from one doctor. This doctor has to be presented as an expert witness who will be subjected to both direct and cross-examination so that he can properly manifest to the court the physical basis for his inferences as well as the nature of the medical condition of petitioner. Rebutting evidence that may be presented by the prosecution should also be considered. All this would be proper before the Sandiganbayan. Again, none of this was considered by the Sandiganbayan because petitioner insisted that he was entitled to bail as a matter of right on grounds other than his medical condition.

Furthermore, the majority's opinion—other than the invocation of a general human rights principle—does not provide clear legal basis for the grant of bail on humanitarian grounds. Bail for humanitarian considerations is neither presently provided in our Rules of Court nor found in any statute or provision of the Constitution.

This case leaves this court open to a justifiable criticism of granting a privilege *ad hoc*: only for one person—petitioner in this case.

Worse, it puts pressure on all trial courts and the Sandiganbayan that will predictably be deluged with motions to fix bail on the basis of humanitarian considerations. The lower courts will have to decide, without guidance, whether bail should be granted because of advanced age, hypertension, pneumonia, or dreaded diseases. They will have to decide whether this is applicable only to Senators and former Presidents charged with plunder and not to those accused of drug trafficking, multiple incestuous rape, serious illegal detention, and other crimes punishable by reclusion perpetua or life imprisonment. They will have to decide whether this is applicable only

to those who are in special detention facilities and not to the aging or sick detainees in overcrowded detention facilities all over this country.

Our trial courts and the Sandiganbayan will decide on the basis of personal discretion causing petitions for certiorari to be filed before this court. This will usher in an era of truly selective justice not based on clear legal provisions, but one that is unpredictable, partial, and solely grounded on the presence or absence of human compassion on the day that justices of this court deliberate and vote.[41]

Ergo, a reading of the ruling in *Enrile* shows that there is no discernible standard for the courts to decide cases involving discretionary bail on the basis of humanitarian considerations. The ineluctable conclusion, as opined by Justice Leonen,[42] is that the grant of bail by the majority in *Enrile* was a special accommodation for petitioner therein. Thus, at the risk of being repetitious, the ruling in *Enrile* should be considered as a stray decision and, echoing Justice Bernabe,[43] must likewise be considered as *pro hac vice*. It should not be used as the benchmark in deciding cases involving the question on whether bail may be allowed on the basis of humanitarian considerations. Notably, under the Rules of Court, humanitarian considerations such as age and health are only taken into account in fixing the bail amount after a determination that evidence of guilt against the accused is not strong.[44]

However, the petitioners are not left without any other recourse that is legally permissible. Despite the inapplicability of *Enrile* and in view of the novel nature of this case, the Court should not be precluded from affording the petitioners the appropriate reliefs within the bounds of law.

In this regard, a proper bail hearing before the trial court should first be conducted to determine whether the evidence of guilt against the petitioners is strong. This Court, not being a trier of facts, cannot receive and weigh the petitioners' evidence at the first instance. Factual and evidentiary matters must first be threshed out in a proper bail hearing, which may only be done in the lower courts. Trial courts are better equipped to assess the petitioners' entitlement to bail or recognizance based on the provisions of the Constitution, the relevant laws, and the Rules of Court.

Thus, instead of dismissing the petition outright, I agree with the Court's ruling to refer this petition to the concerned trial courts.[45] Exigency is better served if the trial courts where the criminal cases of the petitioners are respectively pending will hear their bail petitions and receive their evidence.

II.

All persons are guaranteed the right to life. This is constitutionally enshrined under Section 1, Article III of the Constitution, to wit:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

More importantly, the right to life, being grounded on natural law, is inherent[46] and, therefore, not a creation of, or dependent upon a particular law, custom, or belief. It precedes and transcends any authority or the laws of men.[47] Its protection is guaranteed notwithstanding one's status; neither is this right forfeited by detention or incarceration.

Necessarily included in the right to life are the State policies found in Sections 11 and 15, Article II of the Constitution, which state:

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

x x x x

SECTION 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

The above core principles in our Constitution mirror those found in several international laws, prominent of which is the Universal Declaration of Human Rights[48] (UDHR) stating that:

Article 1. All human beings are born free and equal in dignity and rights. x x x

x x x x

Article 3. Everyone has the right to life, liberty and security of person.

x x x x

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Meanwhile, the right to health is included in the International Covenant on Economic, Social and Cultural Rights (ICESCR),[49] which obliges state parties to recognize the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health." [50] The Philippines signed and ratified the ICESCR,[51] which makes it a binding obligation on the part of the government.

These rights do not discriminate between offenders and non-offenders as it is the declared policy of the State under the 1987 Constitution to value "every human person." [52] Similarly, the UDHR recognizes that all persons are entitled to all the rights and freedoms set forth therein, "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." [53]

Thus, the notion that persons deprived of liberty (PDLs) are not entitled to the guarantee of basic human rights should be disabused. While they do not enjoy the same latitude of rights as certain restrictions on their liberty and property are imposed as a consequence of their detention or imprisonment, the foregoing international covenants and our own Constitution prove that PDLs do not shed their human rights once they are arrested, charged, placed under the custody of law, and subsequently convicted and incarcerated. The International Covenant on Civil and Political Rights (ICCPR),[54] in particular, to which the Philippines is likewise a party,[55] positively requires the treatment of PDLs "with humanity and with respect for the inherent dignity of the human person." [56]

Our laws governing arrest and custodial investigation also do not deviate from the above principles. R.A. 7438,[57] otherwise known as the "Custodial Investigation Law of 1992," was created pursuant to the State policy of valuing the "dignity of every human being" [58] and guaranteeing "full respect for human rights." [59] It defines the positive rights of all persons under custodial investigation, and outlines the concomitant duties of arresting, detaining or investigating officers to secure said rights, which include the detained person's right to be assisted by counsel. In addition, R.A. 9745,[60] otherwise known as the "Anti-Torture Act of 2009" outlaws, foremost, any act that subjects people held in custody to any form of physical, psychological or mental harm, force, violence, threat or intimidation or any other act which degrades human dignity.[61] Finally, Article 32 of the New Civil Code enumerates the rights and liberties of all persons, several of which pertain to the rights of the accused, and includes the freedom from excessive fines or cruel and unusual punishment.[62] Article 32 further provides that the impeding or impairment of these rights shall be under pains of damages.

When a person is detained or imprisoned, the person is afforded certain fundamental rights that affirmatively

remain in effect throughout the entire period of incarceration. These rights spring from Section 19, Article III of the Bill of Rights of the Constitution, which proscribes the infliction of cruel, degrading or inhuman punishment and the employment of physical, psychological, or degrading punishment against any prisoner or detainee. It likewise affirms that the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law. Notably, both the UDHR[63] and the ICCPR[64] have similar prohibitions against the employment of cruel, degrading, or inhuman punishment.

Associate Justice Edgardo L. Delos Santos, however, opines that the Constitutional proscription against cruel, degrading or inhuman punishment is limited in application and may only be invoked to invalidate a law that imposes such penalty, but "not to recognize a substantive right." [65] Furthermore, he surmises from the deliberations that, as Section 19, Article III is currently worded, it is only the legislature that has the authority to deal with substandard or inadequate penal facilities. [66] I respectfully differ.

Preliminarily, while I agree with how Justice Delos Santos presented the evolution of Section 19, Article III, showing how the deliberations of the 1986 Constitutional Commission manifested an original intention to only protect against "law[s] which [impose] a penalty that is cruel, degrading or inhuman," [67] it is clear from the exchanges that this original intention was expanded.

In particular, Commissioner Teodulo C. Natividad passionately argued that the provision should contemplate the abatement of inhuman conditions in prison facilities. The following exchanges, likewise quoted in Justice Delos Santos' opinion, [68] demonstrate the accommodation of Commissioner Natividad's proposition that the gross inadequacy of the prison facilities constitutes an impairment of this constitutional right:

MR. NATIVIDAD. May I go on to Section 22 which says: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment, or the death penalty inflicted." I will not deal with the death penalty because it has already been belabored in many remarks. In due time, perhaps I will be given a chance to say a few words on that, too. But I am referring to cruel, degrading and inhuman punishment. I am drawing upon my experience as the Chairman of the National Police Commission for many years. As Chairman of the National Police Commission, the same way that General de Castro here was, one of my duties was to effect the inspection of jails all over the country. We must admit that our jails are a shame to our race. Once we were invited by the United Nations' expert on penology — I do not remember his name, but he is a doctor friend of mine — and he reported back to us that our jails are penological monstrosities.

Here in the cities, 85 percent are detention prisoners and only 15 percent are convicted prisoners. But if we visit the jails, they are so crowded and the conditions are so subhuman that one-half of the inmates lie down on the cold cement floor which is usually wet, even in summer. One-half of them sleep while the other half sit up to wait, until the other half wake up, so that they can also sleep. In the toilets, right beside the bowl, there are people sleeping. I visited the prisons and that was the time I fought for the Adult Probation Law because I remember what Winston Churchill and the criminologist Dostoevski said: "If you want to know the level of civilization of a country, all you have to do is visit their jails." In jurisprudence, the interpretation of "cruel and unusual punishment" in the United States Constitution was made by the Supreme Court when it said, and I quote: "Interpretation of the Eight Amendment in the phrase 'cruel and unusual punishment,' must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Courts in the United States in 10 landmark cases — some of these I would like to mention in passing: *Halt v. Sarver*, *Jackson v. Bishop*, *Jackson v. Handrick*, *Jordan v. Fitzharris* and *Rockly v. Stanley* — stated that subhuman conditions in a prison is an unconstitutional imposition of cruel and unusual punishment.

I would just like to — even without an amendment — convince the Committee that if a prison is subhuman and it practices beatings and extended isolation of prisoners, and has sleeping cells which are extremely filthy and unsanitary, these conditions should be included in the concept of "cruel and inhuman punishment." Even without amendment but with this concept, I would like to encourage the legislature to give higher priority to

the upliftment of our jails and for the judiciary to act because the judiciary in habeas corpus proceedings freed some prisoners. So, by means of injunction, the courts stopped these practices which are inimical to the constitutional rights of inmates. On the part of the executive, it initiated reforms in order that the jails can be more humane and fair. If this concept of "cruel and inhuman punishment" can be accepted, Mr. Presiding Officer, I may not even ask for an amendment so that in the future, the judiciary, the executive and the legislative can give more remedial measures to this festering problem of subhuman conditions in our jails and prisons.

I submit, Mr. Presiding Officer.

FR. BERNAS. Mr. Presiding Officer, although I would say that the description of the situation is something that is inhuman, I wonder if it fits into the purpose of Section 22. The purpose of Section 22 is to provide a norm for invalidating a penalty that is imposed by law. Let us say that thieves should be punished by imprisonment in a filthy prison, that would be "cruel and unusual punishment." But if the law simply say that thieves should be punished by imprisonment, that by itself does not say that it is cruel. So, it does not invalidate the penal law. So my own thinking is that what the Gentleman has in mind would be something more proper, even for ordinary legislation or, if at all, for Section 21.

MR. NATIVIDAD. The Gentleman said that he is not going to sentence him in a filthy prison. Of course not. But this is brought out in the petition for habeas corpus or for injunction. This is revealed in a proper petition.

FR. BERNAS. I agree with the Commissioner, but as I said, the purpose of Section 22 is to invalidate the law itself which imposes a penalty that is cruel, degrading or inhuman. That is the purpose of this law. The Commissioner's purpose is different.

MR. NATIVIDAD. My purpose is to abate the inhuman treatment, and thus give spirit and meaning to the banning of cruel and inhuman punishment. In the United States, if the prison is declared unconstitutional, and what is enforced is an unconstitutional punishment, the courts, because of that interpretation of what is cruel and inhuman, may impose conditions to improve the prison; free the prisoners from jail; transfer all prisoners; close the prison; or may refuse to send prisoners to the jail.

FR. BERNAS. We would await the formulation of the Commissioner's amendment.

MR. NATIVIDAD. So, in effect, it is abating the continuance of the imposition of a cruel and inhuman punishment. I believe we have to start somewhere in giving hope to a big segment of our population who are helplessly caught in a trap. Even the detention prisoners, 85 percent of whom are jailed in the metropolitan area, are not convicted prisoners, and yet although not convicted in court, they are being made to suffer this cruel and inhuman punishment. I am saying this in their behalf, because as Chairman of the National Police Commission for so many years, it was my duty to send my investigators to chronicle the conditions in these jails day by day. I wrote letters to the President asking for his help, as well as to the Batasan, but there was no reply.

Finally, I am now here in this Commission, and I am writing this letter through the Chairman of this Committee. I hope it will be answered.

FR. BERNAS. Mr. Presiding Officer, as I said, we have no quarrel whatsoever with the objective. We will await the formulation of the amendment.

MR. NATIVIDAD. Thank you.[69] (Emphasis supplied)

When Commissioner Regalado E. Maambong posed the same concern as Commissioner Natividad, Fr. Joaquin G. Bernas again agreed that the formulation of the provision may be amended to integrate the protection being sought, viz.:

MR. MAAMBONG. Yes, so that I do not have to waste the time of the body and the Committee, considering that the Committee has understood our purpose, perhaps the Committee could help by giving us just one section to be inserted there or one sentence or one phrase which would satisfy the requirements that we have presented, considering that in the United States, circumstances of this nature which happen inside the jail are considered under the provisions and jurisprudence of the United States as cruel and unusual punishment. Probably, we can have a parallel provision along that line and I hope the Committee will help. Would that be all right?

FR. BERNAS. Yes. And I thought the Gentleman already has the formula which we can discuss.

THE PRESIDING OFFICER (Mr. Bengzon). The Floor Leader is recognized.

MR. MAAMBONG. So, we reserve our right to insert something here in coordination with the Committee.

Thank you very much.[70] (Emphasis supplied)

During the period of amendments, several points were raised, including letting the legislature define the concept of substandard or inadequate facilities:

FR. BERNAS. This is more of a command to the State saying that beyond having recognized these things as prohibited, the State should do something to remedy whatever may be a violation.

x x x x

FR. BERNAS. If we add the word "GROSSLY," we are almost saying that the legislature should act only if the situation is gross.

MR. REGALADO. How do we determine what is substandard?

FR. BERNAS. We leave that to the legislature. What I am saying is that the legislature could say: "Well, this is substandard but it is not grossly substandard; therefore, we need not do anything about it."

MR. REGALADO. Could we have a happy compromise on how the substandard categorization could come in because it may be substandard from the standpoint of American models, but it may be sufficient for us?

FR. BERNAS. I do not think we should go into great details on this. We are not legislating . . .

MR. REGALADO. So, the sponsor's position is that we just leave it to the legislature to have a legislative standard of their own in the form of an ordinary legislation?

FR. BERNAS. Yes.

x x x x

MR. RODRIGO. I would like to call attention to the fact that the word "DEGRADING" is already in the first sentence of this section: "Excessive fine shall not be imposed nor cruel, degrading or inhuman punishment inflicted." So, why repeat the word "DEGRADING"?

FR. BERNAS. Precisely, Madam President, yesterday, we said that the provision we have in the present Constitution has reference to the punishment that is prescribed by the law itself; whereas what we are dealing with here is the punishment or condition which is actually being practised. In other words, we are, in the present Constitution, talking about punishment which, if imposed by the law, renders the law invalid.

In this paragraph, we are describing conditions of detainees who may be held under valid laws but are being treated in a manner that is subhuman or degrading.

x x x x

MR. FOZ. May I just ask one question of the proponent of the amendment. I get it that the law shall provide penalties for the conditions described by his amendment.

MR. MAAMBONG. In line with the decisions of the Supreme Court on the interpretation of cruel and unusual punishments, there may be a law which punishes this violation precisely or there may not be a law. What could happen is that the law could provide for some reliefs other than penalties.

In the United States, there are what is known as injunctive or declaratory reliefs and that is not exactly in the form of a penalty. But I am not saying that the legislature is prevented from passing a law which will inflict punishment for violations of this section.

MR. FOZ. In case the law passed by the legislature would impose sanctions, not so much in the case of the first part of the amendment but in the case of the second part with regard to substandard or outmoded legal penal facilities characterized by degrading surroundings and insanitary or subhuman conditions, on whom should such sanctions be applied?

MR. MAAMBONG. It would have to be applied on the administrators of that penal institution. In the United States, in my reading of the cases furnished to me by Commissioner Natividad, there are instances where the law or the courts themselves ordered the closure of a penal institution and, in extreme cases, in some states, they even set the prisoners free for violations of such a provision.

MR. FOZ. I am concerned about the features described as substandard or outmoded penal facilities characterized by degrading surroundings, because we know very well the conditions in our jails, particularly in the local jails. It is not really the fault of those in charge of the jails but these conditions are the result of lack of funds and the support by local government, in the first instance, and by the national government.

Does the Gentleman think we should penalize the jailers for outmoded penal facilities?

MR. MAAMBONG. No, Madam President. What we are trying to say is that lack of funds is a very convenient alibi for the State, and I think with these provisions, the State should do something about it.

MR. FOZ. Thank you, Madam President.

FR. BERNAS. Madam President, we are not telling the legislature what to do; we are just telling them that they should do something about it.

MR. DE CASTRO. Madam President.

THE PRESIDENT. Commissioner de Castro is recognized.

MR. DE CASTRO. Thank you.

The provision which says: "The employment of PHYSICAL, psychological OR DEGRADING PUNISHMENT against ANY PRISONER OR DETAINEE SHALL be dealt with BY LAW" is already provided for by our present laws. We already have laws against third-degree punishments or even psychological punishments. Do we still need this provision?

Thank you, Madam President.

MR. MAAMBONG. As I was saying, Madam President, the law need not penalize; the law may only put in corrective measures as a remedy.

MR. REGALADO. Madam President.

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. May I just rejoin the statement of Commissioner de Castro that we have laws already

covering situations like this. The law we have on that in the Revised Penal Code is maltreatment of prisoners which comes from the original text *maltratos de los encarcerados*. That presupposes that the prisoner is incarcerated.

The proposed legislation sought here will apply not only to incarcerated prisoners, but also to other detainees who, although not incarcerated, are nevertheless kept, their liberty of movement is controlled before incarceration. So, this is for the legislature to fill that void in the law.[71] (Emphasis supplied)

The foregoing exchanges, in my view, belie a restrictive interpretation that severely limits the application of Section 19, Article III. What is apparent instead is that the Framers reached a consensus on three important points: first, that the use of substandard or inadequate penal facilities under subhuman conditions constitutes cruel, degrading or inhuman punishment and shall be dealt with by legislation; second, that the said subhuman conditions during detention may be appreciated for both PDLs under preventive detention, and PDLs who are detained after conviction; and third, the State has the positive duty to undertake measures for the improvement of these conditions.

Justice Delos Santos makes much of the fact that the second paragraph of Section 19, Article III contains the phrase "shall be dealt with by law," thus advancing the view that the Framers intended to leave to Congress the authority of determining the conditions for substandard or inhuman prison facilities and of providing penalties therefor.[72] It bears emphasis, however, that both Commissioners Natividad and Maambong referred to the United States (US) Supreme Court's interpretation of the Eighth Amendment[73] in their Constitution, which similarly proscribes the infliction of cruel and inhuman punishment.

Indeed, the US Supreme Court ruled in *Estelle v. Gamble*[74] (*Estelle*) that the Eighth Amendment, which traditionally proscribes physically barbarous punishments, should extend to the provision of adequate medical care to PDLs. The US Supreme Court, in effect, acknowledged the positive obligation of the State over PDLs in its custody, to wit:

Our more recent cases, however, have held that the Amendment proscribes more than physically barbarous punishments. . . . The Amendment embodies "broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . .," . . . against which we must evaluate penal measures. Thus, we have held repugnant to the Eighth Amendment punishments which are incompatible with "the evolving standards of decency that mark the progress of a maturing society," . . .

These elementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration. An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical "torture or a lingering death," . . . the evils of most immediate concern to the drafters of the Amendment. In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose. . . . The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency as manifested in modern legislation codifying the common law view that "it is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself." [75] (Emphasis supplied; citations omitted)

Thus, while torture is the ordinary and usual contemplation of cruel and inhuman punishment, the deliberations of the 1986 Constitutional Commission reveal the explicit intention of the Framers to depart from or expand the understanding of this convention. For this reason, the Framers clearly agreed to extend the guarantee in Section 19, Article III for the protection against the employment of substandard prison facilities. That this "shall be dealt with by law" is an exhortation to the government — not only the legislature — to create or otherwise ensure humane conditions for PDLs during their incarceration. It is not a condition for Section 19 to operate.[76]

In this regard, if the penal institutions are so grossly inadequate, there is a culpable omission on the part of the State to observe an affirmative obligation under the Constitution. Section 19, Article III may therefore be invoked to grant reliefs not only when, as suggested by some members, there is "flagrant or intentional infliction of pain or suffering,"[77] but also when the conditions of incarceration are neglected to such a degree that the punishment becomes cruel and excessive.

It is also worth repeating, as cited by Justice Delos Santos, that as early as 1986, the Framers had wrestled with the means with which this deplorable situation of PDLs can be redressed. Over three decades ago, there was already an acute sense of failure of the detention system of the country, with one soberly recognizing that our detention facilities were "penological monstrosities"[78] and another calling for an uplifting of the detention conditions to a "level of constitutional tolerability." [79]

The above discussion only goes to show that the Framers neither intended to preclude individuals, such as the petitioners, from invoking the right under Section 19, Article III to obtain redress for their grievances, nor designed to foreclose any complementary action on the part of the Court or the Executive. In fact, a more circumspect consideration of the material deliberations draws a conceptualization of Section 19, Article III that is far from static, but is instead dynamic, and constantly attuned to the moral moorings and convictions of the times. In *Echegaray v. Secretary of Justice*, [80] which Justice Delos Santos likewise cites positively, the Court significantly held that "[w]hat is cruel and unusual 'is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice' and 'must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.'" [81]

Against this backdrop, therefore, it is most difficult to surmise that during the Framers' deliberations, Section 19, Article III was conceived with the idea of minimizing its enforceability, or confining its remedial curative measures only to the Executive and the Legislative branches. If at all, it is perhaps even reasonably discernible that the appreciation of the severity of the condition in the detention facilities tilted the arc of the provision towards enabling all three branches of the government to be able to move within its powers to remedy the appalling conditions suffered by PDLs under custody.

Of equal import, Commissioner Maambong remarked that "the law need not penalize; the law may only put in corrective measures as a remedy." [82] As I have already mentioned, there are laws already in place to protect the rights of PDLs against the employment of cruel, degrading, and inhuman punishment, from the moment of custodial investigation until the service of their sentence. R.A. 7438 and R.A. 9745 provide for penalties, while Article 32 of the Civil Code grants PDLs a recourse to collect damages in cases of violations of their rights.

Verily, the Constitutional rights afforded to PDLs create corresponding duties on the part of the State to protect and promote them. In line with this, it is noteworthy that as early as 1955, the UN adopted the Standard Minimum Rules for the Treatment of Prisoners (UNSMRTP), which constituted the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners. [83] While these rules were merely recommendatory, they have been of tremendous value and influence in the development of prison laws, policies and practices in Member States all over the world. [84] The UNSMRTP was subsequently revised in 2015 into what is now known as the Nelson Mandela Rules. The recent revision took into consideration the development of other international law instruments on human rights. [85]

The UNSMRTP and the Nelson Mandela Rules were concretized and situated within the sphere of the national experience mainly through the enabling laws of the two main agencies in charge of the country's prison system, namely the Bureau of Jail Management and Penology (BJMP) and the Bureau of Corrections (BuCor). These enabling laws contain the very corrective measures, as Commissioner Maambong adverted to during the

deliberations, which seek to address the use of substandard or inadequate penal facilities under subhuman conditions.

The BuCor's enabling statute, R.A. 10575,[86] explicitly declares as a policy the promotion of the general welfare and the safeguarding of prisoners' rights in the national penitentiary.[87] For this purpose, R.A. 10575 vests the BuCor with the mandate of safekeeping national inmates, by ensuring the "decent provision of quarters, food, water and clothing in compliance with established United Nations standards." [88] Repeated references to the UNSMRTP are also made in its Revised Implementing Rules and Regulations (Revised IRR). Section 2 of said Revised IRR echoes the declaration of policy in the BuCor's enabling act, further stating that the basic rights of every prisoner should be safeguarded by, among other things, "creating an environment conducive to [the] rehabilitation [of prisoners] and compliant with the [UNSMRTP]." This section quotes the concept of imprisonment, in particular, as stated in Rule 57 of the UNSMRTP,[89] to wit:

Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation. (Emphasis supplied)

The definition of safekeeping in the Revised IRR also expounded that the basic needs which PDLs must be provided with comprise of "habitable quarters, food, water, clothing, and medical care, in compliance with the established UNSMRTP, and consistent with restoring the dignity of every inmate and guaranteeing full respect for human rights." [90] It is likewise stated that the core objective of "according the dignity of man" to inmates while serving sentence is in accordance with the following provisions of the UNSMRTP:[91]

60. (1) The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

(2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.[92] (Emphasis supplied)

The enabling statute of the BJMP,[93] on the other hand, mandates a secure, clean, adequately equipped, and sanitary jail in every district, city and municipality, for the custody and safekeeping of detainees.[94] The mission of the BJMP is to enhance jail management by formulating policies and guidelines on humane safekeeping of inmates and ensuring their compliance in all district, city and municipal jails.[95] One of its objectives is to ensure that the BJMP complies with the principles in the different international instruments relative to the humane treatment of inmates.[96] The BJMP likewise endeavors to improve the living conditions of offenders in accordance with the accepted standards set by the United Nations.[97]

In the BJMP Operations Manual, what especially stands out are the provisions on the handling and safekeeping of inmates with special needs. Included herein are inmates who are pregnant,[98] senior citizens,[99] and infirm.[100] Section 43 also significantly provides that emergency plans for both natural and man-made calamities and other forms of jail disturbances shall be formulated to suit the physical structure and other factors peculiar to every jail. An epidemic is among the enumerated examples of a natural calamity.

These laws affirm the State's duty of safekeeping PDLs, as carried out by the BuCor and BJMP, in relation to the constitutional proscription against cruel and inhumane punishment, and substandard conditions for penal facilities.

At the same time, what may not be divorced from this proscription is the duty to protect the health of PDLs while incarcerated, and ultimately, realize their right to life,[101] both fundamental rights — as I have stressed previously — which PDLs do not forfeit upon arrest and detention.

As it stands, therefore, the right to health, as a "component to the right to life,"[102] is inextricably linked with the guarantees under Section 19, Article III, of the Constitution, which are self-executing provisions and, as such, are judicially enforceable.

Apart from the domestic laws earlier mentioned, the more relevant consideration is that the enabling statutes of the BuCor and the BJMP have expressly adopted the standards set by the UN for the safekeeping of PDLs. There is no question, therefore, that included herein are the universally accepted minimum standards set by the Nelson Mandela Rules. The BuCor's enabling law, in particular, has explicitly referred thereto. Consequently, notwithstanding the non-binding and recommendatory nature of the Nelson Mandela Rules, they have effectively been transformed as part of the law of the land.

Furthermore, flowing from the right to health guaranteed by ICESCR, PDLs cannot be discriminated upon when it comes to access to health facilities and services.[103] They are entitled to receive the same standard of care normally available to those not incarcerated. This is referred to as the principle of "equivalence of care,"[104] initially adopted by the UN in General Assembly Resolution 37/194, which declared principles for the role of physicians in protecting PDLs against torture and cruel or degrading punishment:

Principle 1

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.[105] (Emphasis supplied)

This was further echoed in Rule 24 of the Nelson Mandela Rules, which states that:

1. The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.
2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence. (Emphasis supplied)

It is interesting to note that under the BuCor Operating Manual, there is an evident adherence to the principle of equivalence and non-discrimination, which is apparent in the following provision:

Part V

Rehabilitation and Treatment of Inmates

x x x x

Chapter 2

Inmate Services

x x x x

SECTION 2. Health Services. — Health care and services shall be given to inmates similar to those available in the free community and subject to prison regulations. A prison shall have at least one qualified medical doctor

and a dentist. (Emphasis supplied)

Guided by the principle of equivalence of care, the petitioners and all other PDLs are entitled to the same safeguards against illnesses that are available to those not incarcerated. But considering the present state of our penal facilities, and in light of the gravity of the present pandemic, the fulfillment of the minimum standards for the safekeeping and health of PDLs has taken on a new sense of urgency.

The problem with congestion within our penal facilities is no longer a disputable matter. The New Bilibid Prison alone reportedly has a 353% congestion rate.[106] The acuteness of the consequences of overcrowded jails and prisons, however, has been sharpened by the highly infectious nature of COVID-19. The Court can take judicial notice of the precautions published by the World Health Organization on the import of social distancing and self-isolation as effective measures to prevent the spread of COVID-19.[107] But given the notorious conditions within prison walls, these recommended measures intended for the protection of the health and safety of PDLs may well be unattainable. The respondents themselves, in their Comment, admitted to the near impossibility of adhering to these measures.[108] In the context of the present global pandemic, therefore, the interwoven rights of PDLs run the risk of being impaired. And, while it might be true that respondents have taken steps to address and contain the spread of COVID-19 among the inmates, these measures may be easily negated by the congestion of prison facilities, which render PDLs vulnerable to the risk of contracting the virus.

If the causal link between PDLs' poor health and exclusion from standards of care available to free individuals, on the one hand, and the fact of facility congestion on the other, are both sufficiently established, such may give rise to an actionable claim based on the violation of the proscription against cruel and inhuman punishment, and the State's commitment to various international law instruments. Such a claim may be demonstrably supported by a showing that within the present configuration of the prison systems, PDLs are deprived of the means to practice standard protocols to ensure their health, including even the simplest ones such as physical distancing and self-isolation.

In the case of *Helling v. McKinney*[109] (*Helling*), the US Supreme Court was confronted with the question of whether a prison inmate's health risk as a result of involuntary exposure to environmental tobacco smoke in the Nevada State prison was a proper basis for a claim under the Eighth Amendment. The US Supreme Court held that denial of a remedy for such health risk exposure was tantamount to deliberate indifference in the contemplation of *Estelle* and further rejected the proposition that only deliberate indifference to serious health problems was actionable, viz.:

We have great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate's current health problems but may ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year. In *Hutto v. Finney*, 437 U. S. 678, 682 (1978), we noted that inmates in punitive isolation were crowded into cells and that some of them had infectious maladies such as hepatitis and venereal disease. This was one of the prison conditions for which the Eighth Amendment required a remedy, even though it was not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed. We would think that a prison inmate also could successfully complain about demonstrably unsafe drinking water without waiting for an attack of dysentery. Nor can we hold that prison officials may be deliberately indifferent to the exposure of inmates to a serious, communicable disease on the ground that the complaining inmate shows no serious current symptoms.

That the Eighth Amendment protects against future harm to inmates is not a novel proposition. The Amendment, as we have said, requires that inmates be furnished with the basic human needs, one of which is "reasonable safety." *DeShaney*, supra, at 200. It is "cruel and unusual punishment to hold convicted criminals in unsafe conditions." *Youngberg v. Romeo*, 457 U. S. 307, 315-316 (1982). It would be odd to deny an

injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them. x x x[110] (Emphasis and underscoring supplied)

Again, quite notably, the US Supreme Court proclaimed in *Helling* that there need not be an actual infection or affliction on the part of the inmate before the protection of the Eighth Amendment can apply. As applied to petitioners' situation, it is unnecessary to require them to submit to a physical examination, or to first show symptoms of COVID-19 before recognizing a violation or threatened violation of their rights. Such a proposition may be evidence of indifference to the toll that substandard living conditions in our prison systems exact until it may be too late. Perhaps that premise has been rejected not in the least because it may well result in an exercise in futility, where the grave and possibly irreversible consequences on the right to health of PDLs must precede a proper recognition of such a right to begin with. I thus respectfully express my reservations to the proposition of some of my colleagues that absent a clear showing of the petitioners' health status, or that they are "actually suffering from a medical condition [requiring] immediate and specialized attention,"[111] the actual risk for the petitioners to contract COVID-19 in their respective penal facilities is speculative.[112]

In the later case of *Brown, et al. v. Plata, et al.*[113] involving a protracted violation of inmates' rights in a California prison through substandard and unsafe conditions of detainment, the US Supreme Court held that a court-mandated decongestion of the prison facilities, as authorized by the Prison Litigation Reform Act of 1995, was crucial in providing a remedy to these violations, and steps taken to that end should only be affirmed, to wit:

Yet so too is the continuing injury and harm resulting from these serious constitutional violations. For years the medical and mental health care provided by California's prisons has fallen short of minimum constitutional requirements and has failed to meet prisoners' basic health needs. Needless suffering and death have been the well-documented result. Over the whole course of years during which this litigation has been pending, no other remedies have been found to be sufficient. Efforts to remedy the violation have been frustrated by severe overcrowding in California's prison system. Short term gains in the provision of care have been eroded by the long-term effects of severe and pervasive overcrowding.

Overcrowding has overtaken the limited resources of prison staff; imposed demands well beyond the capacity of medical and mental health facilities; and created unsanitary and unsafe conditions that make progress in the provision of care difficult or impossible to achieve. The overcrowding is the "primary cause of the violation of a Federal right," 18 U. S. C. §3626(a)(3)(E)(i), specifically the severe and unlawful mistreatment of prisoners through grossly inadequate provision of medical and mental health care.[114] (Emphasis supplied)

Further echoing the ruling in *Estelle*, the US Supreme Court brought to the fore the positive duty on the part of the State to ensure the basic dignity of the human lives that it detains, premised on the fact that the detainees, by virtue of their detention, are severely limited in their capacity to ensure such dignity themselves, viz.:

As a consequence of their own actions, prisoners may be deprived of rights that are fundamental to liberty. Yet the law and the Constitution demand recognition of certain other rights. Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment. "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man." *Atkins v. Virginia*, 536 U. S. 304, 311 (2002) (quoting *Trop v. Dulles*, 356 U. S. 86, 100 (1958) (plurality opinion)).

To incarcerate, society takes from prisoners the means to provide for their own needs. Prisoners are dependent on the State for food, clothing, and necessary medical care. A prison's failure to provide sustenance for inmates "may actually produce physical 'torture or a lingering death.'" *Estelle v. Gamble*, 429 U. S. 97, 103 (1976) (quoting *In re Kemmler*, 136 U. S. 436, 447 (1890)); see generally A. Elsner, *Gates of Injustice: The Crisis in America's Prisons* (2004). Just as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care. A prison that deprives prisoners of basic sustenance, including adequate medical care,

is incompatible with the concept of human dignity and has no place in civilized society.[115] (Emphasis supplied)

It bears emphasis, however, that in these cases, the US Supreme Court only ruled on the existence of causes of actions or possible claims under the Eighth Amendment, but left it to the trial courts to try and hear said claims, aided by the subjective and objective elements that plaintiffs would need to prove to establish an Eighth Amendment violation.

There is no valid reason to depart from this practice of the US Supreme Court, considering that claims for violations of a PDL's fundamental rights are replete with factual matters best threshed out in the trial courts. Justice Bernabe is of the same view, recommending that the petition be referred to the appropriate trial court for a full-blown hearing on the petitioners' respective situations, which should be examined using the "deliberate indifference" test.[116] As such, in the same manner that the prayer of the petitioners for themselves and for other, similarly situated PDLs to be granted bail or recognizance must be brought before the proper trial court for hearings, so should any claim for violation under the proscription against cruel and inhuman punishment and substandard living conditions.

The Court, on a previous occasion, has affirmed its power to review alleged violations of the constitutional rights of PDLs. In *In the Matter of Petition for Habeas Corpus of Alejano v. Caubay*,[117] it held:

x x x Regulations and conditions in detention and prison facilities that violate the Constitutional rights of the detainees and prisoners will be reviewed by the courts on a case-by-case basis. The courts could afford injunctive relief or damages to the detainees and prisoners subjected to arbitrary and inhumane conditions.[118]

At this juncture, I return to the elephant in the room: the causal link between the congestion within prison walls and the exclusion of PDLs from the standard of care that should be made available to them.

The Court should be mindful of the fact that the remedies of bail and recognizance are not available for every PDL. To be more precise, these remedies are not extended to PDLs who have already started serving their sentence. There should be no reason, however, to ignore their plight in the midst of this global pandemic, lest there arise a cause of action under the Constitution. It is important to note that the US cases referred to earlier were decided outside the circumstances of a global pandemic. It is with more reason that, in light of the current situation, the State should recognize and acknowledge the possible impairment of every PDL's basic right to life and human dignity.

In a proper action initiated at a more opportune time, courts may be taken to task to provide relief against the employment of physical, psychological, or degrading punishment or against the use of substandard or inadequate penal facilities with subhuman conditions. The Court, unfortunately, must move only within the bounds of its jurisdiction; nonetheless, it has taken the necessary measures within its power, in order to guarantee the rights of PDLs in the face of this global pandemic. Ultimately, however, the task of providing farsighted and enduring solutions to the problem of overcrowding in penal facilities is a policy question and formulation that is best within the powers of the Legislative and Executive branches.

All told, pursuant to the significant body of laws both within and outside our borders that affirms the positive rights of PDLs, I submit that it remains incumbent upon the State to organize and utilize its whole apparatus so that these human rights are safeguarded.[119] In other words, any attendant limitation may not excuse a slackening of efforts, but on the contrary serve as compulsion for the State to exhaust all measures available to it to ensure that these fundamental rights of PDLs are appreciated as such.

III.

For its part, in the exercise of its mandate to promulgate rules concerning the protection and enforcement of constitutional rights^[120] and its power of supervision over all persons in custody for purposes of eliminating unnecessary detention,^[121] the Court has been implementing systems in promoting rehabilitative and restorative criminal justice.

One such measure is Administrative Matter (A.M.) No. 12-11-2-SC, or the Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial. With the current public health emergency, these measures are supplemented by various Court issuances aimed at ensuring easy access to PDLs of the different modes of securing provisional liberty. Taken together, laws and regulations in place have created a framework, essential facets of which are as follows:

1. For PDLs currently in custody for a period equal to or more than the possible maximum imprisonment prescribed for the offense charged, he or she shall be released immediately, without prejudice to the continuation of the trial or the proceedings on appeal, as the case may be;^[122]
2. For PDLs detained for a period of at least equal to the minimum of the penalty for the offense charged against him, he or she shall be ordered released, *motu proprio* or on motion and after notice and hearing, on his own recognizance without prejudice to the continuation of the proceedings against him,^[123] subject further to the guidelines set forth in Administrative Circular (A.C.) No. 33-2020,^[124] as implemented by OCA Circular No. 89-2020,^[125] on online bail proceedings and electronic transmission of release orders;
3. For PDLs who qualify for provisional dismissal pursuant to A.M. No. 12-11-2-SC, Section 10,^[126] they may secure their release pursuant to said guidelines. For this purpose, judges for the first and second level courts are directed to immediately conduct an inventory of their pending criminal cases to determine cases eligible for provisional dismissal.^[127]
4. For all other PDLs who do not meet the above criteria, they may apply for bail. Special considerations are given for indigent PDLs who may post bail at a reduced amount or be released on recognizance:
 - All PDLs may still avail of their rights to bail pursuant to the provisions of Rule 114 of the Revised Rules of Criminal Procedure.
 - In promoting social and restorative justice especially in this period of public health emergency, indigent PDLs may avail of the reduced bail and recognizance under A.C. No. 38-2020;^[128]

The amounts of bail for indigent PDLs are reduced following the schedule below:

Penalty of Crime Charged

Computation of Reduced Bail

Maximum period of reclusion temporal or twelve (12) years and one (1) day to twenty (20) years

Medium period of the penalty of the crime charged multiplied by P3,000.00 for every year of imprisonment

Maximum period of prision mayor or six (6) years and one (1) day to twelve (12) years

Medium period of the penalty of the crime charged multiplied by P2,000.00 for every year of imprisonment

Maximum period of prision correccional or six (6) months and one (1) day to six (6) years

Medium period of the penalty of the crime charged multiplied by P1,000.00 for every year of imprisonment

For indigent PDLs charged with crimes punishable by *arresto mayor* or one (1) month and one (1) day to six (6)

months, and arresto menor or one (1) day to thirty (30) days, they may be released on their own recognizance.

For indigent PDLs who meet the criteria set forth in R.A. 10389, specifically Sections 5, 6, and 7 thereof, they shall be released on recognizance pursuant to the provisions therein.

In further implementation of these rights, and considering the exigencies of the situation brought about by the current public health crisis, courts have introduced new capacities and accessible processes:

1. Proceedings concerning the right of the accused to bail^[129] and proceedings on provisional dismissal^[130] are classified as urgent matters that are immediately heard and resolved by courts during the public health emergency;
2. A.C. No. 33-2020 further provides that motions for bail as a matter of right, in accordance with Rule 114, Section 4 of the Revised Rules of Criminal Procedure,^[131] and proceedings on provisional dismissal^[132] are applied for and argued electronically, as implemented by OCA Circular No. 89-2020.
3. Approval of the bail and the consequent release order shall likewise be electronically transmitted by the Judge on duty to the Executive Judge who in turn shall electronically transmit the same within the same day to the proper law enforcement authority or detention facility to enable the release of the accused. The electronically transmitted approval of bail and release order by the Executive Judge shall be sufficient to cause the release of PDL concerned.^[133]

In light of the imposition of modified community quarantine in certain areas and the transition into general community quarantine for the rest of the country, the courts implemented hearings through videoconferencing in a number of pilot courts through A.C. No. 37-2020,^[134] as implemented by OCA Circular No. 93-2020,^[135] which will cover all PDLs and may apply to all stages of newly-filed and pending criminal cases including, but not limited to, arraignment, pre-trial, bail hearings, trial proper, and promulgation.

It is hoped that these measures are sufficient to address the exigencies brought about by the current pandemic for the benefit of PDLs, including the petitioners herein.

IV.

In sum, the Court acknowledges the petitioners' and all other PDLs' current predicament in the face of this pandemic. Thus, prudence and exigency dictate that instead of denying the petition outright, the better course of action is to refer the petition to the respective trial courts for the conduct of bail proceedings. In the process, it is my view that the respective trial courts should also look into the petitioners' claims for violations of their rights under domestic and international laws to ensure that they are not subjected to arbitrary and inhumane conditions in their confinement.

Indeed, the Court is not unmindful of the current situation faced by PDLs. The COVID-19 pandemic has become an unprecedented public health crisis, and the sickness and death it leaves in its wake have forced all of us to a reckoning. The incredible scale of the present problem has perhaps even begun to tug at the seams of the familiar limits of institutional jurisdictions. In the clamor to quell the spread of the virus on the one hand and address competing public concerns on the other, government institutions are hard-pressed at confronting issues that fall within the respective provinces of their agencies.

It is also pivotal that all material institutions acknowledge that the issue of congestion in our prison systems, along with the manner by which it has been brought before the unforgiving light of this global pandemic, finds its root in an interplay of system failures, over which the penal system is not the sole author. The sheer expanse of this crisis requires the synergized response that must outlive the present emergency, from all three branches of

government and all relevant stakeholders. Any measure that is less than farsighted and all-inclusive is a mere stop-gap that is myopic and wasteful at a time such as this.

For its part, the Court, as the ultimate dispenser of justice, has taken concrete steps to address the matter at hand in ways allowed by law, as seen from the previous enumeration of issuances. To my mind, these circulars afford the petitioners sufficient reliefs for the protection of their rights.

Verily, the Court has the unenviable role of balancing the scales of justice. In this exceptional time, justice compels the Court to exercise compassion and humanity but only within the parameters granted to it by law. The same spirit that moves the Court to address the concerns of PDLs also constrains it not to overstep its bounds.

It is in this light that I CONCUR in the Court's disposition to refer the present bail and recognizance applications to the respective trial courts where the petitioners' criminal cases are pending, without prejudice to any relief available to the parties under the circumstances, and to direct the aforesaid trial courts to act on the petitioners' cases with utmost dispatch.

[1] *People v. De los Santos*, 122 Phil. 55, 65-66 (1965).

[2] Decision, p. 7.

[3] *Id.*

[4] 767 Phil. 147 (2015).

[5] Decision, pp. 3-4.

[6] *Heirs of Delgado v. Gonzalez*, G.R. Nos. 184337 & 184507, December 17, 2008 (Unsigned Resolution).

[7] *People v. Abner*, 87 Phil. 566, 569 (1950).

[8] R.A. 10389, Sec. 3.

[9] AN ACT INSTITUTIONALIZING RECOGNIZANCE AS A MODE OF GRANTING THE RELEASE OF AN INDIGENT PERSON IN CUSTODY AS AN ACCUSED IN A CRIMINAL CASE AND FOR OTHER PURPOSES, approved on March 14, 2013.

[10] R.A. 10389, Sec. 5.

[11] *People v. Tanes*, G.R. No. 240596, April 3, 2019.

[12] *Tanog v. Balindong*, 113 Phil. 542, 555 (2015).

[13] 334 Phil. 253 (1997).

[14] 148-B Phil. 502, 506-507 (1971).

[15] *Obosa v. Court of Appeals*, *supra* note 13, at 269.

[16] *Heirs of Delgado v. Gonzalez*, *supra* note 6.

[17] Decision, pp. 6-7.

[18] See *People v. Tanes* *supra* note 11; *Revilla, Jr. v. Sandiganbayan* (First Division), G.R. Nos. 218232, 218235, 218266, 218903 & 219162, July 24, 2018.

[19] *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 769 (2013).

[20] See *People v. Presiding Judge of the RTC of Muntinlupa City*, 475 Phil. 234, 244 (2004).

[21] *Reyes v. Lim*, 456 Phil 1, 10 (2003).

[22] *Id.* at 10.

[23] 44 Phil. 221 (1922).

[24] The case provides: "The remedy here sought is the old action of *deslinde y amojonamiento*. Though this action is not specifically provided for in the Code of Civil Procedure, there can be no doubt that it still exists. The substantive right upon which it is based is granted by article 384 of the Civil Code, and where there is a right there is also a remedy; the issuing of commissions to establish boundaries is an ancient branch of equity jurisdiction and this power no doubt still resides in our courts of general jurisdiction." (*Catigbac v. Leyesa*, *id.* at 223.)

[25] 207 Phil. 574 (1983).

[26] 223 Phil. 391 (1985).

[27] 799 Phil. 575 (2016).

[28] *Id.* at 581.

[29] 573 Phil. 368 (2008).

[30] *Id.* at 378-379.

[31] 379 Phil. 165 (2000).

[32] *Id.* at 216-217.

[33] Concurring Opinion of Chief Justice Diosdado M. Peralta, pp. 5-6; Separate Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 5-6; Separate Opinion of Associate Justice Marvic M.V.F. Leonen, p. 18; Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 79.

[34] CONSTITUTION, Art. III, Sec. 13 provides: "All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required."

[35] RULE 114. BAIL.

x x x x

SEC. 7. Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable. — No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution. (7a)

SEC. 8. Burden of proof in bail application. — At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, reclusion perpetua, or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify. (8a)

[36] The necessity of a bail hearing when the charge is a capital offense has been settled in jurisprudence as early

as 1945 in the case of *Herras Teehankee v. Rovira*, 75 Phil. 634 (1945).

[37] *Enrile v. Sandiganbayan* (Third Division), 789 Phil. 679 (2016).

[38] *N.B. Padua v. People* (G.R. 220913, February 4, 2019) cites only the Separate Opinion of Associate Justice Arturo D. Brion in *Enrile* and not the ponencia itself.

[39] Separate Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 5-6.

[40] See Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 81; see also Separate Opinion of Associate Justice Amy C. Lazaro-Javier, p. 8.

[41] J. Leonen, Dissenting Opinion in *Enrile v. Sandiganbayan*, *supra* note 4, at 180-181,

[42] Separate Opinion of Associate Justice Marvic M.V.F. Leonen, p. 20.

[43] Separate Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 5-6.

[44] RULES OF COURT, Rule 114, Sec. 9(e).

[45] Decision, p. 7.

[46] International Covenant on Civil and Political Rights (ICCPR), Article 6(1).

[47] *Sps. Imbong v. Ochoa, Jr.*, 732 Phil. 1, 135 (2014).

[48] See *Mejoff v. Director of Prisons*, 90 Phil. 70 (1951).

[49] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, December 16, 1966, United Nations, Treaty Series, vol. 993, p. 3, available at <<https://www.refworld.org/docid/3ae6b36c0.html>> (last accessed June 14, 2020).

[50] ICESCR, Article 12(1).

[51] UN Human Rights, Office of the High Commissioner, UN Treaty Body Database, Ratification Status for Philippines, available at <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN> (last accessed June 14, 2020).

[52] CONSTITUTION, Art. II, Sec. 11.

[53] UDHR, Article 2.

[54] UN General Assembly, International Covenant on Civil and Political Rights, December 16, 1966, United Nations, Treaty Series, vol. 999, p. 171, available at <<https://www.refworld.org/docid/3ae6b3aa0.html>> (last accessed June 14, 2020).

[55] UN Human Rights, Office of the High Commissioner, UN Treaty Body Database, Ratification Status for Philippines, available at <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN> (last accessed June 14, 2020).

[56] ICCPR, Article 10(1).

[57] AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND

INVESTIGATING OFFICERS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF, approved on April 27, 1992.

[58] R.A. 7438, Sec. 1.

[59] Id.

[60] AN ACT PENALIZING TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT AND PRESCRIBING PENALTIES THEREFOR, approved on November 10, 2009.

[61] R.A. 9745, Sec. 2(b).

[62] CIVIL CODE OF THE PHILIPPINES, Art. 32(18); In the early case of *People v. Dionisio*, 131 Phil. 408, 411 (1968), the Court clarified that the constitutional stricture referred to in the use of "cruel or unusual punishment" has been interpreted as penalties that are inhuman and barbarous, or shocking to the conscience.

[63] UDHR, Article 5.

[64] ICCPR, Article 7.

[65] Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 38.

[66] Id. at 53.

[67] I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 703 (1986).

[68] Separate Opinion of Associate Justice Edgardo L. Delos Santos, pp. 35-38.

[69] RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 702-703 (1986).

[70] Id. at 779.

[71] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 23-26 (1986).

[72] See Separate Opinion of Associate Justice Edgardo L. Delos Santos, pp. 54-55.

[73] "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

[74] 429 U.S. 97 (1976).

[75] Id. at 102-104.

[76] FR. BERNAS. This is more of a command to the State saying that beyond having recognized these things as prohibited, the State should do something to remedy whatever may be a violation.

x x x x

MR. MAAMBONG. No, Madam President. What we are trying to say is that lack of funds is a very convenient alibi for the State, and I think with these provisions, the State should do something about it. [II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 23, 25 (1986).]

[77] Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 57.

[78] Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 36, quoting Commissioner Natividad.

[79] *Id.* at 39, quoting Commissioner Maambong.

[80] 358 Phil. 410 (1998), quoted in Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 35.

[81] *Id.* at 436.

[82] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 26 (1986).

[83] United Nations, Nelson Mandela Rules available at <https://www.un.org/en/events/mandeladay/mandela_rules.shtml> (last accessed on June 14, 2020).

[84] *Id.*

[85] The Whereas Clauses of the Nelson Mandela Rules explicitly took into account "the progressive development of international law pertaining to the treatment of prisoners since 1955, including in international instruments such as the [ICCPR], the [ICESCR] and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto."

[86] AN ACT STRENGTHENING THE BUREAU OF CORRECTIONS (BUCOR) AND PROVIDING FUNDS THEREFOR, approved on May 24, 2013.

[87] R.A. 10575, Sec. 2.

[88] *Id.*, Sec. 4(a). Underscoring supplied.

[89] Now found in Rule 3 of the Nelson Mandela Rules.

[90] Revised IRR of R.A. 10575, Sec. 3(ee). Emphasis and underscoring supplied.

[91] *Id.*, Sec. 4.

[92] Now found in Rules 5(1) and Rule 87 of the Nelson Mandela Rules.

[93] R.A. 6975, AN ACT ESTABLISHING THE PHILIPPINE NATIONAL POLICE UNDER A REORGANIZED DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, AND FOR OTHER PURPOSES, approved on December 13, 1990, Sec. 6.

[94] *Id.*, Sec. 63; RULES AND REGULATIONS IMPLEMENTING THE DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT ACT OF 1990, Sec. 62.

[95] BJMP COMPREHENSIVE OPERATIONS MANUAL, 2015 Edition, Sec. 6(b).

[96] *Id.*, Sec. 6(c).

[97] *Id.*, Sec. 10(a).

[98] Section 34. HANDLING INMATES WITH SPECIAL NEEDS. - The following guidelines shall be observed in handling inmates with special needs:

x x x x

13. Pregnant Inmates/Female Inmates with Infants

- Pregnant inmates must be referred to jail physician or nurse for pre-natal examination;
- They should be given tasks that are deemed fit and proper, their physical limitations, considered;
- During active labor, pregnant inmates should be transferred nearest government hospital;

x x x x

[99] Section 34. x x x

x x x x

11. Senior Citizen Inmates

- Senior citizen inmates should be segregated and close supervised to protect them from maltreatment and other forms of abuse by other inmates;
- Individual case management strategies should be developed and adopted to respond to the special needs of elderly inmates;
- Collaboration with other government agencies and community-based senior citizen organizations should be done to ensure that the services due the senior citizen inmates are provided; and
- Senior citizen inmates should be made to do tasks deemed fit and appropriate, their age, capability, and physical condition considered.

[100] Section 34. x x x

x x x x

12. Infirm Inmates

- Inmates with contagious diseases must be segregated to prevent the spread of said contagious diseases;
- Infirm inmates should be referred to the jail physician or nurse for evaluation and management; and
- Infirm inmates must be closely monitored and provide with appropriate medication and utmost care.

[101] See Committee on Economic, Social and Cultural Rights, General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12), UN Document E/C. 12/2000/4, par. 3, available at <<https://www.refworld.org/pdfid/4538838d0.pdf>> (last accessed June 14, 2020).

[102] Sps. Imbong v. Ochoa, Jr., supra note 47, at 156.

[103] See Committee on Economic, Social and Cultural Rights, General Comment 14, supra note 101 par. 43(a).

[104] Gen Sander and Rick Lines, HIV, Hepatitis C, TB, Harm Reduction, and Persons Deprived of Liberty: What Standards Does International Human Rights Law Establish? 18 (2) Health and Human Rights Journal 171 (December 2016).

[105] United Nations, Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Resolution 37/194, Principle 1 (December 18, 1982).

[106] BuCor Statistics on Prison Congestion, available at <<http://www.bucor.gov.ph/inmate-profile/Congestion-04062020.pdf>> (last accessed June 14, 2020).

[107] World Health Organization, Coronavirus Disease (COVID-19) Advice for the Public, at

<<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>> (last accessed June 14, 2020).

[108] OSG Comment, p. 31.

[109] 509 U.S. 25 (1993).

[110] Id. at 33.

[111] Concurring Opinion of Chief Justice Diosdado M. Peralta, p. 7.

[112] Separate Opinion of Associate Justice Rodil v. Zalameda, p. 7.

[113] 563 U.S. 493 (2011).

[114] Id.

[115] Id.

[116] Separate Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 17-18.

[117] 505 Phil. 298 (2005).

[118] Id. at 323.

[119] Supreme Court Annotation on the Writ of Amparo, citing decision of the Inter-American Court of Human Rights.

[120] CONSTITUTION, Art. VIII. Sec. 5(5).

[121] RULES OF COURT, Rule 114, Sec. 25.

[122] Id., Rule 114, Sec. 16

[123] Id.; A.M. No. 12-11-2-SC "Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial" dated March 18, 2014, Sec. 5; R.A. No. 10389 Sec. 5(b).

[124] Re: Online Filing of Complaint or Information and Posting of Bail Due to the Rising Cases of COVID-19 Infection, dated March 31, 2020.

[125] Re: Implementation of Supreme Court Administrative Circular No. 33-2020 on the Electronic Filing of Criminal Complaints and Informations, and Posting of Bails, dated April 3, 2020.

[126] Sec. 10. Provisional dismissal. - (a) When the delays are due to the absence of an essential witness whose whereabouts are unknown or cannot be determined and, therefore, are subject to exclusion in determining compliance with the prescribed time limits which caused the trial to exceed one hundred eighty (180) days, the court shall provisionally dismiss the action with the express consent of the detained accused.

(b) When the delays are due to the absence of an essential witness whose presence cannot be obtained by due diligence though his whereabouts are known, the court shall provisionally dismiss the action with the express consent of the detained accused provided:

(1) the hearing in the case has been previously twice postponed due to the non-appearance of the essential witness and both witness and the offended party, if they are two different persons, have been given notice of the setting of the case for third hearing, which notice contains a warning that the case would be dismissed if the essential witness continues to be absent; and

(2) there is proof of service of the pertinent notices of hearings or subpoenas upon the essential witness and offended party at their last known postal or e-mail addresses or mobile phone numbers.

[127] See OCA Circular No. 91-2020, Re: Release of Qualified Persons Deprived of Liberty, dated April 20, 2020.

[128] Re: Reduced Bail and Recognizance as Modes for Releasing Indigent Persons Deprived of Liberty During This Period of Public Health Emergency, Pending Resolution of Their Cases, dated April 30, 2020.

[129] See A.C. No. 32-2020.

[130] See OCA Circular No. 91-2020.

[131] A.C. No. 33-2020, No. 4.

[132] OCA Circular No. 91-2020.

[133] A.C. No. 33-2020, No. 5.

[134] Re: Pilot Testing of Hearings of Criminal Cases Involving Persons Deprived of Liberty Through Videoconferencing, dated April 27, 2020.

[135] Re: Implementation of Supreme Court Administrative Circular No. 37-2020 on the Pilot Testing of Hearings of Criminal Cases Involving Persons Deprived of Liberty Through Videoconferencing, dated May 4, 2020.

SEPARATE OPINION

LAZARO-JAVIER, J.:

Prefatory

Petitioners allege a common denominator – they are most vulnerable to catching the SARS-COV-2 and getting infected with COVID-19.[1] They are detention prisoners or pre-judgment persons deprived of liberty (PDLs) who fall into two (2) categories, either sickly older people (afflicted with severe medical conditions) or pregnant women, who because of the crimes charged have no access to bail as a matter of right.

They seek provisional liberty either on bail for a specified amount or on recognizance for themselves and others similarly situated as may be determined by a Prisoner Release Committee.

Petitioners approach their grievance in a rather novel fashion. They claim that their plea does not fall into any of the remedies in the ordinary course of law. While they assert rights which they say they should already be enjoying as PDLs, an allegation that in ordinary times would found a cause of action for an action, they make the assertion in this case only in support of their call for the exercise of our equity jurisdiction, specifically humanitarian considerations in light of our current state of public health emergency.[2]

They invoke the ruling in *Enrile v. Sandiganbayan*[3] and the relief or remedy for the infringement of petitioners' rights as PDLs that increases the risks they each face as detainees from COVID-19.

Petitioners are not alone in their quest for remedial measures in this time of the pandemic.

As they assert, justice systems of other countries have re-engineered their approach to detaining persons accused of committing offenses because of the present pandemic.[4]

Respondents, through the Office of the Solicitor General (OSG), reduce the issue here to "whether the State can provide medical care to the petitioners while maintaining their confinement vis-à-vis the threat of COVID-19." They then enumerate the collective efforts of the justice sector at curbing the threat of COVID-19 among PDLs, which according to the OSG eliminate the need to grant temporary liberty to petitioners on bail for a specified amount or under recognizance.

Indeed, the world has undergone a swift transformation through the rise of COVID-19. The criminal justice system is not immune from the changes being forced upon everyone living through this time. The electronic filing of the present petition and the physical closure of our courts nationwide, for example, were just months ago unimaginable. Since then, prospects of our return to normalcy has inevitably been prefaced with the cautious caveat of a new normal. How this new normal would evolve and ultimately impact on the administration of justice and the practice of law remains to be seen.

Equity jurisdiction – what is it and is it necessary?

The history of our court system is alien to the distinction between a court of common law and court of equity. In a manner of speaking, we simply woke up one day having a court system that did not have these two sides of the same coin. Nonetheless, our Civil Code has demanded of us judges that "[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws," and "[i]n case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail." [5]

The history of the court, of common law and the court of equity began with the legal reforms of King Henry II after 1154. [6] Administration of local courts became more centralized. [7] Thus:

Henry II created a unified system of law "common" to the country as whole. This was in part the result of his practice of sending judges from his own central court to hear disputes throughout the country. Disputes were resolved on an ad hoc basis according to what the customs were interpreted to be. The king's judges then returned to the court, discussed their cases with other judges in a manner that permitted and required them to be used for the interpretation and application of the law in future cases. In this way, the laws of England developed as "common-law" – the collection of judge-made decisions based on tradition, custom and precedent, as opposed to laws derived from statutes, a civil code or equity. [8]

By 1215, a court system was created:

The Court of Exchequer was developed to hear disputes where the Crown sought money it claimed it was owed and answered claims for money said to be owed by the Crown. The Court of Common Plea developed as a local court for civil trials between individuals. The Court of King's Bench developed as a court for more serious disputes and for the hearing of criminal cases.... [9]

Over time, procedure in the courts of common-law became convoluted and ossified. [10] Litigants who felt they had been cheated or had not been given justice by courts of common-law petitioned the King in person. [11] From this developed a system of equity, administered by the Lord Chancellor, in the Court of Chancery. [12]

It was observed that:

[51] The basis for decision-making in the Court of Chancery was equity. It was a court of conscience and not a court of rules or laws. An important distinction between court of equity (Chancery) and courts of law was that a jury had no role in interpreting the law or in matters of conscience. Only a judge could dispense equity."

[52] In courts of law, the opposite was the case. The jury answered questions of fact, originally by its own investigation and later solely from the evidence produced during a trial. Equity and law were frequently in

conflict, and litigation could continue for years as courts of law countermanded courts of equity and vice versa. This was so even though, by the 17th century, it was established that equity should prevail over the common law.

[53] By the mid-19th century, disputes between, and conflicting orders issued by, the courts of law and the courts of equity had led to a breakdown of the English legal system - as reflected in Charles Dickens' *Bleak House* - and the merger of the courts of law and the courts of equity by legislation in 1873 and 1875. While the principles of law and of equity remained distinct for a time after merger, legislation created a unified court system.

[54] Various statutes, both in England and in those common-law countries which derive their legal system from England, have modified the practices and procedures by which courts determine matters of law and of equity. For the most part they are based on the practices that pre-existed the English Judicature Act of 1873.[13]

The legislation that merged courts of law and court of equity conferred no new rights but they confirmed the rights that previously existed in these courts. The law merely gave to the courts the jurisdiction previously exercised by both the courts of common law and the Court of Chancery.[14] Thereafter, there was the complete consolidation of equitable and legal jurisdiction and practice and procedure for both equitable and legal remedies in the courts.[15]

Equitable and legal remedies differ from each other. Successful litigants are entitled to legal remedies.[16] The principal legal remedy is damages.[17] There is however no entitlement to equitable remedies.[18] By the very nature of equity, they are granted by the discretion of the court and are unlimited.

Equitable remedies are called such because they originated from the court of equity. However, through time, these once flexible equitable remedies have themselves ossified into distinct rules like the common law remedies they had meant to correct for being inflexible. Among the principal equitable remedies are declaratory judgments, injunctions, specific performance or contract modification, accounting, rescission, estoppel, proprietary remedies such as constructive trusts and tracing, subrogation, and equitable liens.

In the Philippines, it does not make sense to distinguish between common law and equitable jurisdictions and remedies except for historical purposes. This is because our jurisprudence has evolved and developed remedies fairly independently of their historical roots and has treated remedies without such distinctions. Thus, the Court does not have to refer to its supposed equity jurisdiction when it provides purportedly equitable remedies, and neither does the Court dispense supposed equitable remedies only through its purported equity jurisdiction.

The evolution of equitable remedies into distinct rules themselves demonstrates that equity is far from being a willy-nilly justice system. Flexible principles arising from the exercise of equitable jurisdiction and their constant application have developed a juridical experience that crystallized these principles into defined rules. In the words of a North American judge:

In recent years, there has been a marked trend away from strict rules and towards flexibility and importing into the law what can be described as broad moral principles of reasonableness, fair dealing and good conscience. These principles point the judge deciding a case in a certain way, but they lack the precision and certainty of black letter rules of law. Most of these doctrines spring from the tradition of equity. Historically, the common law was characterized by its relatively rigid rule-based approach, while equity, the "court of conscience", came along to relieve against the rigours of the common law. But it was never quite as simple as that because the common law method of developing rules in a case by case fashion has an inherent flexibility. The common law has gone through periods characterized by strict adherence to black letter doctrine and rigid application of rules, while at other times, it has emphasized the need for flexibility, growth and renewal. Equity as well has

moved back and forth along the continuum. In its origins, equity was based on broad principles of morality and good conscience, but as experience was gained with the application of those principles, they tended to crystallize into rules and equity itself became rigid. By the late nineteenth century and early twentieth century, both the common law and equity appear to have reached this point. . . . In the latter part of the twentieth century, there has been something of a resurgence of the spirit of equity. . . . Reliance on broad statements of principle rather than strict rules arises not only from the desire for flexibility and the need to ensure justice in the particular case. It is also characteristic of the first step in a fundamental change in the law. When a new doctrine emerges, it may only be possible to sketch out in general terms. Over time, cases are decided, gaps are filled and there develops a body of doctrine. The good neighbour duty of care principle in negligence law pronounced by Lord Atkin in *Donohue v. Stephenson* provides an example of common law rule which began as a broad statement of principle . . . I would suggest that the modern principles relating to fiduciary, unjust enrichment and constructive trust fall into a similar category.[19]

In this sense, it may be said that petitioners have loosely used the concept of equity to found their plea to be released on bail or recognizance when allegedly they are otherwise not allowed to. As we have said, we never had that division between a court of common law and a court of equity, and in reality, our legal system is a hybrid or a cross between the common and the civil law jurisdictions. As well, our jurisprudence does not allow equity to supplant and contravene the provision of law clearly applicable to a case, and conversely, cannot give validity to an act that is prohibited by law or one that is against public policy.

In this light, respondents' objection to the use of the word "humanitarian" in their Comment's prefatory may appear to be justified since petitioners could have grounded their prayer upon established law or jurisprudence without having to summon the amorphous and value-laden adjectives humanitarian or equitable.

Verily, it is not necessary to invoke equity or humanitarianism so courts could have the needed flexibility to do justice in a particular case under specifically unique circumstances, or to be able to rely upon broad moral principles of reasonableness, fair dealing and good conscience in resolving issues. Articles 9[20] and 10[21] of our Civil Code already provide the legal bases for doing so. And, as regards bail, our jurisprudence has already allowed inroads of flexibility and broad moral principles to justify what others have believed to be a just outcome.

Bail rules – is it feasible to navigate through and accommodate flexibility and broad moral principles?

Bail is not a matter of right for an accused charged with a crime punishable by death, reclusion perpetua, or life imprisonment. This rule has been interpreted and practiced as requiring the detention of an accused until he or she has sought a bail hearing and the prosecution is not able to prove that the evidence of his or her guilt is strong.[22]

The Enrile two-step test for provisional liberty.

The availability of bail to an accused charged with crimes punishable by death, life imprisonment or reclusion perpetua, however, has been modified to significant extents by our ruling in *Enrile v. Sandiganbayan*. [23]

In *Enrile*, despite the absence of a bail hearing where the prosecution could have proved that the evidence of guilt is strong, the Court allowed Senator Enrile to post bail on account of his exceptional circumstances (i.e., advanced age and ill health requiring special medical attention) and the bottom line that he was not a flight risk. Despite the vigorous and well-reasoned Opinion of Justice Leonen, the Court made room for flexibility and broad moral principles, as we re-stated the rule from *Dela Rama v. The People's Court* [24] as follows:

Bail for the provisional liberty of the accused, regardless of the crime charged, should be allowed independently of the merits of the charge, provided his continued incarceration is clearly shown to be injurious to his health or to endanger his life. Indeed, denying him bail despite imperiling his health and life would not serve the true objective of preventive incarceration during the trial. . . . It is relevant to observe that granting

provisional liberty to Enrile will then enable him to have his medical condition be properly addressed and better attended to by competent physicians in the hospitals of his choice. This will not only aid in his adequate preparation of his defense but, more importantly, will guarantee his appearance in court for the trial.

Enrile has ingrained in jurisprudence a two-step test to authorize the grant of bail when it is discretionary to do so: (a) the detainee will not be a flight risk or a danger to the community; and (b) there exist special, humanitarian and compelling circumstances. This test involves the balancing of factual and legal factors before resolving to grant or deny the application for bail.

Through Enrile, our jurisprudence has thus incorporated the degree of flexibility and the broad moral principles to the black-letter law on bail as a matter of discretion to the extent necessary to serve complete justice in particular situations, first, in *Dela Rama*, and later, in *Enrile*.

Rather than an exercise of equitable jurisdiction in its strict historical sense, the reasoning and disposition in *Enrile* is an illustration of the Civil Code provisions that "[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws," and "[i]n case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail."

In *Enrile*, the Court did not reference equitable principles in the strict historical sense of a body of rules as a counterpoint to those established among courts of common law. Perhaps in the loose sense of equity being the equivalent of flexibility and broad moral principles, *Enrile* stands for this proposition and more.

Enrile was expressly conscious to build on earlier case law to serve complete justice to Senator Enrile's circumstances. It is not a random or a cowboy sense of justice that it was serving, but one anchored on rules founded a long time ago.

Enrile thus represents what has been said about common law being itself flexible and accommodating of broad moral principles without having to distinguish it from and summoning equity. We were able to navigate through the established rules on bail as a matter of discretion to arrive at a conclusion that we thought would not have been possible under established rules but nonetheless consistent with the stability and predictability valued in every legal system.

The learned Justice Leonen reiterates his principled stand to dissent from the doctrine set forth in *Enrile* and therefore to refuse applying its ruling in subsequent cases. I deeply admire his consistency in this regard. But we have to ask ourselves, what are we to do with this *En Banc* Decision?

Article 8 of the Civil Code states that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

Enrile is a clear and categorical statement of positive law pursuant to the Court's constitutional and inherent power to "settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government,"^[25] and "to promulgate rules and procedures for the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts."

For better or for worse, until overturned, our jurisprudence has to reckon with *Enrile* as a rule that may be invoked and should be applied whenever the circumstances of a case call for it.

As judges, we are "the visible representation of the law, and more importantly, of justice. It is from [the judge] that the people draw their will and awareness to obey the law. For the judge to return that regard, [the judge] must be the first to abide by the law and weave an example for others to follow. Consequently, the last person to refuse

to adhere to the directives of the Court . . . is the judge himself." [26]

On the other hand, my learned senior brethren, Justice Caguioa, specifically referred to my opinion on Enrile as follows:

xxx. For the same reason above, I disagree with the position that Enrile has ingrained in jurisprudence a two-step test to authorize the grant of bail when it is discretionary to do so: (a) the detainee will not be a flight risk or a danger to the community; and (b) there exist special, humanitarian and compelling circumstances. The ruling in Enrile deviates from entrenched legal principles concerning bail and it cannot be used to create doctrine for subsequent cases. To reiterate, petitioner therein was allowed to post bail even though he was charged with an offense punishable by reclusion perpetua, without any showing through a hearing that the evidence of his guilt is not strong. Having skirted the minimum requirements under the Constitution regarding bail, the ruling in Enrile should not be used to set precedent for cases involving discretionary bail.

Moreover, the grant of bail in Enrile on the basis of petitioner's age and health rests on shaky ground as the circumstances therein were quite peculiar. As illustrated in Justice Leonen's Dissenting Opinion therein:

Neither was there grave abuse of discretion by the Sandiganbayan when it failed to release accused on bail for medical or humanitarian reasons. His release for medical and humanitarian reasons was not the basis for his prayer in his Motion to Fix Bail filed before the Sandiganbayan. Neither did he base his prayer for the grant of bail in this Petition on his medical condition.

The grant of bail, therefore, by the majority is a special accommodation for petitioner. It is based on a ground never raised before the Sandiganbayan or in the pleadings filed before this court. The Sandiganbayan should not be faulted for not shedding their neutrality and impartiality. It is not the duty of an impartial court to find what it deems a better argument for the accused at the expense of the prosecution and the people they represent.

The allegation that petitioner suffers from medical conditions that require very special treatment is a question of fact. We cannot take judicial notice of the truth contained in a certification coming from one doctor. This doctor has to be presented as an expert witness who will be subjected to both direct and cross examination so that he can properly manifest to the court the physical basis for his inferences as well as the nature of the medical condition of petitioner. Rebutting evidence that may be presented by the prosecution should also be considered. All this would be proper before the Sandiganbayan. Again, none of this was considered by the Sandiganbayan because petitioner insisted that he was entitled to bail as a matter of right on grounds other than his medical condition.

Furthermore, the majority's opinion -- other than the invocation of a general human rights principle -- does not provide clear legal basis for the grant of bail on humanitarian grounds. Bail for humanitarian considerations is neither presently provided in our Rules of Court nor found in any statute or provision of the Constitution.

This case leaves this court open to a justifiable criticism of granting a privilege ad hoc: only for one person -- petitioner in this case.

Worse, it puts pressure on all trial courts and the Sandiganbayan that will predictably be deluged with motions to fix bail on the basis of humanitarian considerations. The lower courts will have to decide, without guidance, whether bail should be granted because of advanced age, hypertension, pneumonia, or dreaded diseases. They will have to decide whether this is applicable only to Senators and former Presidents charged with plunder and not to those accused of drug trafficking, multiple incestuous rape, serious illegal detention, and other crimes punishable by reclusion perpetua or life imprisonment. They will have to decide whether this is applicable only to those who are in special detention facilities and not to the aging or sick detainees in overcrowded detention facilities all over this country.

Our trial courts and the Sandiganbayan will decide on the basis of personal discretion causing petitions for

certiorari to be filed before this court. This will usher in an era of truly selective justice not based on clear legal provisions, but one that is unpredictable, partial, and solely grounded on the presence or absence of human compassion on the day that justices of this court deliberate and vote.

Ergo, a reading of the ruling in *Enrile* shows that there is no discernible standard for the courts to decide cases involving discretionary bail on the basis of humanitarian considerations. The ineluctable conclusion, as opined by Justice Leonen, is that the grant of bail by the majority in *Enrile* was a special accommodation for petitioner therein. Thus, at the risk of being repetitious, the ruling in *Enrile* should be considered as a stray decision and, echoing Justice Bernabe, must likewise be considered as *pro hac vice*. It should not be used as the benchmark in deciding cases involving the question on whether bail may be allowed on the basis of humanitarian considerations. Notably, under the Rules of Court, humanitarian considerations such as age and health are only taken into account in fixing the bail amount after a determination that evidence of guilt against the accused is not strong.

However, petitioners are not left without any other recourse that is legally permissible. Despite the inapplicability of *Enrile* and in view of the novel nature of this case, the Court should not be precluded from affording petitioners the appropriate reliefs within the bounds of law.

In this regard, a proper bail hearing before the trial court should first be conducted to determine whether the evidence of guilt against the petitioners is strong. This Court, not being a trier of facts, cannot receive and weigh petitioners' evidence at the first instance. Factual and evidentiary matters must first be threshed out in a proper bail hearing, which may only be done in the lower courts. Trial courts are better equipped to assess petitioners' entitlement to bail or recognizance based on the provisions of the Constitution, the relevant laws, and the Rules of Court.

Thus, instead of dismissing the petition outright, I join Justice Bernabe's recommendation to refer or remand this petition to the concerned trial courts.

Exigency is better served if the trial courts where the criminal cases of petitioners are respectively pending will hear their bail petitions and receive their evidence.

With all due respect, I truly cannot read *Enrile* through Justice Leonen's eagle eyes because his reading is simply not the Supreme Court's decision. Justice Leonen was very emphatic about the Court's favorable treatment of Senator *Enrile*, but the Majority chose not to side with him and to believe otherwise.

The Majority did not describe *Enrile* as a ruling for the sole and exclusive benefit of Senator *Enrile*. The Majority could not have said that *Enrile* was *pro hac vice* because that would have only validated what Justice Leonen has long been articulating about the decision – that we have a justice system for the powerful and another justice system for the powerless. Any reading of *Enrile* will never elicit that admission.

The Majority, I am sure, especially then Chief Justice Lucas P. Bersamin, will never admit enunciating a ground-breaking doctrine only to favor and pander to "Senators and former Presidents charged with plunder and not to those accused of drug trafficking, multiple incestuous rape, serious illegal detention, and other crimes punishable by reclusion perpetua or life imprisonment. . . . those who are in special detention facilities and not to the aging or sick detainees in overcrowded detention facilities all over this country."

Admittedly, the present *En Banc* has the authority to reject and set aside the doctrine laid down by the Court *En Banc* in *Enrile*[27] by characterizing it as *pro hac vice*. But this ruling will just be a euphemism for what Justice Leonen has been dissenting about — that the Court lays down doctrines to pamper the powerful, to grant a "privilege *ad hoc*: only for one person," that *Enrile* applies only to Senator *Enrile* because of who and what he is.

Another unfortunate consequence of characterizing Senator *Enrile*'s eponymous hit ruling as *pro hac vice* is to

apply the rejection of the Enrile doctrine retroactively.[28] During this pandemic, an exceptional circumstance, it at once denies petitioners at least their right to invoke the Enrile doctrine to their cause, for the simple reason that it was crafted and especially tailored-fit solely for Senator Enrile's benefit.

I am not willing to travel this extent of unfairness. It was the Court that put the doctrine out there. If the Court is to pull it back, at least allow those who have already invoked it the benefit of the doubt no matter how marginalized and uninfluential they are. And only thereafter, may the Court set the doctrine aside because the Court supposedly just wants to favor Senator Enrile.

Going forward, I completely disagree with the opinions expressed that Enrile does not provide for clear-cut standards to justify release on bail for a specified amount or on recognizance. As stated, Enrile enunciates a two-step test that is more than clear and determinable. The Enrile test can even accommodate Senior Justice Perlas-Bernabe's reference to the "deliberate indifference" test as a standard for justifying other forms of custodial arrangements.

Provisional liberty as a relief or remedy for the infringement of every PDL's right against jail congestion.

Ruminations on Justice Leonen's Separate Opinion

A true scholar, Justice Leonen carefully dissects the international and local laws to determine the rights of PDLs as PDLs, and the problematic implementation of these rights. He then narrows down the problem areas among the plethora of these rights to that specific matter which is of public knowledge, or is capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions – the problem, of congestion in our holding centers. Thus:

The Court may take judicial notice of the nature of COVID-19 and the long standing jail congestion which has plagued the Philippine jails and how this unresolved crisis is a significant threat to the right to life, health, and security of persons detained in such conditions.

I agree with Justice Leonen that the Court may take judicial notice of jail congestion. This problem has long hounded our holding centers that the Court has once mandated judges to conduct jail visitations in an effort to decrease inmate population and proffer suggestions for better management of these facilities.

I also agree with Justice Leonen that the Philippines has incorporated the minimum standards on the treatment of PDLs in international law into our local laws, and as a result, the minimum standards may be judicially enforced.

I respectfully disagree, however, with the argument that an infringement of these minimum standards, such as the overcrowding in jails, is tantamount to cruel and inhuman punishment, because these minimum standards "operationalize the right against cruel and inhuman punishment."

Our jurisprudence has taken a conservative approach to the constitutional proscription against cruel and inhuman punishment.

Maturan v. Commission on Elections[29] reiterated its conceptualization as extending only to situations of extreme corporal or psychological form or character of the punishment rather than its severity in respect of its duration or amount, and –

... applies to punishments which never existed in America or which public sentiment regards as cruel or obsolete. This refers, for instance, to those inflicted at the whipping post or in the pillory, to burning at the stake, breaking on the wheel, disemboweling and the like. The fact that the penalty is severe provides insufficient basis to declare a law unconstitutional and does not, by that circumstance alone, make it cruel and inhuman.

Echegaray v. Secretary of Justice[30] excluded from the meaning of cruel and inhuman punishment the infliction of pain or distress that is merely incidental in carrying out the punishment. It rejected cruelty as the mere infliction of pain or suffering, because if it were, no one would ever be punished at all. Echegaray held that "[t]he cruelty against which the Constitution protects a convicted man is cruelty inherent in the method of punishment, not the necessary suffering involved in any method employed to extinguish life humanely."

While the minimum standards on the treatment of PDLs are no doubt part and parcel of protecting, defending and promoting the dignity of PDLs, their infringement does not rise to the level of what we have conceived to be cruel and inhuman punishment. The minimum standards have nothing to do with the form, character, or method of punishment, and though subpar PDL conditions may affect the severity of the punishment meted out, this is just incidental to the implementation of the punishment.

It is true that jail congestion impacts more on the PDLs' right to life and its cognate rights under Section 1, Article III of the Constitution amidst the pandemic than during ordinary times.

It is equally true, however, that if the right to life contemplates the existence only of negative rights or rights of non-interference, in order to establish a breach of the right to life, a claimant must first show that he or she was deprived of his or her right to life and its cognate rights, and then must establish that the State caused such deprivation without due process of law. Active State interference with one's life, security or health by way of some affirmative, positive, or definitive act will be necessary in order to engage the protection of this right. There will also be a need to establish a causal link between State action and harm alleged to have been suffered. This requires searching for a causal nexus tying the State to petitioners' inability to exercise their right to life. Such a nexus could only ever be established by pointing to a positive state action giving rise to the aggrieved condition.

The Court has thus held:

The legitimacy of a government is established and its functions delineated in the Constitution. From the Constitution flows all the powers of government in the same manner that it sets the limits for their proper exercise. In particular, the Bill of Rights functions primarily as a deterrent to any display of arbitrariness on the part of the government or any of its instrumentalities. It serves as the general safeguard, as is apparent in its first section which states, "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws." Specifically, due process is a requirement for the validity of any governmental action amounting to deprivation of liberty or property. It is a restraint on state action not only in terms of what it amounts to but how it is accomplished. Its range thus covers both the ends sought to be achieved by officialdom as well as the means for their realization.[31]

Here, we cannot fault respondents for the increased risks to life, security and health brought about by COVID-19 even among the inmates, including petitioners, of our overcrowded jail facilities. In a manner of speaking, paraphrasing one classic song, respondents did not light the fire as it seemed to have always been burning since the world has been turning. They have not engaged in any definitive, affirmative or positive State action to cause such increased risks of deprivation.

Nevertheless, even if the right to life does not contemplate the existence only of negative rights (i.e., to identify some definitive, affirmative or positive act, in contrast to mere inaction, on the part of the State which could be said to constitute an interference with this right and consequently ground the claim of a violation) and has positive rights dimension (i.e., whether the right to life imposes on the State a duty to act where it has not done so), I would have reached the same conclusion that respondents did not breach petitioners' or any other PDL's right to life amidst the increased dangers to life, security and health caused by the pandemic.

If the right to life includes a positive dimension, such that it is not merely a right of non-interference but also a

right of performance, then it is violable even by mere inaction or failure by the State to actively provide the conditions necessary for its fulfilment, or to alleviate petitioners' condition, and not on whether the State can be held causally responsible for the aggrieved's condition in the first place.

Here, respondents have taken positive measures to minimize the spread of COVID-19 within holding centers and the infection of petitioners and other PDLs of this disease. They have not remained idle and inactive to simply let the PDLs be afflicted. They have actively endeavoured to block the conditions necessary for the virus' contagion and to alleviate petitioners' increased risks to this viral infection.

While these measures may not be enough, their inadequacy is attributable to so many varied factors. These factors are beyond respondents' control and levels of authority and responsibility, and include the unpredictable nature of the pandemic and, should there be finger-pointing at this time, the collective and systemic inadequacies not only of all the institutions and stakeholders in our criminal justice system, but also of the entire State machinery responsible for the allocation of limited resources.

We may take judicial notice of the pitfalls in complying with the minimum standards of the treatment of PDLs. It is factual and accurate that there is overcrowding in most of our jails.

However, attributing this setback solely to respondents is both unfair and inaccurate. We may take judicial notice of the publicly known fact that respondents do not also want this dire situation happening in their facilities. But what can they do? The population and facilities in their holding centers are the outcomes of so many variables outside their control and competence.

Neither will it be correct to remediate this concern by directing the release of such number of PDLs as would match the holding centers' respective capacities.

To begin with, there is no law which requires this type of relief or remedy for an innocent slip-up or non-compliance with the minimum standards. Neither is it beneficial, desirable nor practicable. In fact, granting this type of relief or remedy will put the Court on the spot and in a compromising slippery slope position where we would have to order the release of a PDL each time a minimum standard is not met, simply because of the theory that these minimum standards as to safety, sanitary, and sufficient provisions and facilities operationalize the right against cruel and inhuman punishment.

More, the present case is not about vindicating the rights of all PDLs to the minimum standards of treatment. The petition is about petitioners' concerns, and while petitioners and some of us may want to extend its beneficial effects to other PDLs, this only rests on and is only due to the impact of the pandemic.

In any event, since the case here is not per se about the enforcement of the minimum standards, it would not be fair and wise to deal with the forms of relief or remedy for the alleged infringement thereof without hearing from respondents. Before crafting the relief or remedy, respondents must first be heard to shed light on the infringement, if any, and its nature and impact, and their justifications for such state of affairs.

Ruminations on Senior Associate Justice Perlas-Bernabe's Separate Opinion

A rock of integrity and competence, Senior Associate Justice Perlas-Bernabe provides a solid legal anchor to the views I have expressed above. While it has not been shown that respondents are responsible for any infringement of the minimum standards, petitioners must have the opportunity to prove their claims against respondents. Senior Associate Justice Perlas-Bernabe has outlined the framework of the deliberate indifference test by which petitioners could proceed for this purpose.

Bail in the time of COVID-19 – quo vadis, whither goest thou?

Petitioners seek bail for a designated amount or upon recognizance as a counter-measure to prevent their COVID-19 infection.

Prisons and justice officials worldwide respond... – an overview.

Petitioners are not the only ones seeking urgent ameliorative measures at detention facilities.

As the petition has poignantly stressed, which the Court can take judicial notice of, several other countries have reacted swiftly to beat, or at least so their leaders thought, COVID-19 to the draw. We rely on online news feeds to validate petitioners' claims that detainees or prisoners have indeed been released in other countries as one of the countermeasures against the virus and its disease. We cannot vouch however for the circumstances of their detainees' or prisoners' release and the issues and the decision-making process that went with this countermeasure, if it were the result of a political, administrative, or judicial decision.

The World Health Organization (WHO) has published an interim guidance on how to deal with the virus and its disease in prisons and other places of detention, entitled "Preparedness, prevention and control of COVID-19 in prisons and other places of detention." WHO describes the material and its rationale, as follows:

The guidance provides useful information to staff and health care providers working in prisons, and to prison authorities. It explains how to prevent and address a potential disease outbreak and stresses important human rights elements that must be respected in the response to COVID-19 in prisons and other places of detention. Access to information and adequate health care provision, including for mental disorders, are essential aspects in preserving human rights in such places.

Controlling the spread of infection in these settings is essential for preventing large outbreaks of COVID-19. The guidance aims to protect the health and well-being of all those who live, work in and visit these settings and the general population at large. People deprived of their liberty, and those living or working in enclosed environments in their close proximity, are likely to be more vulnerable to the COVID-19 disease than the general population. Moreover, correctional facilities may amplify and enhance COVID-19 transmission beyond their walls. According to the newly published WHO guidance, the global effort to tackle the spread of disease may fail without proper attention to infection control measures within prisons.[32]

Indonesia has released nearly 23,000 prisoners out of the projected release of 30,000 prisoners who have served two-thirds of their respective sentences.[33] This is meant to reduce inmate population and prevent the rapid spread of the virus.[34]

In the United States, prisoners serving sentences have been targeted for early release, subject to certain criteria:

In response, officials have begun to take action. On the federal level, Attorney General William Barr released a memo last week that ordered the Federal Bureau of Prisons to identify "at-risk inmates who -are non-violent and pose minimal likelihood of recidivism and who might be safer serving their sentences in home confinement." His plan, however, has been criticized because these inmates will be identified by an algorithm that the Marshall Project reports is biased toward white people.

And realistically, it's state officials that need to take bolder action: There are only about 226,000 people locked up in federal facilities compared to the nearly 1.3 million in state prisons, according to the Prison Policy Institute. Some have begun to release the incarcerated. Most recently, California announced that it would let out 3,500 nonviolent inmates in the next 60 days — the most drastic measure taken by states so far. New York City Mayor Bill de Blasio also announced the city had released 900 people as of March 31.[35]

In the Islamic Republic of Iran, some 85,000 inmates have been temporarily freed, mostly non-violent offenders serving short sentences and some political prisoners.[36]

Afghanistan has taken the same precautionary measure, involving mostly women, young offenders and sickly inmates.[37]

In Canada, there has been a clarion call to limit the number of people in detention facilities, encourage the attorneys-general and the provinces, territories, and federally, to persuade police officers, prosecutors, and judges to exercise their discretion and not jail people if it is not required by public safety.[38] As a result, it has been observed that "[a] flurry of court decisions suggest that even those accused of violent crimes are winning release. As one judge wrote, the pandemic had 'reordered the usual calculus.'"[39]

Indeed, COVID-19 has taken its toll on the normative, what we must or ought to do, and have altered the narrative to a passive reactive new normal, what has been done to us, and in response, what must be done by us.

Our reply... – balancing varied interests.

Here, I take petitioners' assertions very seriously. Not only for their sakes, but for the sake of the general population, including us. This is because as WHO has confirmed, "correctional facilities may amplify and enhance COVID-19 transmission beyond their walls."

We can take judicial notice of materials suggesting that the COVID-19 situation is under control in our jails, and that prison officials have established isolation facilities for PDLs who may exhibit even the mildest symptoms of the virus[40] infection as well as procedures restricting family visits and strict querying protocols upon admission for signs of this virus.

We may accept as evidence the laudable efforts of our jail wardens to curtail or even withdraw altogether the few niceties that pre-judgment PDLs had available to them previously, such as religious services. Viewed strictly in the context of COVID-19, that is welcome news.

We may even take judicial notice of respondents' concrete earnest efforts to prevent the transmission of the SARS-CoV-2 virus and the infection of PDLs, including petitioners, with COVID-19, as painstakingly specified in their Comment. We may further accept as evidence respondents' claim that MMDJ-4 at Camp Bagong Diwa, Taguig City, the Taguig City Jail-Female Dormitory, Manila City Jail-Female Dorm, and the Manila City Jail-Male Dormitory have no confirmed cases of COVID-19.

But we do not live in a bubble. We, too, may take judicial notice of the fact that this virus is contagious even before a person demonstrates signs of infection. Persons can be asymptomatic yet be highly contagious. These facts are well known in the community given the proliferation of formal and informal media coverage on COVID-19. We note how rapidly events have changed from day to day, with a corresponding rise in the numbers of individuals who are infected, who die, and fortunately, who are cured of this abominable menace.

We may likewise take judicial notice of the fact that recommended physical distancing and frequent hand washing which are required as protection against COVID-19 are not readily available while a person is in custody at our facilities. This is not a criticism of our facilities much less their administrators. It is merely a statement of the fact that our pre-judgment PDLs cannot adequately physically isolate or wash their hands with frequency in the facilities.

Just because petitioners have been deprived of their liberty and are stuck in jails in Luzon, they are already vulnerable to an increased risk of contracting the disease brought about by the virus. We need not require petitioners to satisfy the Court that they have some subjective personal characteristics for us to accept that each of them is at an increased risk of infection. We do not need evidence to accept this proposition.

At most, petitioners' alleged pre-existing medical conditions render each of them just even more prone to infection

by this virus and contracting its disease. Their pre-existing medical conditions make the risk of infection riskier. But the absence of these conditions does not remove altogether the risk that have been heightened as a result of their being in jails. At any rate, from my end, I can accept as fact that they each have pre-existing medical conditions that put each of them at a higher than normal risk of infections generally. I have no evidence to contradict their assertions on this point, and I accept them.

In view of the life-changing impact of COVID-19 upon the totality of our social and economic well-being, the administration of our government, the dispensation of justice, and our individual lifestyles, I am of the view that this pandemic constitutes exceptional and material change of circumstances that permits us to look closely and with urgency into petitioners' plea.

The reasoning in *Enrile* will help us resolve this case.

In *Enrile*, the Court found that the greatly elevated health risk posed to Senator Enrile as a PDL than when he is on bail or under another form of custodial arrangement, is a factor that must be considered in evaluating whether to grant discretionary bail. Enrile posed a two-step test: (a) that the detainee will not be a flight risk or a danger to the community; and (b) that there exist special, humanitarian and compelling circumstances.

Here, in the same manner, the threat that the virus poses to every PDL is one factor to be considered in the balancing of the interests attending the pre-judgment detention of an accused. It is a special, humanitarian and compelling circumstance that fulfils the second step of the test.

It bears emphasis though that the existence and contagious nature of COVID-19 while highly relevant is not solely determinative. It is just one of the factors that the Court must assess. There are other concerns, which specifically deal with first step.

As in *Enrile*, a factor in the first step is the flight risk of the pre-judgment PDL, or in this case, the PDLs – will he or she or they attend court hearings? Note that there are so many of them directly seeking the Court's intervention, which makes a whole lot of a difference than when the Court is dealing with only a single individual whose court attendance must be secured.

I also articulate some of the other factors we must consider:

(i)

Is there a substantial likelihood or substantial risk that the pre-judgment PDL or PDLs would be committing the same or another crime, using as contexts the circumstances of the offense with which the pre-judgment PDL or the PDLs is or are charged and their individual personality or personalities?

(ii)

Will the grant of bail for a specified amount or upon recognizance maintain the peoples' trust and confidence in our system of administering justice, having regard to the pre-judgment PDLs' respective situations, including the apparent strength of the prosecution's case, the gravity of the crime per se, the hideous or attenuating circumstances surrounding its commission and the potential for a lengthy term of imprisonment and other criminal penalties?

(iii)

Are there custodial arrangements by which respondents could reduce the greatly elevated health risk posed to

petitioners as pre-judgment PDLs with pre-existing medical conditions by the COVID-19 disease?

(iv)

Will petitioners' release on bail be actually beneficial to them, that is, will each of them be actually inoculated from COVID-19 through such means as physically distancing, protective gears, frequent handwashing, and others that may be required hereafter?

(v)

With the enactment of RA 11469 (2020), Bayanihan To Heal As One Act, will the Court not trudge on questions of policy that are better left to the Executive Branch, specifically the Inter-Agency Task Force for the Management of Emerging Infectious Diseases in the Philippines (IATF) under EO 168 (2014) as amended, to address under the doctrines of authentic political question and primary jurisdiction?

As respondents have clarified, petitioners' respective offenses are serious and violent. Respondents also emphasized that a number of them failed to report to their respective courts after their safe conduct passes to attend the peace talks abroad were revoked by the Philippine Government. Petitioners were subsequently arrested on the basis of warrants of arrest issued against each of them. Respondents also detailed each of the detention center's efforts to combat the spread and transmission of COVID-19 not only among petitioners but the other PDLs as well.

Beyond the factors which the Court are competent to weigh in, we must consider as well that COVID-19 is also a national health concern, the response to which impacts on the whole fabric and every strand of our polity. Ultimately, it was for this reason that Congress passed RA 11469 (2020), Bayanihan To Heal As One Act, so that there will be a united front against this common invisible enemy.

In this context, there will be consequences to the plans already laid down by the IATF if we are to release petitioners, and later, others similarly situated, on bail. Resources of the Executive Branch will be diverted and used simply to monitor petitioners' whereabouts and activities during the period of national health emergency. If granted, their release could become an unnecessary distraction to the current efforts to fight the virus and its disease. As respondents seem to assert in their Comment, petitioners are better quarantined at their present detention centers.

The doctrine of political question states:

Baker v. Cart remains the starting point for analysis under the political question doctrine. There the US Supreme Court explained that:

. . . Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department or a lack of judicially discoverable and manageable standards for resolving it, or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on question.

In Tañada v. Cuenco, we held that political questions refer "to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. It is concerned with issues

dependent upon the wisdom, not legality of a particular measure." [41]

I am of the view that RA 11469 has exclusively committed to the Executive Branch actions and decisions pertaining to the courses of action to meet the perils brought by COVID-19.

The release on bail of pre-judgment PDLs not otherwise qualified for release but for the perils of the virus and the disease, involves an act of discretion falling under RA 11469. The country is in actual standstill because of COVID-19. Necessarily, if the Court is to act because of the virus and its disease, the Court has to defer to the wisdom of the Executive Branch, because our legal order has exclusively tasked it to combat the very cause of and reason for the action prayed for by petitioners.

In the ultimate analysis, even the issues that we can decide on our own as an institution, i.e., whether petitioners would again commit a crime or would be available for the next court date or their release would bring our administration of justice into disrepute, are also intricately connected to the over-all response to the pandemic.

This is because once petitioners are released, the courts will have to rely on the Executive Branch and its officers to monitor and enforce compliance with the bail plan. This will be especially complicated during this period of national health emergency when everyone in the Executive Branch is focused on fighting the virus and the disease it brings. Further, it is the Executive Branch that has the resources to commit and spend for alternative custodial arrangements to keep petitioners safe from COVID-19.

The doctrine of primary jurisdiction articulates that "courts will hold off from determining a controversy involving a question within the jurisdiction of an administrative agency, particularly when its resolution demands the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact." [42] The country's law has now entrusted to the Executive Branch, especially the IATF, the authority to decide upon how to go about combatting the spread of the virus and its disease everywhere, including our courts, penitentiaries and detention or holding facilities. Full discretionary authority has been delegated to this administrative office as regards this broad matter, by virtue of its expertise and specialized knowledge.

I say with a great deal of confidence that there would potentially be a great deal of embarrassment and confusion should there be multifarious pronouncements by various departments on this pressing concern. More, these pronouncements could be deadly and costly if made unilaterally without coordination or consultation with the Executive Branch.

Balancing varied interests – a summary.

Of all the issues I have canvassed vis-à-vis petitioners' plea to be released on bail for a specified amount or upon recognizance, the things that have been established are:

-

the extremely contagious nature of COVID-19,

-

the likelihood of transmission of the virus and the disease inside detention facilities among PDLs, unless intervention measures are put in place,

-

the difficulties in achieving physical distancing, providing protective gears, and accessing frequent handwashing,

-

the increased risk to petitioners as a result of their detention and pre-existing medical conditions,

-

respondents' concrete earnest efforts to prevent the transmission of and the infection with COVID-19 of PDLs including petitioners, and

-

the absence of confirmed cases of COVID-19 at MMDJ-4 at Camp Bagong Diwa, Taguig City, the Taguig City Jail-Female Dormitory, Manila City Jail-Female Dorm, and the Manila City Jail-Male Dormitory.

While the facts about the extreme contagious nature of COVID-19 are real, and existing concerns about the state of our detention facilities are highly relevant, they are not the only factors determinative or dispositive of petitioners' plea.

We also have to take into account respondents' and other jail wardens' concrete efforts to put into place protective measures against the virus.

Further, there is a host of other issues I believe petitioners have to address, for which they provided no answers, and to date have not suggested any.

In summary, in these very challenging times, even as we fully recognize the potential harmful health impact on detained persons of the virus, the Court must balance what respondents in particular have been doing and will do to keep PDLs healthy and alive as well as the legal requirements of, one, adhering to the legislated policy of having just the compass of the Executive Branch as the single baton in the united fight against COVID-19 for our common collective protection, and two, sustaining our role in the proper functioning of our legal system and the administration of justice.

Separate Opinion of Justice Delos Santos – some points to ponder upon...

For the most part, I concur in the Separate Opinion of my esteemed colleague, Justice Delos Santos. May I however respectfully forward some of my thoughts on a very few items that in my humble opinion could be subject to unintended interpretations.

One. I disagree with the reasoning that:

First, the general import of the terms in Section 4 (a) of the Bureau of Corrections Act in relation to the Nelson Mandela Rules clearly show that such provision is not judicially-enforceable.

....

The phrase "in compliance with established United Nations standards" in Section 4 (a) of the Bureau of Corrections Act is so generic that it clearly appears to be silent regarding the manner of its implementation. . . .

....

As to the issue of specific implementation, the following phrases of the afore-cited Nelson Mandela Rules stand out: (a) "reasonable accommodation and adjustments;" (b) "full and effective access to prison life on an equitable basis;" (c) "shall meet all requirements of health;" (d) "cubic content of air, minimum floor space, lighting, heating and ventilation;" (e) "special accommodation;" and (f) "[a]rrangements shall be made." All of these phrases do not provide specific details as to the manner of implementation...

Second, the implementation of the Bureau of Corrections Act is dependent on the available funds of the Bureau, (emphases supplied)

To begin with, primary and subordinate legislations would almost always be couched in general terms that understandably would lack details. Such terms as "reasonable," "equitable," "circumstances" and others are so common among public and private legal instruments, but it does not mean that these otherwise binding documents would not be judicially enforceable.

To illustrate, the definitions of "probable cause" and the various other standards of proof (e.g., beyond a reasonable doubt, preponderant evidence, substantial evidence) use the same words as "reasonable," "circumstances," etc., yet we never ever complained that we cannot enforce them.

Indeed, such ambiguous terms are meant to be questions of fact whose resolution must be grounded in the specific facts and circumstances established by evidence or supporting allegations. Their ambiguity is clarified by the process of receiving evidence or submissions, and in the end, a court is able to define what "reasonable" and "equitable" concretely signify.

Hence, in one case, this Court was confronted with the issue of "whether there is a 'counteraction' of forces between the union and the company and whether each of the parties exerted 'reasonable effort at good faith bargaining'"[43]but we did not decline to rule on this issue because of the ambiguity of the standard. Instead, we said "whether there was already deadlock between the union and the company is likewise a question of fact. It requires the determination of evidence to find..."

I also disagree with the thought that budgetary restrictions and considerations are factors in determining the existence of a right and its enforceability. I will of course be the first to concede that in the "implementation" of a statutory program, budget becomes a critical factor. But this weighing does not happen at the initial stage where the existence of a right and its enforceability are being determined. Budget could be a factor in fashioning the appropriate remedy or relief, and assessing the reasonableness of the compliance with the remedy or relief, but this occurs only after a right has been determined to exist and to be enforceable.

In any event, please recall that in one of the Court's more celebrated decisions, we decreed:

WHEREFORE, the petition is DENIED. The September 28, 2005 Decision of the CA in CA-G.R. CV No. 76528 and SP No. 74944 and the September 13, 2002 Decision of the RTC in Civil Case No. 1851-99 are AFFIRMED but with MODIFICATIONS in view of subsequent developments or supervening events in the case. The fallo of the RTC Decision shall now read:

WHEREFORE, judgment is hereby rendered ordering the abovenamed defendant-government agencies to clean up, rehabilitate, and preserve Manila Bay, and restore and maintain its waters to SB level (Class B sea waters per Water Classification Tables under DENR Administrative Order No. 34 [1990]) to make them fit for swimming, skin-diving, and other forms of contact recreation.

In particular:

(1) Pursuant to Sec. 4 of EO 192, assigning the DENR as the primary agency responsible for the conservation, management, development, and proper use of the country's environment and natural resources, and Sec. 19 of RA 9275, designating the DENR as the primary government agency responsible for its enforcement and implementation, the DENR is directed to fully implement its Operational Plan for the Manila Bay Coastal Strategy for the rehabilitation, restoration, and conservation of the Manila Bay at the earliest possible time. It is ordered to call regular coordination meetings with concerned government departments and agencies to ensure the successful implementation of the aforesaid plan of action in accordance with its indicated completion schedules.

(2) Pursuant to Title XII (Local Government) of the Administrative Code of 1987 and Sec. 25 of the Local Government Code of 1991, 42 the DILG, in exercising the President's power of general supervision and its

duty to promulgate guidelines in establishing waste management programs under Sec. 43 of the Philippine Environment Code (PD 1152), shall direct all LGUs in Metro Manila, Rizal, Laguna, Cavite, Bulacan, Pampanga, and Bataan to inspect all factories, commercial establishments, and private homes along the banks of the major river systems in their respective areas of jurisdiction, such as but not limited to the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, the Meycauayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other minor rivers and waterways that eventually discharge water into the Manila Bay; and the lands abutting the bay, to determine whether they have wastewater treatment facilities or hygienic septic tanks as prescribed by existing laws, ordinances, and rules and regulations. If none be found, these LGUs shall be ordered to require non-complying establishments and homes to set up said facilities or septic tanks within a reasonable time to prevent industrial wastes, sewage water, and human wastes from flowing into these rivers, waterways, esteros, and the Manila Bay, under pain of closure or imposition of fines and other sanctions.

(3) As mandated by Sec. 8 of RA 9275,⁴³ the MWSS is directed to provide, install, operate, and maintain the necessary adequate waste water treatment facilities in Metro Manila, Rizal, and Cavite where needed at the earliest possible time.

(4) Pursuant to RA 9275,⁴⁴ the LWUA, through the local water districts and in coordination with the DENR, is ordered to provide, install, operate, and maintain sewerage and sanitation facilities and the efficient and safe collection, treatment, and disposal of sewage in the provinces of Laguna, Cavite, Bulacan, Pampanga, and Bataan where needed at the earliest possible time.

(5) Pursuant to Sec. 65 of RA 8550, ⁴⁵ the DA, through the BFAR, is ordered to improve and restore the marine life of the Manila Bay. It is also directed to assist the LGUs in Metro Manila, Rizal, Cavite, Laguna, Bulacan, Pampanga, and Bataan in developing, using recognized methods, the fisheries and aquatic resources in the Manila Bay.

(6) The PCG, pursuant to Secs. 4 and 6 of PD 979, and the PNP Maritime Group, in accordance with Sec. 124 of RA 8550, in coordination with each other, shall apprehend violators of PD 979, RA 8550, and other existing laws and regulations designed to prevent marine pollution in the Manila Bay.

(7) Pursuant to Secs. 2 and 6-c of EO 513 and the International Convention for the Prevention of Pollution from Ships, the PPA is ordered to immediately adopt such measures to prevent the discharge and dumping of solid and liquid wastes and other ship-generated wastes into the Manila Bay waters from vessels docked at ports and apprehend the violators.

(8) The MMDA, as the lead agency and implementor of programs and projects for flood control projects and drainage services in Metro Manila, in coordination with the DPWH, DILG, affected LGUs, PNP Maritime Group, Housing and Urban Development Coordinating Council (HUDCC), and other agencies, shall dismantle and remove all structures, constructions, and other encroachments established or built in violation of RA 7279, and other applicable laws along the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas- Malabon-Tullahan-Tenejeros Rivers, and connecting waterways and esteros in Metro Manila. The DPWH, as the principal implementor of programs and projects for flood control services in the rest of the country more particularly in Bulacan, Bataan, Pampanga, Cavite, and Laguna, in coordination with the DILG, affected LGUs, PNP Maritime Group, HUDCC, and other concerned government agencies, shall remove and demolish all structures, constructions, and other encroachments built in breach of RA 7279 and other applicable laws along the Meycauayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other rivers, connecting waterways, and esteros that discharge wastewater into the Manila Bay.

In addition, the MMDA is ordered to establish, operate, and maintain a sanitary landfill, as prescribed by RA 9003, within a period of one (1) year from finality of this Decision. On matters within its territorial jurisdiction

and in connection with the discharge of its duties on the maintenance of sanitary landfills and like undertakings, it is also ordered to cause the apprehension and filing of the appropriate criminal cases against violators of the respective penal provisions of RA 9003, Sec. 27 of RA 9275 (the Clean Water Act), and other existing laws on pollution.

(9) The DOH shall, as directed by Art. 76 of PD 1067 and Sec. 8 of RA 9275, within one (1) year from finality of this Decision, determine if all licensed septic and sludge companies have the proper facilities for the treatment and disposal of fecal sludge and sewage coming from septic tanks. The DOH shall give the companies, if found to be non-complying, a reasonable time within which to set up the necessary facilities under pain of cancellation of its environmental sanitation clearance.

(10) Pursuant to Sec. 53 of PD 1152, 48 Sec. 118 of RA 8550, and Sec. 56 of RA 9003, 49 the DepEd shall integrate lessons on pollution prevention, waste management, environmental protection, and like subjects in the school curricula of all levels to inculcate in the minds and hearts of students and, through them, their parents and friends, the importance of their duty toward achieving and maintaining a balanced and healthful ecosystem in the Manila Bay and the entire Philippine archipelago.

(11) The DBM shall consider incorporating an adequate budget in the General Appropriations Act of 2010 and succeeding years to cover the expenses relating to the cleanup, restoration, and preservation of the water quality of the Manila Bay, in line with the country's development objective to attain economic growth in a manner consistent with the protection, preservation, and revival of our marine waters.

(12) The heads of petitioners-agencies MMDA, DENR, DepEd, DOH, DA, DPWH, DBM, PCG, PNP Maritime Group, DILG, and also of MWSS, LWUA, and PPA, in line with the principle of "continuing mandamus", shall, from finality of this Decision, each submit to the Court a quarterly progressive report of the activities undertaken in accordance with this Decision.

No costs.[44]

The kilometric dispositive portion will at once tell us that the concerned entities will have to spend some money, which calls for a budget, to be able to comply with what the Court has ruled to be the rightful entitlements of the claimants therein. It was never an issue to the Court that in determining the existence of a right and in enforcing it, we may be requiring some government agencies to spend some resources to promote, protect and defend the right.

In truth, nothing ought to restrict the Court from adjudicating the existence of a right and its enforceability on the basis of the availability of budget for the implementation of a right. We should be able to distinguish one from the other and to keep sacred this dichotomy.

Second. I disagree with the rationale that:

Presently, there is no constitutional provision or law which automatically grants bail, releases on recognizance or allows other modes of temporary liberty to all accused or inmates who are clinically-vulnerable (i.e. sickly, elderly or pregnant). As it stands, courts concerned will still have to consider the following guidelines for bail in Sections 5 and 9, Rule 114 of the Revised Rules of Criminal Procedure....

The above-mentioned enumeration clearly pertain to purely factual questions that trial courts are equipped to pass upon. Moreover, the consideration of these factors which includes others not mentioned but are analogous to the ones provided means that such guidelines do not work in isolation. (emphases supplied)

The cited rule pertains to the determination of the amount of bail where bail is a matter of right. It has no application where bail is a matter of discretion as a result of the imposable penalties upon the crime charged where evidence of guilt is strong.

I do not wish to impart the idea that Section 9, Rule 114 per se is a list of factors to be weighed every time a

petition for bail is filed. Section 9 becomes relevant only when the ruling in *Enrile* is applicable in the sense of being the standard for resolving the case, particularly, in determining whether the *Enrile* two-step test is complied with: (a) that the detainee will not be a flight risk or a danger to the community; and (b) that there exist special, humanitarian and compelling circumstances. The Section 9 factors are good indicators, among others, of the existence of these elements in the *Enrile* test.

In this connection, I disagree with the statement that:

Fourth, the Court's ruling in *Enrile v. Sandiganbayan, et al.* is inapplicable in the instant case.

....

In *Enrile*, the Court emphasized that while the Philippines honors its "commitment to uphold the fundamental human rights as well as value the worth and dignity of every person," the grant of bail to those charged in criminal proceedings as well as extraditees must be based upon a clear and convincing showing: (a) that the detainee will not be a flight risk or a danger to the community; and (b) that there exist special, humanitarian and compelling circumstances....

Here, the petitioners do not deny the allegations of the OSG that they are indeed charged with heinous crimes related to national security and are also valuable members of the CPP-NPA-NDF and its affiliates. Even if the alleged facts underlying humanitarian reasons were to be accepted without question, they still have to be weighed against the fact that the charges against the petitioners involve serious matters of national security and public safety.... As a consequence, the petitioners' reliance on this ruling is patently misguided....

Even assuming for the sake of argument that the petitioners had managed to attach documents proving the foregoing pieces of information, the determination of whether or not guilt is strong should still be lodged with the trial courts who are well-equipped to handle them.... (emphases and underscoring supplied)

As submitted earlier, *Enrile* applies here, not in the sense that herein petitioners would also be entitled to be released on a bail plan, but in the sense that *Enrile* is a legally binding decision, a law, that must apply equally to all who are able to meet the standards that *Enrile* espouses. To conclude otherwise is to institutionalize the forbidden thought that some people are better treated in and under the law than others upon dubious grounds.

Thus, herein petitioners are correct in invoking *Enrile* but may still be not released on bail for a specified amount or on recognizance unless they are able to muster the two-step test in *Enrile*: (a) the detainee will not be a flight risk or a danger to the community; and (b) there exist special, humanitarian and compelling circumstances. The test in *Enrile* has nothing to do with assessing whether or not the evidence of petitioners' guilt is strong, but on other factors as mentioned above.

Third. I disagree with the rationale that:

In the case of the petitioners' continued confinement in their respective detention facilities, the Court cannot issue an order for the creation of a "Prisoner Release Committee" in the absence of any law and in the absence of any concluded bail hearing which resulted in the grant of provisional liberty. As it stands, only the political branches of government (Executive and Legislative) have the power to determine for themselves if such recourse is warranted. The only act that the Court may do under the circumstances is to order the conduct bail hearings before the trial courts with dispatch....

I have my misgivings if the political branches of government have the authority to order the release of PDLs, or for that matter, their continued detention, if, in the former, the evidence of guilt is strong for a crime punishable by death, reclusion perpetua or life imprisonment or there has been yet no determination thereof in a hearing, or if, in the latter, it has been decided after a hearing that the evidence of guilt is not strong for a crime punishable by death, reclusion perpetua or life imprisonment. The determination in this regard exclusively belongs to the courts.

Fourth. I also disagree with this statement:

Besides, whenever a conundrum arises in times of emergency when police power collides with constitutionally-protected freedoms or fundamental rights, the political questions doctrine will often tip the balance in favor of general welfare acts or policies in view of the State's duty to primarily protect general interests... However, while public safety is the paramount and overriding concern of the State and while it is also true that laws should be interpreted in favor of the greatest good of the greatest number during emergencies, individual freedoms also have to be respected... (Emphases supplied)

I do not want to give the misimpression that petitioners will remain in detention because "whenever a conundrum arises in times of emergency when police power collides with constitutionally-protected freedoms or fundamental rights, the political questions doctrine will often tip the balance in favor of general welfare acts or policies in view of the State's duty to primarily protect general interests." This is farthest from the truth. They will stay under detention because they failed to satisfy the requirements that would have otherwise qualified them to be released.

More, I am not comfortable with the idea that during emergencies, the Court will already desist from acting in favour of individual rights since the political question doctrine will often tip the balance. This is a recipe for authoritarianism which I am sure even respondents and the OSG are not advocating at present.

Fifth. I disagree with the references to the following conclusions which may have an impact on the trial of petitioners' criminal cases below:

Here, the petitioners do not deny the allegations of the OSG that they are indeed charged with heinous crimes related to national security and are also valuable members of the CPP-NPA-NDF and its affiliates...

....

...As earlier discussed, the government cannot afford to gamble its chances and resources by allowing the petitioners who are allegedly key members of the CPP-NPA-NDF to roam free while the COVID-19 pandemic remains an imminent and grave threat...

I would not have wanted us to give so much thought and weight to petitioners' status as rebels when as the Separate Opinion itself states this matter as being merely an allegation (i.e., the Separate Opinion uses the descriptor "alleged") and more importantly when this is an issue being litigated at the trial courts below. It would have sufficed to focus on petitioners' collective inability to provide concrete circumstances and bail plan to prove the first-prong of the Enrile test.

No one left behind, healing as one – fashioning the appropriate relief.

We are not in ordinary times. Also, time is not on anyone's side. The reason lies in the nature of the enemy we are all facing. The spread or transmission rate of COVID-19, to use lay language, is "less than a week and that more than 10 percent of patients are infected by somebody who has the virus but does not yet have symptoms." [45] As further explained by WHO:

Q. How are COVID-19 and influenza viruses different?

The speed of transmission is an important point of difference between the two viruses. Influenza has a shorter median incubation period (the time from infection to appearance of symptoms) and a shorter serial interval (the time between successive cases) than COVID-19 virus. The serial interval for COVID-19 virus is estimated to be 5-6 days, while for influenza virus, the serial interval is 3 days. This means that influenza can spread faster than COVID19. Further, transmission in the first 3-5 days of illness, or potentially pre-symptomatic transmission -transmission of the virus before the appearance of symptoms - is a major driver of transmission for influenza. In contrast, while we are learning that there are people who can shed COVID-19 virus 24-48 hours prior to symptom onset, at present, this does not appear to be a major driver of transmission. The

reproductive number – the number of secondary infections generated from one infected individual – is understood to be between 2 and 2.5 for COVID-19 virus, higher than for influenza.... Children are important drivers of influenza virus transmission in the community. For COVID-19 virus, initial data indicates that children are less affected than adults and that clinical attack rates in the 0-19 age group are low. Further preliminary data from household transmission studies in China suggest that children are infected from adults, rather than vice versa.... For COVID-19, data to date suggest that 80% of infections are mild or asymptomatic, 15% are severe infection, requiring oxygen and 5% are critical infections, requiring ventilation. These fractions of severe and critical infection would be higher than what is observed for influenza infection. Those most at risk for severe influenza infection are children, pregnant women, elderly, those with underlying chronic medical conditions and those who are immunosuppressed. For COVID-19, our current understanding is that older age and underlying conditions increase the risk for severe infection.[46]

The ubiquitous advice about this pandemic is that, unlike in other situations where time heals, time is not our best ally. Transmission is rapid and easy. The host and carrier does not carry a badge for easy identification. Those who look healthy can be just that, mere appearance of health.

I therefore do not criticize petitioners for resorting directly to this Court. As correctly held by the ponencia, the doctrine of the hierarchy of courts does not apply to the present circumstances.

Fortunately, respondents have responded well to the call for preventive measures against COVID-19 at our detention centers. From all indications, and in the absence of evidence to the contrary, respondents have acquitted themselves well in this regard. It is my hope that they remain aggressive against the virus and continue keeping the PDLs safe from the disease. Their timely response answers petitioners' rightful concerns against this invisible enemy.

It is my understanding from the petition that at the time of filing, petitioner Reina Mae Nasino was five-months pregnant. She must have given birth by now. I do not know if her baby now stays with her. But if the baby does, it is entitled to separate protection apart from its mother, petitioner Nasino, would be entitled to.

Hence, while I recognize and adhere to the primordial if not exclusive role of the Executive Branch in the fight against COVID-19, I believe that we have a role to play in protecting the baby from adverse consequences that are not of the baby's own doing. After all, her mother is in this state of panic because the lower court has issued processes for her preventive detention; further, she and her co-petitioners are invoking their entitlement to bail under the circumstances; and, lastly, the health of the baby is exposed to a greater risk of infection than those who are staying with their mothers outside the detention facilities. To use the hyperbole of Human Rights Watch, the baby's situation is akin to having a death sentence imposed upon it by mere accident or as an innocent by-stander.[47]

In *Echegaray v. Secretary of Justice*,[48] the Court affirmed that the power to save the life of a human being is not exclusive to any of the three branches of government. The Court said poignantly: "The powers of the Executive, the Legislative and the Judiciary to save the life of a death convict do not exclude each other for the simple reason that there is no higher right than the right to life."

Our jurisprudence has also confirmed that "the Court is, under the Constitution, empowered to promulgate rules for the protection and enforcement of constitutional rights,"[49] the most prominent being the right to life. With the Court's authority to promulgate formal rules for this purpose, with more reason the Court can exercise and not resile from the jurisdiction to put its two cents' worth whenever a person's life or health – in this case, that of the baby of a pre-judgment PDL – is also at stake from circumstances not of her own making.

The greater risks that the present pandemic have caused are the actual facts that fuel the present controversy

which makes it justiciable. Let me stress. There is nothing advisory, nothing philosophical, nothing dreamy about the COVID-19. We have been quarantined for almost half of this year already, our courts and others have lost the equivalent of about six-months of man-hours, all because of the REAL dangers to life, health and overall well-being of the entire population of the Philippines and the entire world. I would like the Court to give relief to petitioner Nasino's baby not because of the ineptitude of respondents, but as a result of the reality of the greater risks facing petitioner Nasino's baby coming from facts about this pandemic.

ACCORDINGLY, I vote to TREAT the present petition as petitioners' applications for bail or recognizance as well as their motions for other confinement arrangements, and REFER the same to the respective trial courts where their criminal cases are pending, which courts should be DIRECTED to conduct the necessary proceedings and consequently, resolve these incidents with utmost dispatch.

[1] World Health Organization at [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it) (last accessed April 9, 2020). I refer to both SARS-COV-2 and COVID-19 as COVID-19.

[2] Proclamation No. 922, series of March 8, 2020 at <https://www.officialgazette.gov.ph/downloads/2020/02feb/20200308-PROC-922-RRD-1.pdf> (last accessed April 9, 2020).

[3] G.R. No. 213847, August 18, 2015.

[4] See pp. 17-19.

[5] Civil Code, Articles 9 and 10.

[6] *Geophysical Service Inc. v. Sable Mary Seismic Inc.*, 2008 NSSC 79 (CanLII). <<http://canlii.ca/t/1wgvc>>, retrieved on 2020-04-08.

[7] *Ibid.*

[8] *Ibid.*

[9] *Ibid.*

[10] *Ibid.*

[11] *Ibid.*

[11] *Ibid.*

[13] *Ibid.*

[14] *Ibid.*

[15] *Ibid.*

[16] *Ibid.*

[17] *Ibid.*

[18] *Ibid.*

[19] *Ibid.*, quoting Ontario Court of Appeal Justice Robert J. Sharpe's address on October 1st, 1997 to a National

Judicial Institute conference of Justices of the Ontario Superior Court of Justice on the application and impact of judicial discretion in commercial litigation.

[20] Article 9. No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws. (6)

[21] Article 10. In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.

[22] By way of an aside, I see this interpretation and practice to be skewed for being clearly inconsistent with texts of the constitutional provision and the Rules of Court and the effect of the allocation of the burden of proof. As written:

Constitution, Article III, Section 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law....

Rules of Court, Rule 114, Section 7. Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable. — No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.

The texts say that bail is to be denied when the evidence of guilt is strong. There is a precursor to the denial of bail. More, the burden is on the prosecution to establish that precursor. The burden signifies that a court is not to presume that the evidence of guilt is strong. The prosecution has to actually discharge its burden by proving that the evidence of guilt is strong. Prior to satisfying this standard of proof, it cannot be the case that bail is already denied, because bail can be denied only after the prosecution has already discharged its burden by proving that the evidence of guilt is strong. Prior to satisfying this standard of proof, the default is the availability of bail as a matter of right. This, however, is just my irreverent opinion about this aside.

[23] G.R. No. 213847, August 18, 2015.

[24] 77 Phil. 461 (October 2, 1946).

[25] Constitution, Article VIII, Section 1 and Section 5 (5).

[26] *Imbang v. Del Rosario*, A.M. No. MTJ-03-1515, February 3, 2004.

[27] Article VIII, Section 4 (3) of the 1987 Constitution provides: "(3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided en banc: Provided, that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc."

[28] *Chavez v. National Housing Authority*, G.R. No. 164527, August 15, 2007 ruled "It is a settled precept that decisions of the Supreme Court can only be applied prospectively as they may prejudice vested rights if applied retroactively."

[29] G.R. No. 227155, March 28, 2017.

[30] G.R. No. 132601, October 12, 1998.

[31] *Serrano v. National Labor Relations Commission*, G.R. No. 117040, January 27, 2000.

[32] Preventing COVID-19 outbreak in prisons: a challenging but essential task for authorities, at <http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/news/news/2020/3/preventing-covid-19-outbreak-in-prisons-a-challenging-but-essential-task-for-authorities> (last accessed April 10, 2020).

[33] Indonesia releases 22,000 prisoners over COVID-19 fears: Government set to release total of 30,000 prisoners over a week, official says, at <https://www.aa.com.tr/en/asia-pacific/indonesia-releases-22-000-prisoners-over-covid-19-fears/1791209> (last accessed April 10, 2020).

[34] Ibid.

[35] Why people are being released from jails and prisons during the pandemic, <https://www.vox.com/2020/4/3/21200832/jail-prison-early-release-coronavirus-covid-19-incarcerated> (last accessed April 10, 2020); see also US jails begin releasing prisoners to stem Covid-19 infections, <https://www.bbc.com/news/world-us-canada-51947802> (last accessed April 10, 2020).

[36] Iran has released 85,000 prisoners in an emergency bid to stop the spread of the coronavirus, <https://www.businessinsider.com/coronavirus-covid-19-iran-releases-eighty-five-thousand-prisoners-2020-3> (last accessed April 10, 2020).

[37] Afghanistan to release up to 10,000 prisoners to slow coronavirus spread, <https://www.thejakartapost.com/news/2020/03/26/afghanistan-to-release-up-to-10000-prisoners-to-slow-coronavirus-spread.html> (last accessed April 10, 2020).

[38] Release or isolate: The debate on how to help people inside Canada's prisons and jails during COVID-19, <https://aptnnews.ca/2020/04/07/release-or-isolate-the-debate-on-how-to-help-people-inside-canadas-prisons-and-jails-during-covid-19/> (last accessed April 10, 2020).

[39] Judges release growing number accused of violent crimes due to COVID-19 fears, <https://globalnews.ca/news/6788223/coronavirus-prisons-inmates-released/> (last accessed April 10, 2020).

[40] BJMP puts up coronavirus isolation facility for inmates, at <https://news.abs-cbn.com/news/04/09/20/bjmp-puts-up-coronavirus-isolation-facility-for-inmates> (last accessed April 9, 2020).

[41] *Vinuya v. Romulo*, G.R. No. 162230, April 28, 2010.

[42] *Cordillera Global Network v. Paje*, G.R. No. 215988, April 10, 2019.

[43] *Tabangao Shell Refinery Employees Association v. Pilipinas Shell Petroleum Corporation*, G.R. No. 170007, April 7, 2014.

[44] *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, December 18, 2008.

[45] Coronavirus spreads quickly and sometimes before people have symptoms, study finds, at <https://www.sciencedaily.com/releases/2020/03/200316143313.htm> (last accessed April 10, 2020).

[46] SUBJECT IN FOCUS: Q&A: Similarities and differences - COVID-19 and influenza, at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200306-sitrep-46-covid-19.pdf?sfvrsn=96b04adf_2 (last accessed April 10, 2020).

[47] COVID-19 Shouldn't Be a Death Sentence for People in US Prisons, at

<https://www.hrw.org/news/2020/04/03/covid-19-shouldnt-be-death-sentence-people-us-prisons> (last accessed April 11, 2020).

[48] G.R. No. 132601. January 19, 1999.

[49] Castillo v. Cruz, G.R. No. 182165, November 25, 2009.

SEPARATE OPINION

ZALAMEDA, J.:

On 08 March 2020, the President issued Presidential Proclamation (PP) 922 declaring a state of public health emergency throughout the Philippines upon confirmation by the Secretary of Health of local transmission of coronavirus disease (COVID-19).[1] The present Petition was filed on 09 April 2020, a month after the issuance of PP 922.

Fearful that the contagion will catch up to them while in detention, petitioners seek succor from this Court, asking for temporary liberty through bail or personal recognizance based on equity (Sections 1[2] and 5(5)[3] of Article VIII of the 1987 Constitution, in relation to Rule 3, Section 1[4] of A.M. No. 10-4-20-SC). The Petition is filed directly before this Court as an exception to the procedures on applications for bail[5] or personal recognizance,[6] as well as the different modes of judicial review under the Rules of Court.

Petitioners describe themselves as belonging to the "vulnerable or at-risk groups [to contract COVID-19] by reason of their medical and/or physical conditions"[7] and are "currently committed in places of detention where it is impossible to practice self-isolation, social distancing, and other COVID-19 precautions." [8] The table[9] below summarizes petitioners' situation on their respective ages, health conditions, and actual detention facilities:

Petitioner

Case (Case number, crime charged, case status)

Condition (Age, health)

Actual Detention Facility

1

Dionisio S. Almonte

Not specified

62, non-proliferative diabetic retinopathy

Metro Manila District Jail 4 (MMDJ 4), Camp Bagong Diwa, Taguig City

2

Ireneo O. Atadero, Jr.

Not specified

57, hypertensive with type 2 diabetes mellitus

MMDJ 4

3

Emmanuel Bacarra[10]

Not specified

55, hypertensive heart disease stage 1, non-insulin dependent diabetes mellitus type 2, TC benign prostatic hypertrophy and osteoarthritis

MMDJ 4

4

Alexander Ramonita K. Birondo

Not specified

68, with bronchial asthma and dyslipidemia

MMDJ 4

5

Winona Marie O. Birondo

Not specified

61, bronchial asthma cellulitis and dyslipidemia

Taguig City Jail Female Dorm, Camp Bagong Diwa, Taguig City (Female Dorm)

6

Rey Claro Casambre

Not specified

68, diabetes mellitus with vascular and neurologic complications

MMDJ4

7

Ferdinand T. Castillo

Not specified

60, hypertension

MMDJ4

8

Francisco O. Fernandez, Jr.

Not specified

71, hypertensive cardiovascular disease and chronic obstructive pulmonary disease

MMDJ4

9

Renante Gamara

Not specified

62 (nothing further)

MMDJ4

10

Vicente P. Ladlad

Not specified

70, chronic obstructive pulmonary disease (emphysema) and hypertension

MMDJ4

11

Ediesel R. Legaspi

Not specified

62, hypertension

MMDJ4

12

Adelberto A. Silva

Not specified

72, hypertension, had post triple percutaneous transluminal coronary angioplasty and post myocardial infarction in 2002

MMDJ4

13

Alberto L. Villamor

Not specified

63, type 2 diabetes mellitus, hypertension stage 2, microalbuminuria, dermatophy and neuropathy

MMDJ4

14

Virginia B. Villamor

Not specified

65, hypertension with bronchial asthma, chronic recurrent major depressive disorder

Female Dorm

15

Cleofe Lagtapon

Not specified

66 (nothing further)

Female Dorm

16

Geann Perez

Not specified

21, leprosy

Female Dorm

17

Oliver B. Rosales

Not specified

48, ischemic heart disease, peripheral neuropathy, acid peptic disease

MMDJ 4

18

Norberto A. Murillo

Not specified

66, hypertension and diabetes mellitus type 2

Manila City Jail

19

Reina Mae Nasino

Not specified

22, pregnant

Manila City Jail

20

Dario Tomada

Not specified

60, diabetes mellitus type 2, bronchial asthma, T/C chronic obstructive pulmonary disease

Manila City Jail

21

Oscar Belleza

Not specified

63, hypertension, post craniotomy due to sub acute subdural hematoma left fronto parietal area, suffered cerebrovascular accident, has mass in right infra auricular area

Manila City Jail

22

Lilia Bucatcat

Not specified

73 (nothing further)

Serving sentence at the Correctional Institute for Women (CIW), Mandaluyong City

The Petition raises just one issue: whether petitioners, who are elderly, sickly, and with other medical conditions, should be released on humanitarian considerations in the context of COVID-19.[11] Meanwhile, this Court formulated the following issues during deliberations:

- Whether the instant Petition filed directly before this Court may be given due course.
- Whether the Nelson Mandela Rules are enforceable in Philippine courts.
- Whether the petitioners may be given provisional liberty on the ground of equity.
- Whether the Court has the power to pass upon the State's prerogative of selecting appropriate police power measures in times of emergency.[12]

I vote to DENY the Petition.

Petitioners' Direct Recourse to this Court for Provisional Liberty on the Ground of Equity

The determination on the propriety of the instant Petition for provisional liberty may be given due course on the ground of equity, upon an inquiry on the following: 1) jurisdiction of the Court over applications for bail or recognizance; 2) compliance by petitioners with the procedures for applications for bail or recognizance; and 3) exemption of petitioners from complying with the procedures for such applications.

This Court is clearly not among those vested with jurisdiction over applications for bail or recognizance under the Rules and the law. The jurisdiction over both applications for bail and recognizance lies with the trial courts.[13] To be sure, Rule 114 of the Revised Rules on Criminal Procedure governs applications for bail, while Republic Act (RA) No. 10389 governs applications for recognizance.

Also, the issues raised by petitioners, particularly those that entail the determination of the due execution and authenticity of their submitted documents, involve a determination of facts best addressed to the sound discretion of the trial courts. Indeed, petitioners ought to have submitted their applications for temporary release before the respective courts where their cases are pending. And even if We are to take cognizance of the Petition, petitioners failed to substantiate their right to be released on bail or recognizance.

In determining the amount of bail, the trial courts consider the following factors: financial ability of the accused to give bail; nature and circumstances of the offense; penalty for the offense charged; character and reputation of the accused; age and health of the accused; weight of the evidence against the accused; probability of the accused appearing at the trial; forfeiture of other bail; if the accused was a fugitive from justice when arrested; and pendency of other cases where the accused is on bail.[14]

On the other hand, RA 10389 lists the following requirements for an application for recognizance and the disqualifications for such application:

SEC. 6. Requirements. - The competent court where a criminal case has been filed against a person covered under this Act shall, upon motion, order the release of the detained person on recognizance to a qualified custodian: Provided, That all of the following requirements are complied with:

(a)

A sworn declaration by the person in custody of his/her indigency or incapacity either to post a cash bail or proffer any personal or real property acceptable as sufficient sureties for a bail bond;

(b)

A certification issued by the head of the social welfare and development office of the municipality or city where the accused actually resides, that the accused is indigent;

(c)

The person in custody has been arraigned;

(d)

The court has notified the city or municipal sanggunian where the accused resides of the application for recognizance. x x x x

(e)

The accused shall be properly documented, through such processes as, but not limited to, photographic image reproduction of all sides of the face and fingerprinting: Provided, That the costs involved for the purpose of this subsection shall be shouldered by the municipality or city that sought the release of the accused as provided herein, chargeable to the mandatory five percent (5%) calamity fund in its budget or to any other available fund in its treasury; and

(f)

The court shall notify the public prosecutor of the date of hearing therefor within twenty-four (24) hours from the filing of the application for release on recognizance in favor of the accused: Provided, That such hearing shall be held not earlier than twenty-four (24) hours nor later than forty-eight (48) hours from the receipt of notice by the prosecutor: Provided, further, That during said hearing, the prosecutor shall be ready to submit the recommendations regarding the application made under this Act, wherein no motion for postponement shall be entertained.

SEC. 7. Disqualifications for Release on Recognizance. – Any of the following circumstances shall be a valid ground for the court to disqualify an accused from availing of the benefits provided herein:

(a)

The accused had made untruthful statements in his/her sworn affidavit prescribed under Section 5(a);

(b)

The accused is a recidivist, quasi-recidivist, habitual delinquent, or has committed a crime aggravated by the circumstance of reiteration;

(c)

The accused had been found to have previously escaped from legal confinement, evaded sentence or has violated the conditions of bail or release on recognizance without valid justification;

(d)

The accused had previously committed a crime while on probation, parole or under conditional pardon;

(e)

The personal circumstances of the accused or nature of the facts surrounding his/her case indicate the probability of flight if released on recognizance;

(f)

There is a great risk that the accused may commit another crime during the pendency of the case; and

(g)

The accused has a pending criminal case which has the same or higher penalty to the new crime he/she is being accused of.

Petitioners do not seek to invalidate the established requirements for bail or recognizance, but instead claim exception therefrom due to their peculiar circumstances. Evident, however, is petitioner's failure to comply with these clear and comprehensive requirements. Petitioners also significantly failed to present this Court with information if the crimes for which they had been detained are bailable, or their financial status qualifies them for recognizance, and/or they have a definite plan for their temporary release.

It was only after respondents narrated the circumstances relating to the charges against petitioners that the latter were compelled to provide the Court with a more detailed, but still incomplete, information. Petitioners still failed to indicate vital information, such as the actual case numbers, motions filed in relation to their age and health condition, and court orders corresponding to such motions. They did not even assert any pending applications for bail or recognizance before the trial courts, as well as other applications or custodial arrangements, or if such had been denied.

The initial lack of candor about the nature of the crimes charged, and the context for the filing thereof, invite questions as to the legitimacy of using the threat of contracting COVID-19 in petitioners' bid to gain liberty, temporary or otherwise.

As petitioners invoke this Court's exercise of equity jurisdiction, praying for exemption from the procedures of applications for bail or recognizance on humanitarian grounds, they present their respective ages and health statuses, as well as the existing conditions of their detention facilities to show that they are especially exposed and vulnerable to contract COVID-19. However, this prayer for exemption rests on flimsy grounds.

Out of the 22 petitioners, 17 are senior citizens, or are 60 years of age and older. There are 12 male senior citizens with health issues,[15] one male senior citizen without health issues,[16] and three male non-senior citizens with health issues.[17] There are two female senior citizens with health issues,[18] two female senior citizens without health issues,[19] and two female non-senior citizens with health issues. One of the two female non-senior citizens is five months pregnant at the time of the filing of the Petition but has since given birth,[20] while the other has leprosy.[21] The health issues of petitioners include diabetes and hypertension.[22] However, only 17 petitioners provided copies of their medical certificates, and only six medical certificates out of the 17 were issued in 2020. None of the petitioners have been tested for, or are alleged to have, COVID-19.

The Petition described the physical situations in the Quezon City Jail, the Cebu City Jail, the Mandaue City Jail,

and the New Bilibid Prison (NBP) in Muntinlupa, to support their claim of exposure and vulnerability to contract COVID-19. Yet, none of the petitioners are confined in any of the said institutions. Petitioners are actually detained in four other different sites: MMDJ 4 in Camp Bagong Diwa, Taguig City Jail; Female Dorm, which is also in Camp Bagong Diwa, Taguig City Jail; Manila City Jail, and the CIW, in Mandaluyong City.[23]

Petitioners emphasize that their collective actual health situation and congested detention facilities put them at greater risk of contracting COVID-19. They harp upon these facts, but conveniently ignore the reality of the absence of any incident of COVID-19 infection in their actual detention facilities. While it is true that after the filing of the Petition, and during its pendency, 20 PDLs and 1 staff tested positive for COVID-19 at the CIW where one of the petitioners is imprisoned, those who tested positive have since been transferred to the isolation facilities at the NBP.[24] Thus, the actual risk of petitioners contracting COVID-19 is more speculative than real.

In seeking for their temporary release through bail or recognizance, petitioners are primarily asking this Court to turn a blind eye to the established requirements which take into account the nature and gravity of the crimes charged. Petitioners ultimately want the Court to controvert Art. III, Section 13 of the 1987 Constitution, which provides that "[a]ll persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. x x x" Most of the petitioners are incarcerated for non-bailable crimes and offenses. Even conceding the extraordinary backdrop of this case, humanitarian reasons alone cannot justify the utter disregard of the Constitution, the law, and the rules of procedures.

If only to belabor the point, judicial policy dictates that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of our primary jurisdiction.[25] And since petitioners failed to show that they have exhausted the appropriate remedies before the lower courts, i.e., by filing applications for bail and recognizance therein, or compelling circumstances have exempted them from disregarding the hierarchy of courts, the Petition must be denied.

The Court issued Guidelines for Both the Temporary and Permanent Release of Qualified PDLs

Recognizing that We cannot assume the role of the trial courts concerning applications for bail or recognizance, the Court has issued circulars on the trial courts' conduct of procedures on both the temporary and permanent release of qualified persons deprived of liberty (PDLs). These circulars serve as further proof that the entire judiciary was in operation regardless of the threat of contracting COVID-19. In the same vein, this Court acknowledged the congestion in detention facilities nationwide and the consequent high risk of PDLs contracting COVID-19. This Court, by itself or through the Office of the Court Administrator (OCA), issued these circulars as part of its response to the demands brought about by COVID-19.

First, on 31 March 2020, we issued AC No. 33-2020[26] directing the online filing of complaints or information, and posting of bail due to the rising number of COVID-19 infection. The OCA released the corresponding guidelines, OCA 89-2020,[27] on 03 April 2020. Second, on 20 April 2020, the OCA issued OCA Circular No. 91-2020[28] to address the temporary or permanent release of qualified PDLs, reminding judges to adhere to the Guidelines for Decongesting Jails by Enforcing the Rights of the Accused Persons to Bail and to Speedy Trial (A.M. No. 12-11-2-SC, effective 1 May 2014),[29] particularly Sections 5 (release after service of minimum imposable penalty) and 10 (provisional dismissal). Third, AC No. 38-2020[30] dated 30 April 2020 set the guidelines for reduced bail and recognizance as modes for the temporary release of qualified PDLs during this public health emergency, pending resolution of their cases.

As a result, 9,731 PDLs from 17 March to 29 April 2020 were released nationwide. This number has since

increased to 33,790 as of 22 June 2020.[31] The Chief Justice's far-reaching efforts to further decongest our detention facilities, especially in light of the situation brought about by COVID-19, is truly commendable.

Corollary to this Court's initiatives, on 15 April 2020,[32] the Department of Justice (DOJ), through the Board of Pardons and Parole (BPP), issued Board Resolution No. OT-04-15-2020, or the Interim Rules on Parole and Executive Clemency (Interim Rules).[33] The BPP addresses the congestion in the national penitentiaries by advocating the permanent release of qualified PDLs. As of 10 June 2020, the DOJ's efforts resulted to 749 PDLs' release on parole and 356 PDLs' receipt of executive clemency.[34] The combined efforts of this Court, the OCA, and the DOJ has brought about the release of 34,895 PDLs from 17 March to 22 June 2020.

The Enforceability of the Nelson Mandela Rules in the Philippines vis-à-vis the State's Prerogative of Selecting Appropriate Police Power Measures in Times of Emergency

Petitioners cite Rules 13, 16, 18, 22, 24, 25, 27, 30, 42, 109, and 111 of the Revised UN Standard Minimum Rules for the Treatment of Prisoners, or the Nelson Mandela Rules (Mandela Rules),[35] in support of their claim that the State has the duty to protect the health and safety of its prisoners.

The Mandela Rules, however, must be read in their entirety and in the proper context. The Expert Group that formulated the Mandela Rules articulated the standard of adequate systems in penal institutions. It also recognized that the said Rules are not capable of wholesale application in all places because of the difference in the legal, social, economic, and geographical situations in each country. The preliminary observations which preface the Nelson Mandela Rules bear witness to this recognition:

Preliminary observation 1

The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management.

Preliminary observation 2

1. In view of the great variety of legal, social, economic and geographical conditions in the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavor to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

2. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of these rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.[36]

These preliminary observations allow us to characterize the measures that this Court has undertaken for the temporary and permanent release of PDLs, as well as the practices introduced by the officials of the BJMP, under the Department of the Interior and Local Government (DILG), and the BuCor, under the DOJ,[37] as part of our country's compliance with United Nations standards and as part of our country's response in catering to the needs of PDLs brought about by COVID-19.[38] Section 4(a) of RA 10575, or The Bureau of Corrections Act of 2013, expressly states that "the safekeeping of inmates shall include decent provision of quarters, food, water, and clothing in compliance with United Nations standards."

The BJMP and the BuCor have prohibited jail visits since March 2020 to minimize PDLs' exposure to the

COVID-19 virus.[39] They have also implemented a "no paabot" policy prohibiting bringing food and other personal items into the detention facilities and penal institutions.[40] Aside from information campaigns involving both personnel and PDLs,[41] there have been activities such as distribution of vitamins to personnel[42] and PDLs,[43] production of face masks,[44] and distribution of sanitation and disinfection materials.[45] PDLs are also given the means for electronic money transfer[46] and for video calls (e-dalaw).[47]

Measures put in place for addressing tuberculosis in Philippine detention facilities have been replicated to address probable COVID-19 cases. These measures include conducting infection control protocols (proper entry screening[48] and mass screenings inside detention facilities), creating isolation units for infected patients to halt further spread of the disease,[49] and installing quarantine areas for discharged patients.[50] Medical practitioners assigned to detention facilities and penal institutions have been identified.[51] PDLs who are sick, especially those who have fever, cough, and colds, undergo medical consultations at the designated isolation areas.[52] The PDLs who tested positive in the CIW have been admitted to the Mandaluyong City Medical Center and the National Kidney and Transplant Institute.[53] Psycho-social activities,[54] including psychotherapy,[55] are continuously conducted.

Petitioners also enumerated the countries that released PDLs because of the fear of the spread of COVID-19 infections. We would like to point out that the release of PDLs who are similarly situated to petitioners in terms of age and health should be done with extreme caution. Utmost prudence in releasing PDLs with health issues and senior citizens is justified as their release may further endanger their health.[56] Petitioners, however, did not show whether they will be in a better physical environment, or be better protected, upon gaining their temporary freedom. Petitioners did not even inform this Court of the COVID-19 situation in the areas they propose to stay during their temporary release.

Moreover, the countries[57] that released PDLs followed a stringent set of criteria in determining who may be released, such as the kind of cases filed, the length of the sentence served, and a plan for release. Only a few of these countries have released their political prisoners. Iran granted leave to thousands of PDLs, including political prisoners, sometime in March and extended this leave until 20 May 2020.[58] The grant was based allegedly on dubious terms of good behavior and payment of exorbitant bail. As a result, several prisoners have since returned to prison despite the extension.[59] Egypt released four women who were accused of "inciting a protest," "disseminating false information," and "possession of material disseminating false information" after payment of bail. Egypt also released 15 politicians and activists who had been "arbitrarily detained" for months.[60] Some of Egypt's political prisoners who remain in detention have been tested for COVID-19.[61] However, tens of thousands remain in prison for peacefully exercising their rights to freedom of expression, protest, and assembly.[62] The crimes for which Egypt's political prisoners are indicted sharply contrast with those of petitioners.

A Final Word

The situation that the world faces is unprecedented. These are challenging times, but the Judiciary has been equal to the task, albeit with the recognition that there is still much to be done. While the health crisis persists, the Judiciary, along with the Executive and the Legislative branches, need to re-visit their policies, re-calibrate their actions, and promptly react to the emerging needs of the times.

Still, the Court cannot act contrary to, or in excess of, its own authority, no matter how noble the intention. To insist on equity and liberality while forsaking laws, rules, and established procedures is self-defeating. Justice must always be served "according to the mandate of the law." [63] No one benefits from undermining the whole system.

The Judiciary and the Executive have made, and continue to take, the necessary action for both temporary and permanent release of qualified PDLs. The pleas of petitioners and of various organizations to decongest and improve the conditions of Philippine jails did not fall on deaf ears. The actions of this Court, the BPP, the BJMP, and the BuCor are testament to the collective recognition that decongestion is a problem needing to be addressed regardless of the existence of a public health emergency. Moreover, the ideals expressed in international instruments on the treatment of prisoners, like the Nelson Mandela Rules, should constantly be taken into account in crafting laws and in the formulation of policies.

In view of the foregoing, I vote to DENY the Petition.

[1] Presidential Proclamation No. 922, Sec. 5; this state of public health emergency shall remain in force and effect until lifted or withdrawn by the President, and has not been lifted or withdrawn as of this date.

[2] SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[3] SECTION 5. The Supreme Court shall have the following powers:

x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[4] RULE 3: THE EXERCISE OF JUDICIAL FUNCTION

SECTION 1. The Supreme Court [is] a court of law. -The Court is a court of law. Its primary task is to resolve and decide cases and issues presented by litigants according to law. However, it may apply equity where the court is unable to arrive at a conclusion or judgment strictly on the basis of law due to a gap, silence, obscurity or vagueness of the law that the Court can still legitimately remedy, and the special circumstances of the case.

[5] Revised Rules on Criminal Procedure, Rule 114; Cortes v. Catral, A.M. No. RTJ-97-1387, 10 September 1997.

[6] Republic Act (RA) No. 10389, Recognizance Act of 2012. See also Implementing Guidelines (<http://probation.gov.ph/wp-content/uploads/2014/10/Implementing-Guidelines-ROR.pdf> [last accessed 07 July 2020]).

[7] Petition, p. 6.

[8] Id. at 12.

[9] Id. at 12-16.

[10] Data entered twice in petition under (c) and (q).

- [11] Petition, p. 34.
- [12] Per curiam ponencia, p. 5.
- [13] Revised Rules on Criminal Procedure, Rule 114, Section 4; RA 10389, Section 5.
- [14] Revised Rules on Criminal Procedure, Rule 114, Section 9.
- [15] Dionisio S. Almonte, Alexander Ramonita K. Birondo, Rey Claro Casambre, Ferdinand T. Castillo, Francisco O. Fernandez, Jr., Vicente P. Ladlad, Ediesel R. Legaspi, Adelberto A. Silva, Alberto L. Villamor, Norberto A. Murillo, Dario Tomada, and Oscar Belleza. Petition, pp. 37-38.
- [16] Renante Gamara. Petition, p. 38.
- [17] Ireneo O. Atadero, Jr., Emmanuel Bacarra, and Oliver Rosales. Petition, pp. 37-38.
- [18] Winona Marie O. Birondo and Virginia B. Villamor. Petition, pp. 37-38.
- [19] Cleofe Lagtapon and Lilia Bucatcat. Petition, p. 38.
- [20] Reina Mae Nasino. Petition, p. 40. Petitioner Nasino gave birth on 01 July, and returned to Manila City Jail on 02 July. <https://www.philstar.com/nation/2020/07/05/2025696/detainee-seeks-hospital-stay-after-giving-birth> (last accessed 06 July 2020).
- [21] Ge-ann Perez. Petition, p. 39.
- [22] Petition, pp. 37-40.
- [23] Id. at 12-16.
- [24] <https://www.cnnphilippines.com/news/2020/4/21/Women-s-more-COVID-19-infections.html> (last accessed 11 May 2020).
- [25] Santiago v. Vasquez, G.R. Nos. 99289-90, 27 January 1993; 291 Phil. 664 (1993); 217 SCRA Emphasis added.
- [26] <http://sc.judiciary.gov.ph/11145/> (last accessed 06 July 2020).
- [27] <http://sc.judiciary.gov.ph/11165/> (last accessed 06 July 2020).
- [28] <http://sc.judiciary.gov.ph/11234/> (last accessed 06 July 2020).
- [29] <http://oca.judiciary.gov.ph/wp-content/uploads/2014/04/A.M.-No.-12-11-2-SC.pdf> (last accessed 06 July 2020).
- [30] <http://sc.judiciary.gov.ph/11306/> (last accessed 06 July 2020).
- [31] Re: Updated Report on the Number of Persons Deprived of Liberty (PDLs) Released from Custody, Memorandum from the OCA to the Office of the Chief Justice dated 02 July 2020.
- [32] Published 30 April 2020, and to take effect on 15 May 2020.
- [33] <https://law.upd.edu.ph/wp-content/uploads/2020/04/DOJ-BR-No-OT-04-15-2020.pdf> (last accessed 06 July 2020)
- [34] Letter of DOJ Secretary Menardo I. Guevarra to Chief Justice Diosdado M. Peralta dated 15 June 2020.
- [35] On 17 December 2015, the United Nations' General Assembly, in A/Res/70/175, approved the

recommendation of the Expert Group that the Rules should be known as "the Nelson Mandela Rules," to honor the legacy of the late President of South Africa, Nelson Rolihlahla Mandela, who spent 27 years in prison in the course of his struggle for global human rights, equality, democracy and the promotion of a culture of peace.

[36] <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> (last accessed 10 July 2020).

[37] The DOJ has also initiated the same response in the Bureau of Immigration (BI) which reported on 14 May 2020 that its 75 personnel and 84 foreign detainees in Camp Bagong Diwa have all tested negative for COVID-19. The 84 out of 400 detainees were tested because they are at greater risk of contracting COVID-19. They are either senior citizens or have underlying medical conditions. All detainees are required to sanitize. The BI detention facility undergoes "rigorous cleaning and continuous disinfection." Visits have been temporarily prohibited. <https://tribune.net.ph/index.php/2020/05/14/foreign-inmates-bi-personnel-negative-of-covid-19/> (last accessed 06 July 2020).

[38] From the verified reports of the BJMP and BuCor submitted by the OSG as annexes to its Comment. Annex A - Verified Report, BJMP, pp. 17-18; Annex C - Verified Report, BJMP, pp. 2-7, 13, 17.

[39] Annex E - Verified Report, BJMP, pp. 1-2; Annex E - Compendium of Policies, BuCor, p. 7.

[40] Annex E - Compendium of Policies, BuCor, p. 24.

[41] Annex B - Verified Report, BJMP, p. 4; Annex A - Management of CIW, BuCor, pp. 91-10; Annex B - Management in the NBP, BuCor, pp. 5-6; Annex C - Best Practices, BuCor.

[42] Annex B - Verified Report, BJMP, pp. 3-4; Annex C - Verified Report, BJMP, p. 2; Annex D - Verified Report, BJMP, p. 1; Annex E - Verified Report, BJMP, p. 4; Annex B - Management in the NBP, BuCor, pp. 1-2.

[43] Annex B - Verified Report, BJMP, p. 6; Annex D - Verified Report, BJMP, p. 7; Annex E - Verified Report, BJMP, p. 6; Annex B - Management in the NBP, BuCor, pp. 7-8.

[44] Annex C - Verified Report, BJMP, p. 14; Annex A - Management of CIW, BuCor, pp. 11-15.

[45] Annex B - Verified Report, BJMP, p. 7; Annex C - Verified Report, BJMP, pp. 12-13; Annex D - Verified Report, BJMP, pp. 2, 7.

[46] Annex A - Verified Report, BJMP, pp. 8-9, 20; Annex B - Verified Report, BJMP, pp. 11-12; Annex D - Verified Report, BJMP, p. 12; Annex E - Verified Report, BJMP, p. 10.

[47] Annex A - Verified Report, BJMP, p. 7; Annex C - Verified Report, BJMP, p. 14; Annex D - Verified Report, BJMP, p. 10; Annex E - Verified Report, BJMP, p. 10.

[48] Annex B - Verified Report BJMP, p. 14; Annex C - Verified Report, BJMP, pp. 14-16; Annex D - Verified Report, BJMP, pp. 12-13; Annex E - Verified Report, BJMP, p. 15; Annex A - Management of CIW, BuCor, pp. 3-8; Annex B - Management in the NBP, BuCor, pp. 3-4, 9-22.

[49] Annex A - Verified Report, BJMP, pp. 9-15; Annex B - Verified Report, BJMP, p. 31; Annex C - Verified Report, BJMP, pp. 17-20; Annex E - Verified Report, BJMP, pp. 11-13; Annex F - Verified Report, BJMP; Annex D - Isolation Practices, BuCor.

[50] Annex A - Management of CIW, BuCor, pp. 1 -3.

[51] Annex G - Verified Report, BJMP.

[52] Annex A - Verified Report, BJMP, pp. 7, 20; Annex B - Verified Report, BJMP, p. 11; Annex A - Verified Report, BJMP, pp. 14-16; Annex A-Management of CIW, BuCor, pp. 16-17.

[53] Annex A - Management of CIW, BuCor, p. 1.

[54] Annex C - Verified Report, BJMP, pp. 9-12; Annex D - Verified Report, BJMP, pp. 9-11; Annex E - Verified Report, BJMP, p. 8.

[55] Annex A - Verified Report, BJMP, p. 7; Annex B - Verified Report, BJMP, pp. 5, 9.

[56] See the Written Ministerial Statement for Northern Ireland, <https://www.justice-ni.gov.uk/news/covid-19-temporary-release-prisoners-scheme> (last accessed 06 July 2020).

[57] The petitioners mentioned the United States, Canada, Germany, Ethiopia, India, Indonesia, England, Ireland and Wales, Iran, Sri Lanka, and Egypt. Petition, p. 4. Apart from the countries mentioned in the Petition, news reports say that these countries also released PDLs due to COVID-19: Afghanistan, Morocco, and Myanmar. <https://www.rappler.com/newsbreak/iq/257267-list-countries-release-prisoners-over-coronavirus-fears> (last accessed 06 July 2020)

[58] <https://www.voanews.com/middle-east/voa-news-iran/iran-extends-prisoner-furloughs-amid-covid-threat> (last accessed 06 July 2020); <https://www.france24.com/en/20200419-iranian-president-says-prisoner-leave-to-be-extended> (last accessed 06 July 2020).

[59] <https://www.washingtonpost.com/opinions/2020/04/23/why-irans-coronavirus-pandemic-is-also-crisis-human-rights/> (last accessed 06 July 2020).

[60] <https://www.amnesty.org/en/latest/news/2020/03/egypt-release-prisoners-of-conscience-and-other-prisoners-at-risk-amid-coronavirus-outbreak/> (last accessed 06 July 2020).

[61] <https://www.middleeasteye.net/news/coronavirus-egypt-tests-political-prisoners-preventive-measure> (last accessed 06 July 2020).

[62] <https://globalvoices.org/2020/04/28/despite-covid-19-no-respite-for-human-rights-crackdowns-in-egypt/> (last accessed on 06 July 2020).

[63] *Gelos v. Court of Appeals*, G.R. No. 86186, 08 May 1992; 284-A Phil. 114-124 (1992); 208 SCRA 608.

CONCURRING OPINION

LOPEZ, J.:

On April 6, 2020, several Persons Deprived of Liberty^[1] (PDLs) filed a petition^[2] before this Court seeking their provisional freedom for the duration of the Covid-19^[3] pandemic through recognizance or bail. The PDLs alleged that they belong to the "vulnerable or at-risk groups" because of their medical and/or physical conditions.^[4] Also, the PDLs asked for ipso facto release from detention on humanitarian and equitable grounds considering the threats of the present public health emergency. Essentially, they prayed for the following reliefs:

- 1) DIRECTING the temporary RELEASE ON RECOGNIZANCE of petitioners, including those similarly situated who are listed herein but were not able to subscribe on this Petition due to the lockdown, for

humanitarian consideration, for the duration of the state of public health emergency, national calamity, lockdown and community quarantine due to the threats of the COVID 19;

2) In the alternative, DIRECTING the RELEASE ON BAIL of herein petitioners, including those similarly situated who are listed and referred to in this Petition, the amounts of which shall be set at the discretion of this Honorable Court;

3) MANDATING the creation of a Prisoner Release Committee, similar to those set up in other countries, to urgently study and implement the release of all other prisoners in various congested prisons throughout the country who are similarly vulnerable but cannot be included in this Petition due to the difficult circumstances; and

4) DECLARING the issuance of ground rules relevant to the release of eligible prisoners.[5]

However, it is settled that equity may be availed only in the absence of and never against statutory law or rules of procedure.[6] In our jurisdiction, there are existing positive rules relevant to the rights of PDLs which remain in force.

The solemn duty of the Court is to apply the law. It is not a trier of facts.

The right to bail is enshrined in the 1987 Constitution.[7] Section 1, Rule 114 of the Rules of Court defined bail as "the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court x x x." Also, bail is either a matter of right or discretion depending on the penalty, thus:

RULE 114

x x x x

SEC. 4. Bail, a matter of right; exception. — All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment.

SEC. 5. Bail, when discretionary. — Upon conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

x x x x

SEC. 7. Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable. — No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution. (Emphases Supplied)

In this case, the PDLs failed to indicate whether the charges against them are bailable or not. The Solicitor General's comment later disclosed that except for one who is serving sentence, all the PDLs were charged with non-bailable offenses and their cases are pending trial.[8] The PDLs admitted these facts in their reply.[9] It is basic that bail cannot be allowed without a prior hearing to a person charged with an offense punishable with

reclusion perpetua or life imprisonment.[10] As such, bail is a matter of discretion and its grant or denial hinges on the issue of whether the evidence of guilt against the accused is strong. The determination of the requisite evidence can only be reached after due hearing. Thus, a judge must first evaluate the prosecution's evidence.[11] A hearing is likewise required for the trial court to consider the factors in fixing the amount of bail.[12] Notably, this Court outlined the duties of a judge in resolving bail applications,[13] to wit:

1. In all cases, whether bail is a matter of right or of discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation;
2. Where bail is a matter of discretion, conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion;
3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;
4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond; otherwise petition should be denied.

Here, the PDLs raised factual issues about their health conditions which allegedly made them vulnerable to the pandemic. This requires a balancing of interests between the PDLs' presumption of innocence and the duty of the State to ensure that they will be ready to serve the penalty if eventually found guilty.[14] Yet, what the PDLs submitted are unauthenticated medical certificates which cannot be subject of judicial notice.[15] Likewise, it must be ascertained whether the PDLs are flight risk, or capable of committing another crime during their temporary liberty which may affect public order and safety. On this point, it must be emphasized that this Court is not a trier of facts. Thus, the petition should have been filed before the Regional Trial Courts where the PDLs' criminal cases are pending. This is consistent with the rule that the decision on whether to detain or release an accused before and during trial is ultimately an incident of the judicial power to hear and determine the criminal case.[16]

Bail on humanitarian grounds is a matter within the sound discretion of the courts.

In *Enrile v. Sandiganbayan*,[17] this Court allowed bail for humanitarian reasons based on the following factors: (1) the principal purpose of bail, which is to guarantee the appearance of the accused at the trial or whenever so required by the court; (2) the Philippines' responsibility in the international community arising from the national commitment under the Universal Declaration of Human Rights, specifically, to uphold the fundamental human rights as well as value the worth and dignity of every person; (3) the petitioner's social and political standing and his having immediately surrendered to the authorities upon his being charged in court indicate that the risk of his flight or escape from this jurisdiction is highly unlikely; and (4) the fragile state of petitioner's health, as proven by the testimony of a physician presents another compelling justification for his admission to bail.

The PDLs failed to present similar circumstances. The filing of petitions for bail before the trial courts where the criminal cases are pending is a remedy that has always been available. However, the PDLs opted not to avail of such process insisting that this will not provide an adequate and speedy relief to escape the ravaging effects of the pandemic. I see no reason for this apprehension. Foremost, the trial courts conduct only a summary hearing in bail applications.[18] Also, there are ample safeguards under the Revised Guidelines for Continuous Trial of Criminal Cases against any delay in the proceedings. Specifically, petitions for bail shall be set for summary hearing after arraignment and pre-trial and shall be resolved by the trial court within a non-extendible period of 30 calendar days from date of the first hearing, without need of oral argument and submission of memoranda.[19] Lastly, the Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial provides that a motion to reduce bail shall enjoy priority in the hearing of cases.[20]

Worldwide initiatives to release prisoners amid the pandemic are not absolute.

It is true that several countries have implemented release programs for prisoners to prevent the spread of Covid-19 virus but these initiatives were subject to exceptions. In Afghanistan, the members of Islamist Militant Group are not included. In Indonesia, those released were mostly juvenile offenders and those who already served at least two-thirds of their sentences. In Iran, only low-risk and non-violent offenders serving short sentences are released. In Morocco, the prisoners were selected based on their health, age, conduct, and length of detention and were granted pardon. In United Kingdom, high-risk inmates convicted of violent or sexual offenses, or of national security concern or a danger to children were excluded.[21] It must be stressed that the release of prisoners in other jurisdictions was made upon the orders of their Chief Executives.

Corollarily, the matter of unilaterally ordering the temporary release of the PDLs solely on equitable grounds is, strictly speaking, not purely judicial in character. This Court must abstain from exercising such power lest it encroach on the prerogatives of the President and the Congress. The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in the framing of our Constitution. Each department has exclusive cognizance of matters placed within its jurisdiction and is supreme within its own sphere.[22] It is not within the province of the judiciary to express an opinion, or express a suggestion, that would reflect on the wisdom or propriety of the action of the Chief Executive or the Congress on matters purely political in nature. Otherwise, it may be considered as an interference or an attempt to influence the exercise of their powers.[23] Hence, the temporary release of PDLs outside of bail, recognizance and other court processes is best left to the Chief Executive and Congress, especially since matters related to public health and safety are political questions.

PDLs can avail of adequate protections under international and domestic laws.

The overcrowding situation in jail facilities in the Philippines increases the risk of contracting any disease. This means that regardless of age or whether they have pre-existing medical condition, the PDLs are all vulnerable to contracting Covid-19 because of the congestion, along with inadequate nutrition and scarcity in health care. These are problems that need to be sufficiently addressed, not only on account of the pandemic, but more so because these rights are ought to be guaranteed to prisoners both under international and domestic laws.

On this score, the Universal Declaration of Human Rights is customarily binding upon the members of the international community. The Philippines has the responsibility of protecting and promoting the right of every person to liberty and due process, ensuring that those detained or arrested can participate in the proceedings before a court, to enable it to decide without delay on the legality of the detention and order their release if justified. The Philippine authorities are under obligation to make available to every person under detention such remedies which safeguard their fundamental right to liberty. These remedies include the right to be admitted to bail.[24] Accordingly, this Court extended the application of bail to deportation[25] and extradition[26] proceedings.

Later, the United Nations General Assembly adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners[27] or the Nelson Mandela Rules, which seeks to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management.[28] It clothed the PDLs with the following rights:

Rule 24

1. The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.

Rule 25

1. Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.

x x x x

Rule 27

1. All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.

x x x x

Rule 30

A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to:

x x x x

(d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period;

x x x x

B. Prisoners with mental disabilities and/or health conditions

Rule 109

1. Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.

2. If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals.

x x x x (Emphases supplied.)

The standards for the treatment of prisoners are expressly incorporated in Republic Act No. 10575 or the Bureau of Corrections (BuCor) Act of 2013[29] and its implementing rules[30] viz.:

[R.A. No. 10575]

SECTION 4. The Mandates of the Bureau of Corrections. - The BuCor shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years.

(a) Safekeeping of National Inmates - The safekeeping of inmates shall include decent provision of quarters,

food, water and clothing in compliance with established United Nations standards. x x x

x x x x

[Implementing Rules]

RULE II - GENERAL PROVISIONS

x x x x

Section 2. Declaration of Policy. - It is the policy of the State to promote the general welfare and safeguard the basic rights of every prisoner incarcerated in our national penitentiary by promoting and ensuring their reformation and social reintegration, creating an environment conducive to rehabilitation and compliant with the United Nations Standard Minimum Rules for Treatment of Prisoners (UNSMRTP).

x x x x

ee. Safekeeping - refers to the custodial mandate of the BuCor's present corrections system, and shall refer to the act that ensures the public (including families of inmates and their victims) that national inmates are provided with their basic needs. The safekeeping of inmates shall moreover comprise decent provision for their basic needs, which include habitable quarters, food, water, clothing, and medical care, in compliance with the established UNSMRTP, and consistent with restoring the dignity of every inmate and guaranteeing full respect for human rights. The complementary component of Safekeeping in custodial function is Security which ensures that inmates are completely incapacitated from further committing criminal acts, and have been totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the premises of the national penitentiary. Security also includes protection against illegal organized armed groups which have the capacity of launching an attack on any prison camp of the national penitentiary to rescue their convicted comrade or to forcibly amass firearms issued to corrections officers.

x x x x

RULE IV - MANDATES OF THE BUREAU OF CORRECTIONS AND TECHNICAL OFFICERS

a) Safekeeping of National Inmates. In compliance with established United Nations Standard Minimum Rules for the Treatment of Prisoners (UNSMRTP), the safekeeping of inmates shall include:

1. Decent and adequate provision of basic necessities such as shelters/quarters, food, water, clothing, medicine;
2. Proper observance of prescribed privileges such as regulated communication and visitation; and
3. Efficient processing of necessary documentary requirements and records for their timely release. The processing of these documentary requirements shall be undertaken by the Directorate for Inmate Documents and Records (DIDR).

The core objective of these safekeeping provisions is to "accord the dignity of man" to inmates while serving sentence in accordance with the basis for humane understanding of Presidential Proclamation 551, series 1995, and with UNSMRTP Rule 60. (Emphases Supplied)

The implementing rules is explicit that PDLs who are suffering from contagious diseases should be confined in the hospital or infirmary inside the prison compound. Those needing advanced medical treatment shall be brought to the nearest hospital if the prison's medical facilities are not adequate to treat the disease:

RULE VII - FACILITIES OF THE BUREAU OF CORRECTIONS

d) Hospital/Infirmary - refers to a medical facility established inside the prison compound for treatment of sick or injured inmates. This will also serve as a place of confinement for inmates with contagious disease. Sick inmates requiring advance medical treatment shall be brought to the nearest hospital if the prison hospital does not have the necessary medical equipment and expertise to treat such malady.

Hospital/Infirmary for Types A and B shall contain, at least, basic facilities such as isolation room, emergency room, operating room, recovery room, dental, laboratory, X-ray room, comfort rooms, beddings, pharmacy and other standard facilities for Hospitals/Infirmarys. This shall be in accordance with the Administrative Order No. 147-s-2004 issued by the Department of Health.

Verily, the trial courts having jurisdiction over the criminal cases and bail applications may refer the PDLs to the Bureau of Jail Management and Penology (BJMP)'s or BuCor's infirmary for purposes of evaluation and treatment. The 2015 BJMP Comprehensive Operations Manual likewise provides that, in cases of emergency wherein it would not be possible to secure the trial court's order granting Temporary Pass, the BJMP is authorized to take an inmate who is seriously ill to the nearest hospital. Thereafter, the Jail Warden shall notify the regional director and the trial court.[31] All jail personnel must also observe the guidelines in handling inmates with special needs such as mentally ill patients, suicidal inmates, inmates with disability, children in conflict with the law, senior citizen inmates, infirm inmates and pregnant or female inmates with infants.[32]

FOR THESE REASONS, I concur in the result that the immediate referral of the petition to the appropriate trial courts handling the PDLs' cases is in order.

[1] Person Deprived of Liberty (PDL) — refers to a detainee, inmate, or prisoner, or other person under confinement or custody in any other manner. However, in order to prevent labeling, branding or shaming by the use of these or other derogatory words, the term "prisoner" has been replaced by this new and neutral phrase "person deprived of liberty" under Article 10, of International Covenant on Civil and Political Rights (ICCPR), who "shall be treated with humanity and with respect for the inherent dignity of the human person." (Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 10575, IRR of RA 10575, [May 23, 2016]).

[2] Petition, pp. 1-62.

[3] Coronavirus disease.

[4] There are 22 petitioners in this case. *13 are detained at Metro Manila District Jail (MMDJ) 4, Camp Bagong Diwa, Taguig City, namely: Almonte, Atadero, Jr., Bacarra, A. Birondo, Casambre, Castillo, Fernandez, Jr., Gamara, Ladlad, Legaspi, Silva, A. Villamor, and Rosales; *4 are detained at Taguig City Jail Female Dorm, namely, W. Birondo, V. Villamor, Lagtapon, and Perez (21 years old, leprosy); *4 are detained at Manila City Jail, namely, Murillo, Nasino (22 years old, pregnant), Tomada, and Belleza; and *1 Petitioner is serving sentence at Correctional Institution for Women (CIW), Mandaluyong City, namely, Bucatcat (73 years old). All petitioners are detainees whose cases are still on trial, except for Bucatcat, who is a prisoner serving sentence at CIW in Mandaluyong. Moreover, except for Perez, 21 years old, with leprosy and Nasino, 22 years old, 5 months pregnant, all petitioners are in their 60's and above and most have hypertension, diabetes and/or pulmonary disease.

[5] Petition, p. 57.

[6] Philippine Carpet Manufacturing Corporation v. Tagyamon, 723 Phil. 562 (2013). See also Lim Tupas v. Court of Appeals, 271 Phil. 628 (1991); and Zabab, Jr. v. Court of Appeals, 226 Phil. 489 (1986).

- [7] See CONSTITUTION, Article III, Section 14 (2).
- [8] Comment, pp. 3-9.
- [9] Reply, p. 5.
- [10] CONSTITUTION, Art. III, Sec. 13; see also RULES OF COURT, Rule 114, Section 7.
- [11] *Gimeno v. Arcueno, Sr.*, 320 Phil. 463 (1995).
- [12] RULES OF COURT, Rule 114, Sec. 9.
- [13] *Gacal v. Infante*, 674 Phil. 324 (2011), citing *Cortes v. Catral*, 344 Phil. 415 (1997).
- [14] *Sy v. Sandiganbayan* (Third Division), G.R. No. 237703, October 3, 2018, 882 SCRA 217, 230.
- [15] RULES OF COURT, Rule 129, Sec. 2.
- [16] *Gutierrez v. People*, G.R. No. 193728 (Notice), April 4, 2018.
- [17] 767 Phil. 147 (2015).
- [18] *Revilla, Jr. v. Sandiganbayan*, G.R. Nos. 218232, 218235, 218266, 218903 & 219162, July 24, 2018.
- [19] A.M. No. 15-06-10-SC (Resolution), April 25, 2017.
- [20] Section 3 of A.M. No. 12-11-2-SC (March 18, 2014) states: "When amount of bail may be reduced. — If the accused does not have the financial ability to post the amount of bail that the court initially fixed, he may move for its reduction, submitting for that purpose such documents or affidavits as may warrant the reduction he seeks. The hearing of this motion shall enjoy priority in the hearing of cases. (Emphasis Supplied)
- [21] List: Countries Releasing Prisoners Over Coronavirus Fears. Accessed April 23, 2020 at <https://www.rappler.com/newsbreak/iq/257267-list-countries-release-prisoners-over-coronavirus-fears>.
- [22] *Echegaray v. Secretary of Justice*, 358 Phil. 410 (1998).
- [23] *Director of Prisons v. Ang Cho Kio*, 144 Phil. 439 (1970).
- [24] In *Government of Hongkong Special Administrative Region v. Olalia, Jr.*, 550 Phil. 63 (2007), this Court ruled that the Philippines, along with the other members of the family of nations, committed to uphold the fundamental human rights as well as value the worth and dignity of every person. This commitment is enshrined in Section 2, Article II of our Constitution which provides: "The State values the dignity of every human person and guarantees full respect for human rights."
- [25] *Mejoff v. Director of Prisons*, 90 Phil. 70 (1951).
- [26] *Government of Hongkong Special Administrative Region v. Olalia, Jr.*, supra.
- [27] General Assembly Resolution 70/175, adopted on December 17, 2015.
- [28] *Id.*, Preliminary Observation 1.
- [29] Approved on May 24, 2013.
- [30] Approved on May 23, 2016.
- [31] 2015 BJMP Comprehensive Operations Manual, Section 40.

[32] 2015 BJMP Comprehensive Operations Manual, Section 34.

SEPARATE OPINION

DELOS SANTOS, J.:

The Court is once again called to strike a balance between upholding police power and protecting civil liberties—this time, in the backdrop of a worldwide adversity.

Antecedents

Background:

In December of 2019, a new variant of coronavirus closely related to the Severe Acute Respiratory Syndrome coronavirus (SARS-CoV)[1] and the Middle East Respiratory Syndrome coronavirus (MERS-CoV)[2] officially known as SARS-CoV-2 suddenly emerged from Wuhan, China.[3] Coronavirus Disease 2019 (COVID-19), the pulmonary disease caused by SARS-CoV-2.

COVID-19 spread around the world like wildfire. It eventually reached the Philippine soil for the first time on January 21, 2020 thru a 38-year old female Chinese national who was eventually tested positive for the presence of SARS-CoV-2.[4] This was followed by a declaration of "public health emergency of international concern" by the World Health Organization (WHO) on January 30, 2020 after an emergency committee convened in Geneva, Switzerland.[5] Unfortunately, on March 7, 2020, the Department of Health (DOH) reported the first local transmission of COVID-19 in the Philippines.[6] Since the first case of local transmission in the Philippines, COVID-19-related infections and deaths have exponentially skyrocketed. Panic had spread and the government had to act swiftly to protect the people.

Government Responses:

On March 8, 2020, President Rodrigo Roa Duterte (President Duterte) issued Proclamation No. 922 declaring a State of Public Health Emergency throughout the Philippines due to COVID-19.[7]

On March 16, 2020, President Duterte issued Proclamation No. 929 declaring a State of Calamity throughout the Philippines due to COVID-19 and imposing the Enhanced Community Quarantine (ECQ) effective March 17, 2020 at 12:00 A.M.[8] Immediately thereafter, Executive Secretary Salvador C. Medialdea issued a Memorandum by order of President Duterte containing among others a directive on all the heads of departments, agencies, offices and instrumentalities of the government including the Philippine National Police (PNP), Armed Forces of the Philippines (AFP), Philippine Coast Guard (PCG), all government-owned-and-controlled corporations (GOCCs), all government financial institutions (GFIs), all state universities and colleges (SUCs) and all local government units (LGUs) to commence the implementation of the ECQ and Stringent Social Distancing (SSD) Measures.[9]

On March 24, 2020, Republic Act No. 11469 (Bayanihan to Heal As One Act) was signed into law.[10] This law granted special powers to President Duterte for the purpose of suppressing the COVID-19 pandemic.

On April 6, 2020, inmates Dionisio S. Almonte, Ireneo O. Atadero, Jr., Alexander Ramonita K. Birondo, Winona Marie O. Birondo, Rey Claro Casambre, Ferdinand T. Castillo, Francisco Fernandez, Jr., Renante Gamara, Vicente P. Ladlad, Ediesel R. Legaspi, Cleofe Lagtapon, Ge-Ann Perez, Adelberto A. Silva, Alberto L. Villamor, Virginia B. Villamor, Oscar Belleza, Norberto A. Murillo, Reina Mae A. Nasino, Dario Tomada, Emmanuel Bacarra, Oliver B. Rosales and Lilia Bucatcat filed directly before this Court a petition denominated as "In the

Matter of the Urgent Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the COVID-19 Pandemic."

Petition

The petitioners allege that they are "political prisoners and detainees" and are among the elderly, sick and pregnant "currently committed in places of detention where it is practically impossible to practice self-isolation, social distancing, and other COVID[11]-19 precautions." [12] As such, they are invoking this Court's power to exercise "equity jurisdiction" and are seeking "temporary liberty on humanitarian grounds" either on recognizance or on bail. [13] In seeking their provisional release on recognizance or bail, the petitioners raise the following arguments:

(1)

The fatal COVID-19 virus causing respiratory failure—which emerged from Wuhan, China and spread all over the world—has no known vaccine and has no proven cure. [14]

(2)

"The continued incarceration and detention of highly vulnerable inmates such as the elderly, pregnant women, and those who have pre-existing medical conditions that pose a high risk of contracting the corona virus is tantamount to cruel and unusual punishment, which the 1987 Constitution explicitly prohibits." [15]

(a)

The United Nations (UN) Human Rights Committee makes it incumbent upon the State to protect and preserve all its prisoners' right to health and medical care which are among the guarantees of the right to life. [16]

(b)

"Prisons and jails are incubators and amplifiers of infectious diseases and given the sorry state and conditions of jails all over the world, a coronavirus outbreak in prison would be awfully and especially destructive "which even" prompted UN High Commissioner for Human Rights Michelle Bachelet to call for the immediate release of vulnerable prisoners all over the world." [17]

(c)

Other countries (specifically US, Canada, Germany, Ethiopia, India, Indonesia, England, Ireland and Wales, Iran, Sri Lanka and Egypt) had already began releasing "hundreds to tens of thousands of prisoners" due to the COVID-19 pandemic while the Philippines has yet to respond to the High Commissioner's call. [18]

(3)

The instant case should be resolved "based on compassion and humanitarian considerations" in line with this Court's "just, humane and compassionate discretion" [19] "in view of the silence or insufficiency of the law and the rules in regard to [the petitioners'] urgent and extraordinary predicament." [20]

(a)

Rule 114 of the Rules of Court "does not include humanitarian considerations as a ground for the grant of bail"[21] and the guidelines for granting provisional liberty on bail set in *Cortes v. Judge Catral*[22] do not provide any recourse to the said accused who has literally nowhere to go to avoid the life-threatening perils of public health emergencies like the COVID-19 outbreak."[23]

(b)

The Court "may include humanitarian considerations as a ground for the grant of bail"[24] "by way of an exception to procedures on applications for bail or personal recognizance as well as the different modes of judicial review under the Rules of Court."[25]

(c)

This Court has the power under Section 1 and Section 5 (5) in relation to Rule 3, Section 1 of the Internal Rules of the Supreme Court[26] to "apply equity where the court is unable to arrive at a conclusion or judgment strictly on the basis of law due to a gap, silence, obscurity or vagueness of the law that the Court can still legitimately remedy, and the special circumstances of the case."[27]

(d)

Certiorari is not available as a remedy to the petitioners for it is "infeasible" for them "to apply for temporary liberty on humanitarian considerations with the trial courts" due to the Luzon-wide enhanced community quarantine (ECQ).[28]

(e)

This Court's rulings in *Reyes v. Lim, et al.*,[29] *Orata v. Intermediate Appellate Court, et al.*,[30] and *Daan v. Sandiganbayan*[31] which brushed aside some provisions in the Rules of Court by reason of equity jurisdiction as well as a US Circuit Court's ruling in *US v. Jones* *US v. Jones*[32] (misspelled by the petitioners as "Joyce") which granted a bail application on the ground health perils—are all applicable to the petitioners' circumstances.

(f)

This Court should conform to the rulings of its US counterpart in the *De Shaney vs. Winnebago County Dept. of Social Services*[33] and *Helling vs. McKinney*[34] in interpreting the latter's Eighth Amendment— "a verbatim reproduction of Section 19(1) Article III of the Bill of Rights" of the 1987 Philippine Constitution on cruel and inhuman punishments— which imposes upon the State the obligation to protect the safety and general well-being of prisoners and to shield them from unsafe conditions.[35]

(g)

The BJMP "is not enjoined by law to effect, as a matter of ministerial duty, the release of inmates *motu proprio* or without court-issued release orders in the course of a public health emergency."[36]

(h)

The petitioners should be released on humanitarian grounds in consonance with their rights under International Law which includes the International Covenant on Civil and Political Rights, the Convention Against Torture, the UN Standard Minimum Rules for the Treatment of Prisoners ("Nelson Mandela Rules") in relation to the Bureau of Corrections Act (R.A. No. 10575), the UN Principles for Older Persons, and all other worldwide calls by UN officials as well as the responses of other countries favorable to inmates.[37]

(i)

The release on humanitarian grounds of the petitioners through recognizance, bail or non-custodial measures is just and proper consistent with the Court's rulings in *Enrile v. Sandiganbayan, et al.* [38] and *De La Rama v. People's Court*[39] which allowed the grant of bail for humanitarian reasons related to health and advanced age.[40]

(4)

The government's untimely response to the spread of the COVID-19 pandemic and counter-measure efforts is not enough to guarantee the safety of the population including the petitioners and all other inmates.

(a)

It is not enough that "the government apparently allotted a budget of [P]47,363,816.47 for procurement of medicines, PPEs[41] to protect prisoners all over the country" and the "Bureau of Jail Management and Penology (BJMP) has imposed a total lockdown in detention facilities nationwide" because the latter "has yet to release any information as to whether there are PUMs,[42] PUIs[43] or positive patients in any of the detention facilities." [44]

(b)

There was no adequate, coordinated national government response to the COVID-19 situation in the first two (2) months of the virus' emergence.[45]

(c)

The declaration of a State of Public Health Emergency did not provide medical solutions or health measures especially invulnerable communities such as detention facilities.[46]

(5)

The hellish prison conditions in Philippines makes the petitioners vulnerable to COVID-19 infection[47]—making the elderly, sickly and pregnant prisoners to most likely contract the COVID-19 virus due to such conditions.[48]

Comment

As for the respondents who are represented by the Office of the Solicitor General (OSG), they oppose the petitioners' pleas and propound the following arguments:

(1)

The petitioners are all valuable members of the Communist Party of the Philippines – New People's Army – National Democratic Front (CPP-NPA-NDF) who are engaging in "a ruse to remove them from the confines of judicially-approved custody" which is underhandedly based on "merely opportunistic legalism to distort established judicial processes" and who are charged with non-bailable offenses as follows:[49]

(a)

Dionisio S. Almonte: kidnapping with murder/rebellion; violation of Presidential Decree (P.D.) No. 1866;[50] and arson/robbery. Prior to his arrest, he served as secretary of the CPP-NPA unit in Southern Tagalog.

(b)

Ireneo O. Atadero, Jr.: violation of Republic Act (R.A.) No. 9516. Prior to his arrest, he served as the organizer of the Kilusang Mayo Uno, a known Communist Terrorist Group (CTG) allied with the CPP-NPA-NDF according to the OSG.

(c)

Alexander Ramonita K. Birondo: violation of P.D. No. 1866/R.A. No. 10591;[51] obstruction of justice; and direct assault. Prior to his arrest, he was an officer of the CPP-NPA and consultant of the NDF. He was previously detained but released last 2016 as a confidence-building measure for the government's peace negotiations with the NDF.

(d)

Winona Marie O. Birondo: violation of R.A. No. 9516/10591; obstruction of justice; and direct assault. Prior to her arrest, she served as consultant of the NDF and was previously detained but released last 2016 as a confidence-building measure for the government's peace negotiations with the NDF.

(e)

Rey Claro Casambre: murder and attempted murder; violation of P.D. No. 1866; and violation of R.A. No. 10591. Prior to his arrest, he was a CPP - Central Committee (CC) member and also a consultant of the NDF. He also served as an officer of the NPA General Command.

(f)

Ferdinand T. Castillo: double murder and multiple attempted murder; and violation of R.A. No. 10591. Prior to his arrest, he served as the secretary of the CPP-NPA's Metro Manila Regional Party Committee.

(g)

Francisco O. Fernandez: violation of P.D. No. 1866; violation of Commission on Elections Resolution No. 10466; violation of R.A. No. 10591; violation of R.A. No. 9516; murder; and three (3) counts of robbery. Prior to his arrest, he was a member of the CPP-CC and served, among others, as the secretary of the CPP-NPA Visayas Commission, spokesperson of the NDF-Negros, and secretary of the CPP-NPA National United Front Commission (NUCF).

(h)

Renante M. Gamara: kidnapping and murder; murder and frustrated murder; violation of P.D. No. 1866; and violation of R.A. No. 10591. Prior to his arrest, he served as secretary of the CPP-NPA's Metro Manila Regional Party Committee and an alternative member of the CPP-CC. He was previously detained but released last 2016 as a confidence-building measure for the government's peace negotiations with the NDF.

(i)

Vicente P. Ladlad: fifteen (15) counts of murder (in the infamous Inopacan Massacre Case); violation of P.D. No. 1866; and violation of R.A. No. 9516/R.A. No. 10591. Prior to his arrest, he has served, among others, as alternative member of the CPP-CC, as the secretary of the CPP-NUCF, as consultant of the NDF, and as commander of the Southern Tagalog's operations command.

(j)

Ediesel R. Legaspi: violation of R.A. No. 9516/R.A. No. 10591. Prior to his arrest, he served as the secretary of the CPP-NPA's regional committee in Southern Tagalog.

(k)

Adelberto A. Silva: fifteen (15) counts of murder (in the infamous Inopacan Massacre Case); frustrated murder; violation of R.A. No. 10591; and violation of R.A. No. 9516. Prior to his arrest, he served as member of the CPP-CC and as secretary of the CPP's National Organizing Department. He was previously detained but released last 2016 as a confidence-building measure for the government's peace negotiations with the NDF.

(l)

Alberto L. Villamor: violation of P.D. No. 1866; and violation of R.A. No. 9516/R.A. No. 10591. Prior to his arrest, he was a member of the NDF.

(m)

Virginia B. Villamor: violation of P.D. No. 1866; swindling/estafa; and violation of R.A. No. 10591. Prior to her arrest, she was a member of the NDF.

(n)

Cleofe Lagatapon: violation of P.D. No. 1866; violation of R.A. No. 9516/R.A. No. 10591; murder; multiple murder and robbery; and robbery. Prior to her arrest, she had served the CPP-NPA-NDF in Negros in various capacities as: head of the southeast front, deputy secretary of the regional committee, and member of the regional committee's executive committee.

(o)

Ge-Ann C. Perez: violation of R.A. No. 9516/R.A. No. 10591; murder; and robbery. Prior to her arrest, she served as the communication staff of the CPP-NPA's regional committee in Negros.

(p)

Emmanuel M. Bacarra: murder; multiple frustrated murder; multiple frustrated murder; and violation of R.A. No. 10591. Prior to his arrest, he served as an officer of the CPP-NPA's unit in Panay.

(q)

Oliver B. Rosales: violation of R.A. No. 10591; and violation of R.A. No. 9516. Prior to his arrest, he served as a national officer of the CPP-NPA's organizing department.

(r)

Norberto A. Murillo: fifteen (15) counts of murder (in the infamous Inopacan Massacre Case). Prior to his arrest, he served as head of the finance committee of the CPP-NPA's regional committee in Southern Tagalog.

(s)

Reina Mae A. Nasino: violation of R.A. No. 10591 and R.A. No. 9165.[52] Prior to her arrest, she served as the coordinator of the Kalipunan ng Damayang Mahihirap (KADAMAY) - Manila, a group allied with the CTG.

(t)

Dario B. Tomada: fifteen (15) counts of murder (in the infamous Inopacan Massacre Case). Prior to his arrest, he served as chairman of the Samahan han Gudti nga Parag-Uma ha Sinirangan Bisayas (SAGUPA-SB), a group allied with the CTG.

(u)

Oscar Belleza: fifteen (15) counts of murder (in the infamous Inopacan Massacre Case). Prior to his arrest, he served as leader of the propaganda organizing team of the CPP-NPA's regional unit in Eastern Visayas.

(v)

Lilia Bucatcat: charged and convicted of arson; and presently serving her sentence. Prior to her arrest and detention, she served as the secretary of the CPP-NPA's regional unit in Eastern Visayas.

(2)

Petitioners Alexander Ramonita K. Bironde, Winona Marie O. Bironde, Renante M. Gamara, Vicente P. Ladlad and Adelberto A. Silva had been granted provisional liberty by this Court last August of 2016 in view of their participation in the peace talks between the government and the CPP-NPA-NDF; but blatantly reneged on their commitment to go back to their detention facilities after the failed negotiations which necessitated their re-arrest.[53]

(3)

The petitioners are being deceptive by engaging in "pseudo-political correctness in lieu of sound legal arguments" and putting this Court "under the lenses" and "[i]n the fickle arena" of public opinion by emotionally pleading "humanitarian reasons" which implies that a denial of their petition is tantamount to a refusal to act charitably.[54]

(4)

The petitioners are being deceptive by being silent and by not putting in issue on whether or not the State can provide them with medical care while maintaining their confinement vis-à-vis the threat of COVID-19 as they have not even alleged that there exists better medical care for thousands of detainees or that there are medical professionals and ventilators available awaiting for them outside their detention facilities.[55]

(5)

The petitioners' "continued detention even affords them ready access to government resources if and when the dreaded virus reaches the doors to their cells, no less outside their cells." [56]

(6)

The government had already adopted the following measures in response to the COVID-19 pandemic:[57]

(a)

Health protection and safety measures are in place in all penal facilities in the country.[58]

(b)

The observance of safety measures other than social distancing (such as total lockdown, restriction of visitation, proper hygienic practices, and/or isolation of inmates displaying symptoms of illnesses) is

achievable in jails.[59]

(7)

The petitioners have ample remedies before the lower courts as this Court had issued several circulars for purposes of attending to urgent matters regarding the legal concerns of persons deprived of liberty (PDLs) as part of its efforts to decongest the jails due to the COVID-19 pandemic.[60]

(8)

The petition should be dismissed outright for violating the doctrine of hierarchy of courts.[61]

(a)

The question posed by the petitioners on whether or not they should be released on bail or recognizance requires an evaluation of facts.[62]

(b)

This Court is not a trier of facts and it will be overwhelmed with countless petitions which might set a precedent by simple invocation of "equity" and the threat of the COVID-19 pandemic.[63]

(c)

The petitioners' collective acts of attaching documents to prove their medical conditions are factual questions.[64]

(d)

The grant or denial of temporary or provision liberty based on "humanitarian grounds" does not diminish the jurisdiction of the trial courts tasked to evaluate the veracity of their allegations as well as other factual considerations.[65]

(e)

The COVID-19 pandemic is not a compelling circumstance to oust the lower courts of their respective jurisdictions; which is made apparent by the Office of the Court Administrator (OCA) Circular No. 91-2020.[66]

(9)

The petitioners cannot be temporarily released on recognizance because all of them were charged of crimes punishable by reclusion perpetua or death and are disqualified to avail of the benefit in R.A. No. 10389[67]

(Recognizance Act).[68]

(10)

The petitioners are not entitled to bail because they were charged with offenses punishable by reclusion perpetua and the determination of whether or not the evidence of guilt is strong shall be made by the trial court thru a proper hearing.[69]

(11)

The petitioners cannot be granted temporary liberty based on equity.[70]

(a)

Equitable arguments cannot prevail over legal findings.[71]

(b)

Complete and substantial justice is attainable thru governing law (i.e. R.A. No. 10389 and Section 7, Rule 114 of the Rules of Court).[72]

(12)

The case of *Enrile v. Sandiganbayan*[73] is inapplicable in the present situation because the petitioners, as shown by their past records, are more likely to escape once released and are high-ranking leaders of terrorist groups who have committed heinous crimes making their release on "humanitarian grounds" an irony "when their acts betray the rationale behind the grant of bail." [74]

(13)

The present petition is violative of the equal protection clause.[75]

(a)

The petitioners are attempting to set themselves apart by making an unwarranted and impermissible classification.[76]

(b)

"[T]here is no substantial difference which sets the petitioners apart from all other persons detained in jail" and their release "would give them undue favor and would result in inequality and discrimination." [77]

(c)

"Young and old are equally vulnerable from being inflicted with the disease in absence of precautionary and safety measures." [78]

(d)

The observance of social distancing measures in jails is admittedly impossible or unachievable but it does not provide any legal justification to give the petitioners an unwarranted favor of being provisionally released while other prisoners remain languishing in jail. [79]

(e)

The petitioners "have not shown any evidence proving that they are indeed political prisoners and[,] as such, they can be treated differently from among the other prisoners in the country." [80]

(14)

The release of prisoners in other foreign jurisdictions based on humanitarian grounds brought about by the COVID-19 pandemic as cited by the petitioners are qualified by certain conditions. [81]

(a)

"The Philippine government is not expected to conform to the manner of releasing prisoners being adopted by other countries" as its "courts are equipped with legal parameters in resolving whether prisoners in different penal facilities could be released." [82]

(b)

In Germany, prisoners with short periods of remaining sentences were released; excluding those who were convicted of sexual offenders and violent crimes. [83]

(c)

In Ethiopia, President Sahle-Work Zewde granted pardon to more than 4,000 prisoners for those convicted of minor crimes with a maximum penalty of three (3) years of imprisonment as well as for those who were about to be released from jail. [84]

(d)

In the State of New Jersey, inmates jailed for probation violations and those convicted in Municipal Courts or sentenced for low-level crimes in the Superior Court were released. [85]

(e)

In India, the release of prisoners excluded "hardened criminals."[86]

(f)

In Afghanistan, 10,000 prisoners who were mostly juveniles, women and sick were released.[87]

(g)

The CPP-NPA-NDF has been known to exploit every opportunity in the guise of "humanitarian considerations" to facilitate the release of its detained members and is currently bent on exploiting the COVID-19 pandemic while the rest of the world is finding solutions to defeat the virus.[88]

(h)

The Nelson Mandela Rules "clearly indicate that only prisoners infected with contagious diseases shall be isolated from prison."[89]

(i)

The petitioners have acknowledged that they are not infected with COVID-19.[90]

(15)

OCA Circular No. 91-2020 sufficiently provides guidelines towards decongesting penal facilities and humanizing conditions of detained persons pending hearing of their cases.[91]

(16)

COVID-19 "knows no age and health conditions and can infect anyone at any time and any place" because "[t]here are cases of old and sickly COVID-19 positive patients who have fully recovered, while some of the young healthy patients have lost their battle to the virus."[92]

Issues

-I-

Whether or not the instant petition filed directly before this Court may be given due course...

-II-

Whether or not the Nelson Mandela Rules are enforceable in Philippine courts...

-III-

Whether or not the petitioners may be given provisional liberty on the ground of equity...

-IV-

Whether or not the Court has the power to pass upon the State's prerogative of selecting appropriate police power measures in times of emergency...

Discussions

On giving due course to the present petition:

Petitions filed before this Court are essentially divided into two (2) main categories: (a) those that invoke appellate jurisdiction; and (b) those that invoke original jurisdiction. Those falling within the first category are petitions for review under Rule 45 of the Rules of Court where the Court's main function is resolving pure questions of law much like the courts of cassation in other jurisdictions. Those falling under the second category are petitions that either: (a) seek for the issuance of extraordinary or prerogative-writs (certiorari, prohibition, mandamus, continuing mandamus, quo warranto, habeas corpus, amparo, habeas data, and kalikasan); or (b) seek for the invocation of the Court's inherent powers such as those pertaining to the maintenance of orderly proceedings (contempt) or those pertaining to administrative disciplinary proceedings against members of both the Bench and the Bar. While the procedural requirements to be evaluated by this Court in deciding whether or not to give due course for petitions under the first category are relatively straightforward, the procedural requirements for petitions under the second category involving extraordinary writs are a tad complicated. The requirements as well as the corresponding exceptions in this specific subcategory of petitions differ depending on the writ or type of remedy sought.

As to the procedural requirements for the issuance of extraordinary writs—when directly invoking this Court's jurisdiction—are concerned, there have been several instances where technicalities have been brushed aside in order to resolve cases with utmost constitutional significance and far-reaching consequences. Accordingly, due to the practical importance of keeping the dockets down to a controllable level or load so that only petitions with significant import will be entertained, the doctrine of hierarchy of courts was devised and developed in order to manage petitions falling under the concurrent jurisdiction of the second, third and final level courts. Hence, the issuance of extraordinary writs will essentially depend on the guidelines laid down in the recent landmark case of *GIOS-SAMAR, Inc. v. Department of Transportation and Communications, et al.*[93] which are condensed as follows:

(1)

Despite having original and concurrent jurisdiction with the Regional Trial Courts and the Court of Appeals (or the Sandiganbayan and the Court of Tax Appeals, in some cases) in the issuance of extraordinary writs, a direct recourse to this Court seeking for such issuance is proper only to seek resolution of questions of law because it is not a trier of facts;

(2)

The hierarchy of courts is a constitutional imperative and a filtering mechanism so that this Court may be able: (a) to devote its time and resources primarily to cases falling within its exclusive jurisdiction; and (b) to ensure the adequate ascertainment of all facts by lower courts which are necessarily equipped to perform such function.

(3)

The doctrine of hierarchy of courts proceeds from the constitutional power of this Court to promulgate rules "concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts" for the orderly administration of justice.

(4)

The recognized exceptions to the hierarchy of courts have a common denominator— the issues for resolution are purely legal. These exceptions are:

(a)

when there are genuine issues of constitutionality that must be addressed at the most immediate time;

(b)

when the issues involved are of transcendental importance;

(c)

cases of first impression;

(d)

the constitutional issues raised are better decided by the Court;

(e)

exigency in certain situations;

(f)

the filed petition reviews the act of a constitutional organ;

(g)

when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and

(h)

the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

Considering the aforementioned guidelines in GIOS-SAMAR, the undersigned now proceeds to evaluate the present unsanctioned "Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the COVID-19 Pandemic" seeking for the issuance of an extraordinary writ: (a) directing the release of the petitioners from their detention either on bail or on recognizance; (b) mandating the creation of a "Prisoner Release Committee" for the purpose of "urgently study[ing] and implement[ing] the release of all other prisoners in various congested prisons throughout the country who are similarly vulnerable but cannot be included in [their petition] due to the difficult circumstances;" and (c) declaring "the issuance of ground rules relevant to the release of eligible prisoners."

Accordingly, the undersigned deems it imperative to clarify that litigants may only file petitions and other pleadings sanctioned by the Constitution, law, or procedural rules promulgated by this Court. In other words, this Court is generally not bound to entertain or to give due course to unsanctioned petitions. Nonetheless, the arguments put forth in the pleadings of both parties involve: (a) significant and far-reaching implications on disputes involving a collision of general welfare and individual rights; and (b) unprecedented and pressing concerns related to the COVID-19 pandemic currently affecting the whole nation. Considering the magnitude of the pandemic which affects all sectors of society, there is now a pressing need and compelling justification to suspend the application of the doctrine of hierarchy of courts and to take on its constitutional duty to settle controversies. However, such statement should not be interpreted to mean that litigants shall have an unbridled freedom to file unsanctioned pleadings directly before this Court. Hence, it should be emphasized that the rarity of the present occurrence (which is the present COVID-19 pandemic) is more than enough to indicate to the public that this act of giving due course to the present petition shall not be abused as it is primarily based on observations regarding compelling matters raised by both parties as earlier mentioned.

On the Judicial Enforceability of the Nelson Mandela Rules in the Philippine Jurisdiction:

A comprehensive initial discussion as to the effect of international law on Philippine laws is imperative in order to determine the degree of enforceability of the Nelson Mandela Rules.

The term "international law" (or "public international law" according to other recognized authorities) generally refers to a body of rules which govern the relationship^[94] of states and international organizations which, in some instances like human rights concerns, include the treatment of natural persons.^[95] It is founded largely upon the principles of reciprocity, comity, independence, and equality of states.^[96] The sources of this "body of rules" are provided by Article 38 of the Statute of the International Court of Justice^[97] as follows:

Article 38

1.

The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a.

international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b.

international custom, as evidence of a general practice accepted as law;

c.

the general principles of law recognized by civilized nations;

d.

subject to the provisions of Article 59, 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.

2.

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

The aforementioned sources of international law have been traditionally categorized into peremptory and non-peremptory norms. On one hand, peremptory norms or *jus cogens* refers to those mandatory and non-derogable norms or principles which give rise to *erga omnes* obligations (even if no consensus exists on their substance^[98]) and which are modifiable only by general international norms of equivalent authority.^[99] On the other hand, non-peremptory norms, are those international principles or rules which do not have compelling or binding effect against a state.

Concomitantly, the 1987 Philippine Constitution contains some provisions alluding to the practice of considering international norms and principles as part of domestic laws. However, it is settled that the Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer.^[100] This long-standing doctrinal pronouncement, in relation to international law, is consistent with Articles 1 (2) and 55 of the UN Charter^[101] which espouses "the principle of equal rights and self-determination of peoples."^[102] From a Philippine legal standpoint, international norms which are considered forming part of domestic laws must still yield to the supremacy of the Constitution.^[103] Consequently, both peremptory and non-peremptory norms may become part of the sphere of domestic law as provided under the present Constitution either by: (a) transformation—a method which requires an international law or principle to be converted to domestic law thru a constitutional mechanism such as enactment of an enabling legislation or ratification of a treaty; and (b) incorporation—a method where an international law or principle is deemed to have the force of domestic law thru a constitutional declaration.^[104] Of these methods, it is understood that international norms are either transformed or incorporated into domestic laws depending on which category they belong.

Article 53 of the Vienna Convention on the Law of Treaties^[105] (Vienna Convention) states that "a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Since Section 2, Article II of the Constitution expressly states that the Philippines "adopts the generally accepted principles of international law as part of the law of the land," it is beyond question that only norms which have attained a peremptory status by general acceptance or

recognition by the community of states can be considered as part of the law of the land by incorporation. Resultantly, all other norms not contemplated or covered in the definition of "peremptory norm" in Article 53 of the Vienna Convention have to undergo the method of transformation in order to have a binding effect as other domestic laws. Furthermore, transformation may be undertaken either of the following methods: (a) thru ratification of a treaty under Section 21,[106] Article VII of the Constitution; or (b) thru enactment of an enabling law adopting a non-peremptory norm of international law.

As to the characterization of the Nelson Mandela Rules, the undersigned reproduces Articles 10 to 14, Chapter IV of the United Nations (UN) Charter as follows:

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1.

The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2.

The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

3.

The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4.

The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

Article 12

1.

While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2.

The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

Article 13

1.

The General Assembly shall initiate studies and make recommendations for the purpose of:

a.

promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;

b.

promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2.

The further responsibilities, functions and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations. (Underscoring supplied)

The aforementioned provisions clearly show that the UN Charter merely grants recommendatory powers to the

UN General Assembly (composed of all member states per Article 9 of the same Charter) in terms of policy-making. As observed by Associate Justice Marvic Mario Victor F. Leonen (Justice Leonen), UN General Assembly Resolutions such as the Nelson Mandela Rules may constitute "soft law" or non-binding norms, principles and practices that influence state behavior.[107] Consequently, any resolution issued by the UN General Assembly does not carry with it the status of being a peremptory norm. Simply put, it has no binding effect on UN member states. Since the Nelson Mandela Rules gained an official international status thru the UN General Assembly's adoption of a Resolution on December 17, 2015, it stands to reason that the same Rules cannot be considered as a binding peremptory norm of international law for being merely recommendatory. A contrary rule of interpretation which will make every resolution of the UN General Assembly, like the Nelson Mandela Rules, automatically binding and part of the law of the land would undermine and unduly restrict the sovereignty of the Republic of the Philippines. It stifles the Republic's prerogative to interpret international laws thru the lenses of its own legal system or tradition. Therefore, the Nelson Mandela Rules needs to be transformed into a domestic law thru an enabling act of Congress in a clear and unequivocal manner to have a legally binding force.

In response to the UN General Assembly's adoption of the Nelson Mandela Rules, R.A. No. 10575[108] (Bureau of Corrections Act) was enacted by Congress. It made an implied reference to the Nelson Mandela Rules by providing as follows:

Section 4. The Mandates of the Bureau of Corrections. - The [Bureau of Corrections] shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years.

(a)

Safekeeping of National Inmates – The safekeeping of inmates shall include decent provision of quarters, food, water and clothing in compliance with established United Nations standards. The security of the inmates shall be undertaken by the Custodial Force consisting of Corrections Officers with a ranking system and salary grades similar to its counterpart in the BJMP.

(b)

Reformation of National Inmates – The reformation programs, which will be instituted by the [Bureau of Corrections] for the inmates, shall be the following:

(1)

Moral and Spiritual Program;

(2)

Education and Training Program;

(3)

Work and Livelihood Program;

(4)

Sports and Recreation Program;

(5)

Health and Welfare Program; and

(6)

Behavior Modification Program, to include Therapeutic Community.

(c)

The reformation programs shall be undertaken by Professional Reformation Personnel consisting of Corrections Technical Officers with ranking system and salary grades similar to Corrections Officers.

(1)

Corrections Technical Officers are personnel employed in the implementation of reformation programs and those personnel whose nature of work requires proximate or direct contact with inmates.

(2)

Corrections Technical Officers include priests, evangelists, pastors, teachers, instructors, professors, vocational placement officers, librarians, guidance counselors, physicians, nurses, medical technologists, pharmacists, dentists, therapists, psychologists, psychiatrists, sociologists, social workers, engineers, electricians, agriculturists, veterinarians, lawyers and similar professional skills relevant to the implementation of inmate reformation programs. (Emphasis supplied)

At this juncture, there now arises a need to determine whether this Court or the entire Judicial branch is constitutionally-empowered to issue writs or other orders to compel the Bureau of Corrections and all the other public respondents to implement Section 4 of the Bureau of Corrections Act in some particular manner.

The answer strongly points to the negative for the following reasons:

First, the general import of the terms in Section 4 (a) of the Bureau of Corrections Act in relation to the Nelson Mandela Rules clearly shows that such provision (Section 4) is not judicially-enforceable.

In constitutional interpretation, it is settled that a provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.[109] The same can be said of statutory interpretation if the law itself clearly defines a right in terms of its nature and extent as well as the liability or duty imposed pursuant to such right. In effect, statutory provisions which are not self-executing do not confer rights which can be judicially enforced—they only provide guidelines for executive action.[110]

The phrase "in compliance with established United Nations standards" in Section 4 (a) of the Bureau of Corrections Act is so generic that it clearly appears to be silent regarding the manner of its implementation. A thorough reading of the law will reveal that Section 23 of the same law merely delegates the task of jointly promulgating the necessary implementing rules and regulations to the Department of Justice (DOJ) in coordination with the Bureau of Corrections, the Civil Service Commission (CSC), the Department of Budget and Management (DBM), and the Department of Finance (DOF)."[111] The law is also silent as to the degree (moderate or strict).

For purposes of demonstration, the undersigned reproduces some provisions in the Nelson Mandela Rules pertaining to the accommodation of prisoners as follows:

Rule 5

x x x

2.

Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.

x x x

Rule 13

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

x x x

Rule 28

In women's prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison. If a child is born in prison, this fact shall not be mentioned in the birth certificate. (Underscoring supplied)

As to the issue of specific implementation, the following phrases of the afore-cited Nelson Mandela Rules stand out: (a) "reasonable accommodation and adjustments;" (b) "full and effective access to prison life on an equitable basis;" (c) "shall meet all requirements of health;" (d) "cubic content of air, minimum floor space, lighting, heating and ventilation;" (e) "special accommodation;" and (f) "[a]rrangements shall be made." All of these phrases do not provide specific details as to the manner of implementation. They all appear to constitute or operate as primary guidelines for the proper handling of inmates in terms of accommodation. For instance, the words "reasonable," "access," "special," and "arrangements" are so vague that the ministerial duty of an executive or administrative agency cannot be pinpointed in terms of the effectivity of a mandatory injunctive writ. Bluntly speaking, how will the Bureau of Corrections determine what is "special" or what is "reasonable" in executing a writ? A court cannot simply define these terms and invent parameters akin to administrative issuances resembling subordinate legislation. Other details lacking in the general import of the Nelson Mandela Rules are the dimensions associated with "cubic content of air, minimum floor space, lighting, heating and ventilation." The dimensions regarding the living quarters and amenities provided in Implementing Rules and Regulations[112] (IRR) of the Bureau of Corrections Act cannot possibly be altered by virtue of a court order without violating the principle of separation of powers. As pointed out earlier, Section 23 of the Bureau of Corrections Act places the

task of promulgating the IRR on the DOJ (in coordination with the Bureau of Corrections), the CSC, the DBM and the DOF. There is nothing in the same Section which permits the courts to adjust these rules based on "equitable" considerations. Under the circumstances contemplated in the aforementioned provisions in the Nelson Mandela Rules, only the Executive department can reasonably determine the parameters of its compliance. Besides, the Judiciary's interference with the Executive department in the enforcement of a plain provision of the statute would, in effect, destroy the independence of the latter department and subject it under the former's ultimate control.[113]

As keenly observed by Chief Justice Diosdado M. Peralta (Chief Justice Peralta), the Nelson Mandela Rules espouse the generally vicarious idea that it is the responsibility of every state to make accommodations in prisons well suited for proper hygiene, nutrition and hydration, especially to prisoners with particular health care needs. These rules, instead, highlight the obligation of transferring prisoners, whether convicts or detainees, with urgent medical conditions to specialized institutions and in specialized facilities where they can have prompt access to medical attention. The main premises for the application of international law principles are lacking in the case of the petitioners, especially in the absence of an emerging and/or immediate need to receive specialized medical attention which the prison facilities cannot cater to and address at the moment.

Second, the implementation of the Bureau of Corrections Act is dependent on the available funds of the Bureau.

Section 22 of the same law provides:

Section 22. Implementation. - The implementation of this Act shall be undertaken in staggered phases, but not to exceed five (5) years, taking into consideration the financial position of the national government: Provided, That any partial implementation shall be uniform and proportionate for all ranks. (Emphasis supplied)

Yearly financial positions of the national government are mostly dependent on factors beyond its control. For instance, revenues thru tax and regulatory fee collections cannot be reasonably predicted. Various factors—such as the number of taxpayers, the net taxable income of taxpayers, the volume of activities involving excise and value-added taxes, the number of applicants of any sanctioned permit or franchise—all fluctuates depending on results on the dynamics of the nation's collective economic activities. This translates to uncertain internal revenue streams which accounts for almost all of the sources of the nation's resources available for budget. To add to the Bureau of Corrections' financial woes, the national government has also to contend with budgetary concerns coming from other sectors (or problems) of society which, frankly, are within the absolute prerogative of Congress to prioritize; sadly, even over the needs of correctional facilities. Unsurprisingly, this is beyond the control of the Bureau of Corrections and, sometimes, even beyond the control of Congress if it has to respond to exigencies.

Another factor is the unpredictability of the influx of inmates in correctional or detention facilities. Even with the most sophisticated data-gathering methods and analytical tools assisted by the current capabilities of modern technology, both the Executive and the Legislative cannot reasonably estimate or anticipate how many persons will commit crimes in a stated interval of time. In order to demonstrate this problem, the undersigned reproduces Section 12 of the Nelson Mandela Rules as follows:

Rule 12

1.

Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

2.

Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the prison. (Underscoring, supplied)

A realistic assessment of the Philippine correctional system will show that the national government's financial position cannot possibly cope up with the standards of the Nelson Mandela Rules which even contemplates prisoners detained in "individual cells or rooms" for "each prisoner" to occupy "by himself or herself." To add to the Bureau of Corrections' burdens, the first paragraph of the afore-cited rule even goes as far as to imply that "temporary overcrowding" is or should be the norm in correctional facilities. For some countries with seemingly unlimited resources and relatively low crime rates, compliance is considerably possible. However, for the Philippines which has been reportedly afflicted with persisting issues of overcrowding, the instance of "temporary overcrowding" is colloquially "pangarap ng gising" (the stuff of dreams). Admittedly, the Bureau of Corrections has limited land area or real estate. Any adaptive measure as to the influx of inmates will have to be "vertical"—correctional buildings will have to be remodelled in order to add more stories or floors to house more cells. Any budget allotted by the national government to the Bureau of Corrections will have to be stretched to meet such accommodational needs.

As regards the provisions of the IRR on accommodation and facilities (which appears to provide details in relation to the Nelson Mandela Rules), the implementation of a mandatory injunctive writ will be inherently limited by the availability of funds. First, the provisions in the IRR containing matters relating to the standards under the Nelson Mandela Rules (i.e. ventilation, floor area, lighting, etc.) all require funds to be realized. Second, the IRR is a subordinate legislation—it merely implements the provisions in the Bureau of Corrections Act with the aid of congressionally-provided funds. Stated differently, the IRR is: (a) not a source of substantive rights and substantive obligations which, under the Constitution, are properly created or recognized by substantive laws; and (b) dependent upon available funds as appropriated by Congress. Hence, in terms of accommodation, any judicial relief asserting to enjoin some form of compliance with the provisions of the IRR will merely amount to a "paper relief" when funds are inadequate to execute a writ.

To be clear, the undersigned is not saying that, just because the Executive branch is currently limited in its resources to comply with the mandate in Section 4 of the Bureau of Corrections Act, any solution to address the poor and substandard state of existing correctional and other detention facilities is, and will remain to be impossible to achieve. It is not impossible for the government to improve its financial status and adequately provide for the sectors that currently lack the needed funding. All that the undersigned is saying is that the proper branches of government constitutionally-empowered to raise the needed funding and to remedy the situation regarding the accommodation and sanitation problems affecting correctional and other detention facilities are the political branches—the Legislative and the Executive—not the Judiciary. In sum, the very reason for denying the instant petition is to avoid violating the separation of powers enshrined in the Constitution—not because this Court is or should be insensitive to the plight of the petitioners.

Third, the respondents' present inability to comply with the Nelson Mandela Rules or Section 4 of the Bureau of Corrections Act regarding the accommodation of all prisoners cannot be considered as a ground to release the petitioners pursuant to the constitutional prohibition against cruel, degrading or inhuman punishment.

To begin with, the petitioners' (except for Lilia Bucatcat who is presently serving her sentence) previous arrest and present temporary detention are not considered as penalties or punishments as contemplated in Article 24 (1) of the Revised Penal Code because the service of a sentence of one in prison begins only on the day the judgment of conviction becomes final.[114] However, since Article 29[115] of the Revised Penal code provides that

convicted "[o]ffenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment,"[116] the undersigned deems it necessary to elucidate further on the matter of cruel, degrading and inhuman punishments.

The prohibition against the infliction of cruel, degrading or inhuman punishment in Section 19,[117] Article III of the present Constitution was derived from the Eighth Amendment[118] of the US Constitution which likewise proscribes the infliction of "cruel and unusual" punishments. However, what constitutes cruel and unusual punishment has not been exactly defined.[119] Instead, the Court in *Echegaray v. Secretary of Justice, et al.*[120] provides several insights on what cruel, degrading and inhuman punishment includes, viz: (a) "death penalty per se is not a cruel, degrading or inhuman punishment;" (b) "[p]unishments are cruel when they involve torture or a lingering death" as they "impl[y] [that] there something inhuman and barbarous, something more than the mere extinguishment of life;" (c) "[i]n a limited sense, anything is cruel which is calculated to give pain or distress, and since punishment imports pain or suffering to the convict;" (d) the cruelty proscribed by the Constitution is that which is "inherent in the method of punishment, not the necessary suffering involved in any method employed to extinguish life humanely;" (e) what is cruel and unusual "'is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice" and "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society;" and (f) "the primary indicator of society's standard of decency with regard to capital punishment is the response of the country's legislatures to the sanction."

In relation to deprivation of liberty, whether imposed as a punishment or preventive measure, the Court should turn to the deliberations of the 1986 Constitutional Commission (Constitutional Commission) for guidance regarding the accommodation of inmates, the portions of which are hereunder reproduced as follows:

MR. NATIVIDAD:

May I go on to Section 22 which says: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment, or the death penalty inflicted." I will not deal with the death penalty because it has already been belabored in many remarks. In due time, perhaps I will be given a chance to say a few words on that, too. But I am referring to cruel, degrading and inhuman punishment. I am drawing upon my experience as the Chairman of the National Police Commission for many years. As Chairman of the National Police Commission, the same way that General de Castro here was, one of my duties was to effect the inspection of jails all over the country. We must admit that our jails are a shame to our race. Once we were invited by the United Nations' expert on penology — I do not remember his name, but he is a doctor friend of mine — and he reported back to us that our jails are penological monstrosities.

Here in the cities, 85 percent are detention prisoners and only 15 percent are convicted prisoners. But if we visit the jails, they are so crowded and the conditions are so subhuman that one-half of the inmates lie down on the cold cement floor which is usually wet, even in summer. One-half of them sleep while the other half sit up to wait, until the other half wake up, so that they can also sleep. In the toilets, right beside the bowl, there are people sleeping. I visited the prisons and that was the time I fought for the Adult Probation Law because I remember what Winston Churchill and the criminologist Dostoevski said: "If you want to know the level of civilization of a country, all you have to do is visit their jails." In jurisprudence, the interpretation of "cruel and unusual punishment" in the United States Constitution was made by the Supreme Court when it said, and I quote: "Interpretation of the Eight[h] Amendment in the phrase 'cruel and unusual punishment,' must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Courts in the United States in 10 landmark cases — some of these I would like to mention in passing: *Halt v. Sarver*, *Jackson v. Bishop*, *Jackson v. Handrick*, *Jordan v. Fitzharris* and *Roddy v. Stanley* — stated that sub-human conditions

in a prison is an unconstitutional imposition of cruel and unusual punishment.

I would just like to — even without an amendment — convince the Committee that if a prison is subhuman and it practices beatings and extended isolation of prisoners, and has sleeping cells which are extremely filthy and unsanitary, these conditions should be included in the concept of "cruel and inhuman punishment." Even without amendment but with this concept, I would like to encourage the legislature to give higher priority to the upliftment of our jails and for the judiciary to act because the judiciary in habeas corpus proceedings freed some prisoners. So, by means of injunction, the courts stopped these practices which are inimical to the constitutional rights of inmates. On the part of the executive, it initiated reforms in order that the jails can be more humane and fair. If this concept of "cruel and inhuman punishment" can be accepted, Mr. Presiding Officer, I may not even ask for an amendment so that in the future, the judiciary, the executive and the legislative can give more remedial measures to this festering problem of subhuman conditions in our jails and prisons.

I submit, Mr. Presiding Officer.

FR. BERNAS:

Mr. Presiding Officer, although I would say that the description of the situation is something that is inhuman, I wonder if it fits into the purpose of Section 22. The purpose of Section 22 is to provide a norm for invalidating a penalty that is imposed by law. Let us say that thieves should be punished by imprisonment in a filthy prison, that would be "cruel and unusual punishment." But if the law simply say that thieves should be punished by imprisonment, that by itself does not say that it is cruel. So, it does not invalidate the penal law. So my own thinking is that what the Gentleman has in mind would be something more proper; even for ordinary legislation or, if at all, for Section 21.

MR. NATIVIDAD:

The Gentleman said that he is not going to sentence him in a filthy prison. Of course not. But this is brought out in the petition for habeas corpus or for injunction. This is revealed in a proper petition.

FR. BERNAS:

I agree with the Commissioner, but as I said, the purpose of Section 22 is to invalidate the law itself which imposes a penalty that is cruel, degrading or inhuman. That is the purpose of this law. The Commissioner's purpose is different.

MR. NATIVIDAD:

My purpose is to abate the inhuman treatment, and thus give spirit and meaning to the banning of cruel and inhuman punishment. In the United States, if the prison is declared unconstitutional, and what is enforced is an unconstitutional punishment, the courts, because of that interpretation of what is cruel and inhuman, may impose conditions to improve the prison; free the prisoners from jail; transfer all prisoners; close the prison; or may refuse to send prisoners to the jail.

FR. BERNAS:

We would await the formulation of the Commissioner's amendment.

MR. NATIVIDAD:

So, in effect, it is abating the continuance of the imposition of a cruel and inhuman punishment. I believe we have to start somewhere in giving hope to a big segment of our population who are helplessly caught in a trap. Even the detention prisoners, 85 percent of whom are jailed in the metropolitan area, are not convicted prisoners, and yet although not convicted in court, they are being made to suffer this cruel and inhuman punishment. I am saying this in their behalf, because as Chairman of the National Police Commission for so many years, it was my duty to send my investigators to chronicle the conditions in these jails day by day. I wrote letters to the President asking for his help, as well as to the Batasan, but there was no reply.

Finally, I am now here in this Commission, and I am writing this letter through the Chairman of this Committee. I hope it will be answered. (Emphases supplied)

As shown in the aforementioned exchanges, Commissioner Teodulo C. Natividad (Commissioner Natividad) initially proposed that the prohibition on cruel, degrading or inhuman punishment be made to cover subhuman accommodations of inmates in correctional and other detention facilities. Contrastingly, Commissioner Joaquin G. Bernas (Commissioner Bernas) opposed Commissioner Natividad's proposal by enunciating that the purpose of such prohibition is "to provide a norm for invalidating a penalty that is imposed by law" or "to invalidate the law itself which imposes a penalty that is cruel, degrading or inhuman"— not to recognize a substantive right. However, Commissioner Natividad's proposal gained traction as Commissioner Regalado E. Maambong (Commissioner Maambong) supported the idea that the prohibition on cruel, degrading or inhuman punishment be made to encompass subhuman jail conditions as follows:

MR. MAAMBONG:

Mr. Presiding Officer, the clarification being sought or the amendment which may be proposed, if it becomes necessary, reflects the concern of Commissioners Natividad, Ople, de los Reyes and myself, regarding our Proposed Resolution No. 482 which gives meaning and substance to the constitutional provision against cruel or unusual punishment. I do not wish to be expansive about it. I will try to stick to my time limit, but I find this rather emotional on my part because, as a practicing lawyer, I have been going in and out of jails. As a lawyer, of course, I would like to call the attention of the Committee to certain things which they already know, that it has been established by courts of modern nations that the concept of cruel or unusual punishment is not limited to instances in which a particular inmate or pretrial prisoner is subjected to a punishment directed to him as an individual, such as corporal punishment or torture, confinement in isolation or in large numbers, in open barracks or uncompensated labor, among other forms. Confinement itself within a given institution may amount to cruel or unusual punishment prohibited by the Constitution where the confinement is characterized by conditions and practices that are so bad as to be shocking to the conscience of reasonably civilized people. It must be understood that the life, safety and health of human beings, to say nothing of their dignity, are at stake. Although inmates are not entitled to a country club existence, they should be treated in a fair manner. Certainly, they do not deserve degrading surroundings and unsanitary conditions. (Emphasis supplied)

This led to the following exchange of concerns between Commissioners Maambong and Bernas, as follows:

MR. MAAMBONG:

Just one sentence, Mr. Presiding Officer, so that my train of thought will not be destroyed, if I may.

Unless facilities of the penitentiary are brought up to a level of constitutional tolerability, they should not be used for the confinement of prisoners at all. Courts in other jurisdictions have ordered the closure of sub-standard and outmoded penal institutions. All these require judicial orders in the absence of implementing laws to provide direct measures to correct violations of human rights or institute alterations in the operations and facilities of penal institutions. I may not have to present any amendment but I will ask some clarifications from the Committee. For example, in the case of the words "cruel, degrading or inhuman punishment," my question is: Does this cover convicted inmates and pretrial detainees? That is the first question.

FR. BERNAS:

This is a matter which I discussed with Commissioner Natividad. I think the Gentleman has similar ideas on this. I tried to explain to him that the problem he envisions is different from the problem being treated here. In Section 22, we are talking of a proposed, if it becomes necessary, reflects the concern punishment that is contained in a statute which, if as described in the statute is considered to be degrading or inhuman punishment, invalidates the statute itself. But the problem that was discussed with me by Commissioner Natividad is the situation where a person is convicted under a valid statute or is accused under a valid statute and, therefore, detained but is confined under degrading and inhuman circumstances. I suggested to him that that will be treated not together with this, because this section has a different purpose, but as a different provision as a remedy for individuals who are detained legally but are being treated in an inhuman way.

MR. MAAMBONG:

Are we saying that when a person is convicted under a valid statute and he is inside the jail because of the conviction out of that valid statute when he is treated in an inhuman and degrading manner, we have no remedy at all under Section 22?

My understanding is that this is not the protection he can appeal to. That is why I was asking Commissioner Natividad that if he wants a protection for that, to please formulate something else.

MR. MAAMBONG:

All right, then.

The second question would be: The words "cruel, degrading or inhuman punishment" do not cover the situation that we contemplate of substandard or outmoded penal facilities and degrading and unsanitary conditions inside the jail[?]

FR. BERNAS:

Yes, we are referring to cruel, degrading or inhuman punishments which are prescribed in the statute itself. We cannot conceive a situation that the statute would prescribe that. The problem that the Gentleman contemplates again, I think, is about a person who is held under a valid statute but is treated cruelly and inhumanly in a degrading manner. So, we ask for a different remedy for him. (Emphases supplied)

The aforementioned discussions show that Commissioner Bernas emphasized the need for creating a separate provision in order to address the observation that it is inconceivable for Congress to enact a statute prescribing on its face for a cruel, degrading or inhuman punishment. After a stimulating exchange of ideas, the framers eventually arrived at a compromise as shown by the following discussions:

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

The body will continue the consideration of Section 22 of the Bill of Rights which reads:

The employment of corporal or psychological punishment against prisoners or pretrial detainees, or the use of substandard or outmoded penal facilities characterized by degrading surroundings, unsanitary or subhuman conditions should be dealt with in accordance with law.

Commissioner Maambong is recognized.

MR. MAAMBONG: Madam President, I just would like to indicate the generous response of the Members of the Commission to this proposed amendment, notably Commissioners Romulo, Suarez, Davide, Rigos and others who offered beautiful suggestions to implement the concept.

I will start, however, with the perfecting modifications offered by the Committee, acting through the efforts of Commissioner Nollado to whom the proponents are very grateful.

Based on the draft, copies of which are now in the possession of the Members, on line 2, between the words "against" and "prisoners," insert the word CONVICTED.

On line 3, delete the words "substandard or outmoded" and substitute the word INADEQUATE.

On the same line 3, delete the last word "characterized," together with all the words on line 4, and substitute the word UNDER.

On lines 5 and 6, delete the words "in accordance with law" and substitute the words BY LAW. So with this [sic] Committee modifications, the whole proposed amendment would read: "The employment of corporal or psychological punishment against CONVICTED prisoners or pretrial detainees, or the use of INADEQUATE penal facilities UNDER subhuman conditions should be dealt with BY LAW."

We now present that before the Committee, Madam President.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

Will the proponent accept a simple amendment to his amendment which will be in connection with line 1?

We have heard many discussions regarding the way the Bill of Rights should be stated, emphatically by the honorable Vice-President. So bearing this in mind, this is the proposed amendment to the amendment.

Instead of a statement of a principle, let us begin with the word NO such that the proposed amendment will now read: NO PHYSICAL OR MENTAL PUNISHMENT SHALL BE EMPLOYED.

MR. MAAMBONG: Madam President, I would refer that proposed amendment to the Committee for its comment so that we can save time.

THE PRESIDENT: What does the Committee say?

FR. BERNAS: As I said in the beginning, as the Bill of Rights is now shaping up, we have two kinds of rights — rights which are self-implementing and rights which need implementation. The rights which are self-implementing are generally worded in the way Commissioner Suarez would have it. But this particular right which we are putting in here is something which needs implementation. So, actually, the effective provision here would be "should be dealt with BY LAW" because we are still dependent on law.

MR. SUAREZ: May I add that my proposal is to make two sentences out of this proposed provision. So put a period (.) after "detainees" and continue the next sentence: "The use of inadequate . . ."

FR. BERNAS: How would it read now?

MR. SUAREZ: It would read something like this: "NO PHYSICAL OR MENTAL PUNISHMENT SHALL BE EMPLOYED against CONVICTED prisoners or pretrial detainees. The use of INADEQUATE penal facilities UNDER subhuman conditions should be dealt with BY LAW."

FR. BERNAS: I think the proposed amendment of Commissioner Maambong, when it speaks of "should be

dealt with BY LAW," has reference not just to inadequate or substandard conditions, but even also to torture.

MR. MAAMBONG: I confirm that, Madam President.

FR. BERNAS: Yes. So, it does modify the sense of Commissioner Maambong's proposal. I would leave it to Commissioner Maambong to say whether he accepts that or not.

MR. MAAMBONG: Actually, I am amenable to the use of the words "NO PHYSICAL or psychological. . ." But I really have a difficulty in separating the two things with the words "should be dealt with BY LAW" and I would rather agree with the Committee on this point.

FR. BERNAS: At any rate, what Commissioner Suarez wants to be emphasized is already covered by other provisions.

MR. MAAMBONG: Yes, Madam President.

FR. BERNAS: This is more of a command to the State saying that beyond having recognized these things as prohibited, the State should do something to remedy whatever may be a violation.

MR. MAAMBONG:

Yes. But I would just like to indicate, even though I cannot accept the amendment, that the wording of Commissioner Suarez would indeed be more emphatic and it would have served my purpose better if it would not destroy the essence of the whole provision.

FR. BERNAS:

Yes.

MR. REGALADO:

Madam President.

THE PRESIDENT:

Commissioner Regalado is recognized.

MR. REGALADO:

Will the sponsor entertain an amendment to his amendment?

MR. MAAMBONG:

Yes, Madam President.

THE PRESIDENT:

We are still on the amendment of Commissioner Suarez.

MR. REGALADO:

No. I will address it instead to Commissioner Maambong.

MR. BENGZON:

Madam President, I think Commissioner Suarez is not going to insist on his amendment. So, may we allow him to withdraw?

MR. SUAREZ:

In as much as the word "corporal" has already been substituted with the word PHYSICAL, as stated by the honorable proponent. I will not insist on my amendment to the amendment because the sense is already very well conveyed. Thank you.

THE PRESIDENT:

Commissioner Regalado desires to be recognized in relation to the proposed amendment.

MR. MAAMBONG:

Yes, Madam President, but I would just like to make a statement. Considering that Commissioner Suarez mentioned "PHYSICAL" — I did say "corporal" — to save time, I would rather ask the Committee to allow me to change "corporal" to PHYSICAL; then, I will accept that amendment on the word PHYSICAL by Commissioner Suarez.

THE PRESIDENT:

Commissioner Regalado is recognized.

MR. REGALADO:

Madam President, I am proposing a further amendment to put some standards on this, to read: "The employment of PHYSICAL, psychological OR DEGRADING punishment ON ANY PRISONER."

Please permit me to explain. The punishment may not be physical but it could be degrading. Perhaps, the Members have seen the picture of that girl who was made to parade around the Manila International Airport with a placard slung on her neck, reading "I am a thief."

That is a degrading form of punishment. It may not necessarily be corporal nor physical. That is why I ask for the inclusion of OR DEGRADING "punishment" on this line and employment should be ON ANY PRISONER. It includes a convicted prisoner or a detention prisoner.

MR. MAAMBONG:

Where would the words be?

MR. REGALADO:

"The employment of PHYSICAL, psychological OR DEGRADING punishment ON ANY PRISONER." This is all-inclusive.

MR. MAAMBONG:

In other words, the Commissioner seeks to delete the words "against CONVICTED prisoners or pretrial detainees," and in its place would be "ON ANY PRISONER."

MR. REGALADO:

Because in penal law, there are two kinds of prisoners: the prisoners convicted by final judgment and those who are detention prisoners. Delete "or pretrial detainees"; then, "or the use of GROSSLY substandard or INADEQUATE penal facilities." If we just say "substandard," we have no basis to determine against what standard it should be considered. But if we say "GROSSLY substandard," that is enough of a legislative indication and guideline.

MR. MAAMBONG:

Madam President, before we take it up one by one, the Committee modification actually deleted the words "substandard or outmoded," and in its place, we put the word INADEQUATE. Is it the Gentleman's position that we should put back the word "substandard" instead of "INADEQUATE"?

MR. REGALADO:

I put both, "or the use of GROSSLY substandard or INADEQUATE penal facilities," because the penal

facilities may be adequate for a specific purpose but it may be substandard when considered collectively and vice-versa; and then, we delete the rest, "should be dealt with BY LAW." That capsulizes, I think, the intent of the sponsor of the amendment.

FR. BERNAS:

If we add the word "GROSSLY," we are almost saying that the legislature should act only if the situation is gross.

MR. REGALADO:

How do we determine what is substandard?

FR. BERNAS:

We leave that to the legislature. What I am saying is that the legislature could say: "Well, this is substandard but it is not grossly substandard; therefore, we need not do anything about it."

MR. REGALADO:

Could we have a happy compromise on how the substandard categorization could come in because it may be substandard from the standpoint of American models but it may be sufficient for us?

FR. BERNAS:

I do not think we should go into great details on this. We are not legislating . . .

MR. REGALADO:

So, the sponsor's position is that we just leave it to the legislature to have a legislative standard of their own in the form of an ordinary legislation?

FR. BERNAS:

Yes.

MR. MAAMBONG:

Before I make any acceptance of the offered amendment, may I know from the Committee if on line 3, after the word "INADEQUATE," we should also replace "substandard" which we have cancelled earlier?

FR. BERNAS:

I do not know where we are now, but this is what I have. "The employment of PHYSICAL, psychological OR

DEGRADING PUNISHMENT against CONVICTED PRISONERS ..."

MR. MAAMBONG:

"against ANY PRISONER. . ." They were thinking of any prisoner.

MR. REGALADO:

No, I put the word ON not "against." One inflicts the punishment on a person.

MR. MAAMBONG:

Yes.

FR. BERNAS:

But the word "inflict" is not used but "employment" is used. So, the preposition is "against," not "ON."

MR. REGALADO:

That is right; it is a matter of style.

MR. BENGZON:

Madam President.

THE PRESIDENT:

The Acting Floor Leader is recognized.

MR. BENGZON:

May we just leave that to the Committee on Style? What is important is, we decide on the concept. If we can decide on the concept, then we can leave the style to the Committee on Style.

THE PRESIDENT:

It should be left to the Committee on Style or to the Committee itself, to the Committee of Commissioner Bernas if they are agreed on the substance as to what is to be contained in the proposed amendment.

FR. BERNAS:

I just have one question on the substance. If we just say "ANY PRISONER," that may connote that the person is either a prisoner convicted or a pretrial prisoner and, therefore, charged. I would much rather have ANY PRISONER OR DETAINEE because a "prisoner" usually connotes someone who is convicted; a "detainee" could be on pretrial or not charged at all.

THE PRESIDENT:

May we now have the recommendation of the Committee as to how this whole provision will read?

FR. BERNAS:

So, the recommendation of the Committee would be: "The employment of PHYSICAL, psychological OR DEGRADING punishment against ANY PRISONER OR DETAINEE, or the use of INADEQUATE penal facilities UNDER subhuman conditions should be dealt with BY LAW."

MR. RODRIGO:

Madam President.

THE PRESIDENT:

Yes, Commissioner Rodrigo is recognized.

MR. RODRIGO:

I would like to call attention to the fact that the word "DEGRADING" is already in the first sentence of this section: "Excessive fine shall not be imposed nor cruel, degrading or inhuman punishment inflicted." So, why repeat the word "DEGRADING"?

FR. BERNAS:

Precisely, Madam President, yesterday, we said that the provision we have in the present Constitution has reference to the punishment that is prescribed by the law itself; whereas what we are dealing with here is the punishment or condition which is actually being practiced (sic). In other words, we are, in the present Constitution, talking about punishment which, if imposed by the law, renders the law invalid.

In this paragraph, we are describing conditions of detainees who may be held under valid laws but are being treated in a manner that is subhuman or degrading.

MR. RODRIGO:

So, that is the reason for repeating the word "DEGRADING."

FR. BERNAS:

Yes, that is the reason.

MR. COLAYCO:

Just one suggestion for the Committee.

THE PRESIDENT:

Yes, Commissioner Colayco is recognized.

MR. COLAYCO:

To shorten the sentence, I would suggest this: "The employment of PHYSICAL, psychological OR DEGRADING punishment IN ANY PLACE OF DETENTION." That will cover prisoners who are already convicted and those under detention or during trial.

MR. MAAMBONG:

I am sorry I cannot accept that. I think the Committee has made a good job in modifying the sentence.

THE PRESIDENT:

Will Commissioner Maambong please read his proposed amendment with all the suggestions that have come in?

MR. MAAMBONG:

Yes. It would read like this: "The employment of PHYSICAL, psychological OR DEGRADING punishment against ANY PRISONER OR DETAINEE or the use of substandard or INADEQUATE penal facilities UNDER subhuman conditions should be dealt with BY LAW."

MR. FOZ:

Madam President.

THE PRESIDENT:

Commissioner Foz is recognized.

MR. FOZ:

May I just ask one question of the proponent of the amendment[?] I get it that the law shall provide penalties for the conditions described by his amendment.

MR. MAAMBONG:

In line with the decisions of the Supreme Court on the interpretation of cruel and unusual punishments, there may be a law which punishes this violation precisely or there may not be a law. What could happen is that the law could provide for some reliefs other than penalties.

In the United States, there are what is known as injunctive or declaratory reliefs and that is not exactly in the form of a penalty. But I am not saying that the legislature is prevented from passing a law which will inflict punishment for violations of this section.

MR. FOZ:

In case the law passed by the legislature would impose sanctions, not so much in the case of the first part of the amendment but in the case of the second part with regard to substandard or outmoded legal penal facilities characterized by degrading surroundings and in sanitary or subhuman conditions, on whom should such sanctions be applied?

MR. MAAMBONG:

It would have to be applied on the administrators of that penal institution. In the United States, in my reading of the cases furnished to me by Commissioner Natividad, there are instances where the law or the courts themselves ordered the closure of a penal institution and, in extreme cases, in some states, they even set the prisoners free for violations of such a provision.

MR. FOZ:

I am concerned about the features described as substandard or outmoded penal facilities characterized by degrading surroundings, because we know very well the conditions in our jails, particularly in the local jails. It is not really the fault of those in charge of the jails but these conditions are the result of lack of funds and the support by local government, in the first instance, and by the national government.

Does the Gentleman think we should penalize the jailers for outmoded penal facilities?

MR. MAAMBONG:

No, Madam President. What we are trying to say is that lack of funds is a very convenient alibi for the State, and I think with these provisions, the State should do something about it.

MR. FOZ:

Thank you, Madam President.

FR. BERNAS:

Madam President, we are not telling the legislature what to do: we are just telling them that they should do something about it.

MR. DE CASTRO:

Madam President.

THE PRESIDENT:

Commissioner de Castro is recognized.

MR. DE CASTRO:

Thank you.

The provision which says: "The employment of PHYSICAL, psychological OR DEGRADING PUNISHMENT against ANY PRISONER OR DETAINEE SHALL be dealt with BY LAW" is already provided for by our present laws. We already have laws against third-degree punishments or even psychological punishments. Do we still need this provision?

Thank you, Madam President.

MR. MAAMBONG:

As I was saying, Madam President, the law need not penalize; the law may only put in corrective measures as a remedy.

MR. REGALADO:

Madam President.

THE PRESIDENT:

Commissioner Regalado is recognized.

MR. REGALADO:

May I just rejoin the statement of Commissioner de Castro that we have laws already covering situations like this. The law we have on that in the Revised Penal Code is maltreatment of prisoners which comes from the original text maltratos de los encarcerados. That presupposes that the prisoner is incarcerated.

The proposed legislation sought here will apply not only to incarcerated prisoners, but also to other detainees who, although not incarcerated, are nevertheless kept, their liberty of movement is controlled before incarceration. So, this is for the legislature to fill that void in the law.

MR. GUINGONA:

Madam President.

MR. BENGZON:

Madam President.

THE PRESIDENT:

Commissioner Guingona seeks to be recognized.

MR. GUINGONA:

Thank you, Madam President.

The description that our penal facilities are characterized by degrading surroundings under subhuman conditions, in my opinion, is already indicative of substandard or inadequate facilities. And, therefore, I was wondering whether or not the words "substandard or INADEQUATE" might be a surplusage.

MR. BENGZON:

Madam President, the Committee is asking for a vote.

THE PRESIDENT:

Yes, but what is the phrasing now?

MR. GUINGONA:

May I ask, Madam President, for reply to my comment before we vote?

MR. MAAMBONG:

May I make a very short reply on that. Precisely, the Committee has modified the original version by deleting the words "characterized by degrading surroundings, unsanitary or" because it is felt that that is a surplusage.

THE PRESIDENT:

So, please read it now as it is now ready to be voted upon.

MR. MAAMBONG:

Yes, Madam President. It will read: "The employment of PHYSICAL, psychological OR DEGRADING punishment against ANY PRISONER OR DETAINEE or the use of substandard or INADEQUATE penal facilities UNDER subhuman conditions should be dealt with BY LAW."

I now ask if this is acceptable to the Committee.

VOTING

THE PRESIDENT:

This particular amendment has been accepted by the Committee and, therefore, we are now ready to vote.

As many as are in favor of this particular amendment, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show 28 votes in favor and none against; the amendment, as amended, is approved. (Emphases supplied)

The aforementioned exchanges show that Commissioner Maambong eventually softened his stance in rejecting Commissioner Bernas' proposal that the determination of what constitutes "substandard or inadequate penal facilities under subhuman conditions" as well as "employment of physical, psychological, or degrading punishment" should best be left to the Legislature. This translated into an unopposed approval of Commissioner Bernas' proposal. As a result, Section 19 (2) of Article III of the present Constitution came into being; hereunder reproduced as follows:

2.

The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

(Emphasis supplied)

With all due respect, the undersigned disagrees with the opinions of Senior Associate Justice Estela M. Perlas-Bernabe (Justice Bernabe) and Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) who both echoed the US Supreme Court's ruling in *Estelle, et al. v. Gamble*^[121] that the Eighth Amendment establishes "the government's obligation to provide medical care for those whom it is punishing by incarceration" and that the "deliberate indifference to serious medical needs of prisoners constitutes 'unnecessary and wanton infliction of pain.'" It bears stressing that, aside from this jurisdiction's judicial policy that this Court is not bound by the legal perspective expounded by the US Supreme Court,^[122] the US Constitution's Eighth Amendment radically differs from the Philippine Constitution's Section 19, Article III in terms of judicial enforceability. Both provisions are juxtaposed for comparison as follows:

PHILIPPINE CONSTITUTION

UNITED STATES CONSTITUTION

Section 19, Article III

Eighth Amendment

1.

Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

2.

The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.
(emphases supplied)

Clearly, only Congress has the constitutional power to address subhuman conditions that plague our penal institutions.^[123] The Court cannot isolate Section 19 (1) and ignore Section 19 (2) if it is expected to uphold the Constitution. The fact that Section 19 (2), Article III of the Philippine Constitution has no counterpart in the US Constitution, patently shows that the framers of the Constitution had understood and realized the inherent and realistic financial limitation of congressional appropriation.

Accordingly, the undersigned respectfully reiterates the basic principle that the Constitution is to be interpreted as a whole.^[124] A constitutional provision should function to the full extent of its substance and its terms, not by itself alone, but in conjunction with all other provisions of that great document.^[125] No one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument— sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.^[126] In other words, a provision of the Constitution does not operate in isolation without regard to others. This is because the law must not be read in truncated parts, its provisions must be read in relation to the whole law.^[127] As such, cherry-picking principles in order to uphold a desired and pre-determined result not only betrays the solemn and constitutional duty of magistrates to be

impartial but is also a fundamentally-proscribed indirect method of altering or repealing provisions of the Constitution.

Furthermore, the scope of the term "law" has always been understood to be limited to congressionally-enacted statutes. It cannot be reasonably interpreted to mean or encompass either judicial decisions (including procedural rules promulgated by the Court in the exercise of its rule-making power) or administrative rules promulgated by the Executive Department without violating the basic principle of separation of powers. It is a well-settled principle of constitutional construction that the language employed in the Constitution must be given their ordinary meaning except where technical terms are employed.[128]

In the case of Section 19 (2), Article III of the Constitution, there is nothing in the same provision which reasonably points to the possibility that the term "law" carries with it a technical meaning encompassing the common law practice of referring to judicial decisions as "laws." As pointed out earlier in the deliberations of the Constitutional Commission, the phrase "dealt with by law" has been clarified when Commissioner Florenz D. Regalado propounded the question: "How do we determine what is substandard?" to which Commissioner Bernas succinctly responded: "We leave that to the legislature." This exchange leaves no doubt as to the meaning of the term "law" as used in Section 19 (2), Article III of the Constitution—it clearly refers to statutes enacted by Congress. Besides, jurisprudence is already settled that: (a) judicial decisions which apply and/or interpret the law are not laws although they are considered as "part of the law of the land;"[129] and (b) administrative rules and regulations, even if they "have the force and effect of law," are not laws as they do not establish demandable rights and enforceable obligations.[130] For purposes of interpreting the term "law" in the context of Section 19 (2), Article III of the Constitution, it is not difficult to fathom that there is a clear line demarcating between what is legislative and what is not. Accordingly, Congress has to act first by enacting a remedial statute before the Executive and the Judiciary can validly proceed to promulgate any measure if subhuman conditions of detention facilities are to be addressed in accordance with what the Constitution prescribes.

As such, it is unfair to insinuate that this Court is being "deliberately indifferent" to the petitioners' plight if it refuses to grant the instant petition when no less than the Constitution itself lodges the power of addressing "the use of substandard or inadequate penal facilities under subhuman conditions" on Congress. Those who feel that the duty (of addressing the subhuman conditions of detention facilities) should be shared by all branches of the government even without any enabling law should also be mindful that the only remedy at this point is a constitutional amendment— not an expanded but contrived interpretation of the Constitution— lest this Court do violence to the basic principle of separation of powers.

Moreover, Section 19 (2), Article III of the Constitution effectively preserved the doctrine in *People v. Dionisio*[131] (promulgated during the time when the 1935 Constitution was still in effect) which espoused that "[w]hat evils should be corrected as pernicious to the body politic, and how correction should be done, is a matter primarily addressed to the discretion of the legislative department, not of the courts." As to "how correction should be done," the Court had already clarified in *Lim, et al. v. People et al.*[132] thusly:

Settled is the rule that a punishment authorized by statute is not cruel, degrading or disproportionate to the nature of the offense unless it is flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community. It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution. Based on this principle, the Court has consistently overruled contentions of the defense that the penalty of fine or imprisonment authorized by the statute involved is cruel and degrading. (Emphasis supplied)

To be considered as constitutionally repulsive under the afore-cited pronouncement in *Lim*, a punishment prescribed by the statute itself must be flagrant and plainly oppressive as well as disproportionate. Consistent with

the Constitutional Commission's deliberations on Section 19 (2), Article III of the Constitution, this pronouncement refers to the statute itself and not to the implementation of such statute. As such, the pronouncement in *David, et al. v. Macapagal-Arroyo, et al.*[133] makes it straightforward and clear that "[t]he criterion by which the validity of the statute or ordinance is to be measured is the essential basis for the exercise of power, and not a mere incidental result arising from its exertion." This means that a punishment per se as provided by law does not become cruel, degrading or inhuman due to the results of its implementation but due to the basis or legislative intention of its enactment. Besides, a cruel, degrading or inhuman manner of implementing an otherwise constitutionally-permissive punishment exposes the responsible public officer or employee to corresponding criminal, civil and administrative liabilities. Accordingly, the undersigned nevertheless finds it imperative and appropriate to point out that incidents in the implementation of a punishment have proper recourses and do not affect the validity of the statute or ordinance providing for such sanction.

Anent the flagrancy (as contemplated in *Lim*) of an oppressive or wholly disproportionate nature as one of the indicators that a punishment may be cruel, degrading or inhuman, the undersigned points out that detention per se which incidentally results in the deprivation of the prisoners' sanitation needs can hardly be equated to "torture" under R.A. No. 9745.[134] Section 3 (a) of the same law states:

(a) "Torture" refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. (Emphases supplied)

The terms of the aforementioned provision clearly contemplate unlawful instances of flagrant or intentional infliction of pain or suffering on the part of the perpetrator. Any pain or suffering inherent in or incidental to lawful sanctions are excluded from the definition of "torture." This only means that, if any pain or suffering arises incidental to or due to the inherent nature of a punishment or sanction imposed by legislature, the same may not be deemed as "torture" to invoke the constitutional prohibition against cruel, degrading or inhuman punishment for being flagrant. Although not committed to the idea that only torture constitutes cruel, degrading and inhuman punishment, the undersigned still maintains its prudent stand that Legislature is the only branch of government tasked under Section 19 (2), Article III of the Constitution to address subhuman conditions in jails and other detention facilities. Such task—of either enacting a special appropriations law or including in its yearly general appropriations law funds and measures for the upliftment of jail conditions—cannot be forced upon Congress by any judicial writ. Regrettably, the basic principle of checks-and-balances do not allow this Court to consider the petitioners as continually being subjected to torture in their present detention conditions absent any indication of flagrancy on the respondents' part as it will unduly expand the statutory definition of torture. Besides, judicial review may only be resorted to when there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government—not work as a peremptory writ of mandamus improperly applied to compel the performance of an inherently discretionary act such as legislation.

In conclusion, the undersigned reiterates that the extent of judicial remedies should only be those which are circumscribed by substantive law if the fundamental constitutional doctrine of separation of powers is to be respected. The Judiciary must function within its sphere of its power—which does not include the power to order either the Legislative to enact a law or the Executive to issue a particular implementing rule not mandated by any statute.

Last, courts are not constitutionally empowered, to issue advisory opinions or promulgate rules, even thru adjudication, which amount to giving details as to the implementation of statutory provisions.

A "justiciable controversy" refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory.[135] A petition must show "an active antagonistic assertion of a legal right on one side and a denial thereof on the other concerning a real, and not a mere theoretical question or issue." [136] In other words, courts have no authority to: (a) pass upon issues through advisory opinions; (b) resolve hypothetical or feigned problems as well as friendly suits collusively arranged between parties without real adverse interests; and (c) adjudicate mere academic questions to satisfy scholarly interests, however intellectually challenging.[137]

Concomitantly, this Court has the constitutional power, among others, to promulgate rules of pleading, practice and procedure as well as of those concerning the protection and enforcement of constitutional rights.[138] Comparatively, administrative agencies have the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers.[139]

As regards the broad standards set by the Nelson Mandela Rules as well as the generic terms used in Section 4 (a) of the Bureau of Corrections Act, the Court has no power to promulgate rules or even order thru adjudication the specific manner on how to implement specific protective measures which the inmates are entitled. Such power of "subordinate legislation" belongs to administrative agencies to "fill in the gaps of a statute for its proper and effective implementation" by virtue of their expertise in their fields of specialization.[140] In other words, providing for details as to how a provision of law will be carried out or implemented is part of executive—not judicial—functions. Moreover, it also goes without saying that the Bureau of Corrections is duty-bound under Sections 3 and 4 of the Bureau of Corrections Act to look after the welfare of the inmates even "including families of inmates and their victims." Consequently, this Court would be engaging in subordinate legislation if it supplies the details on how to implement the Bureau of Corrections Act instead of providing for rules on either pleading and practice or protection and enforcement of constitutional rights. However, this realization that judicial functions do not include the duty to "fill in the gaps of the statute" should be distinguished from the courts' power to strike down laws or administrative issuances for being unconstitutional or invalid. In this case, striking down portions of administrative issuances does not result in the creation of new rules or new entitlements— it merely renders such stricken portions ineffectual.

As pointed out by Chief Justice Peralta, unless there is clear showing that the petitioners are actually suffering from a medical condition that requires immediate and specialized attention outside of their confinement—as, for instance, an actual and proven exposure to or infection with the SARS-CoV-2—they must remain in custody and isolation incidental to the crimes with which they were charged, or for which they are being tried or serving sentence. Only then can there be an actual controversy and a proper invocation of humanitarian and equity considerations that is ripe for this Court to determine.

Associate Justice Rodil V. Zalameda (Justice Zalameda) also shares a complementary view that contracting COVID-19 has become more speculative than real because there is no such case in petitioners' actual detention facility due to isolation from the public. This negates the actual risk of contracting COVID-19 despite congestion and despite their health condition. And although congested facilities may hasten the spread of COVID-19, such disease is not borne solely out of congested facilities. Furthermore, Justice Zalameda points out that the petitioners: (a) did not inform this Court of the COVID-19 situation in the areas where they propose to stay for their temporary release; and (b) did not show whether they will actually be in a better physical environment during their temporary release—as their possible temporary release during the duration of the ECQ should also be

subject to monitoring by the State.

Take for example the case of petitioner Reina Mae A. Nasino who was then pregnant while being detained and is currently facing charges for violations of R.A. No. 10591 and R.A. No. 9165. This Court cannot automatically and unfairly assume that the Bureau of Corrections is ill-equipped and inept in handling cases of pregnant inmates whether regarding their safekeeping or assisting during childbirth and rearing. To order the Bureau of Corrections to "undertake measures to protect pregnant inmates and their unborn children" would be an empty and redundant display of judicial power—amounting to a mere advisory opinion. Besides, it is premature to order any protective measure for safe delivery of pregnant inmates who have yet to give birth to their children. It is only when there is a lapse or deliberate neglect on the Bureau of Correction's performance of its duty resulting in injury to both mother and child or a violation of the pregnant inmate's right to be taken care of during childbirth can a cause (or even a right) of action arise. To recover at all, there must be some cause of action at the commencement of the suit.[141] Ultimately, this is up to the DOJ (in coordination with the Bureau of Corrections), CSC, DBM and DOF to determine the specific measures in which to protect the inmates in the custody of all detention facilities in the country.

On Releasing the Petitioners Pursuant to Equity:

In order to determine whether or not the petitioners (who pray for their temporary release on bail or recognizance for health and age reasons as well as for the creation of a "Prisoner Release Committee" with the accompanying issuance of ground rules for such release) may successfully invoke "equity" or "equity jurisdiction," it is necessary for the undersigned to explain the legal system of the Philippines and its ramifications in terms of adjudication.

At the outset, there are two (2) main categories of legal systems or traditions that originally came out of Europe: (a) the civil law system; and (b) the common law system. Countries like Spain, France, Germany, Portugal, Italy and Switzerland have been traditionally labelled as civil law jurisdictions;[142] while countries such as the United Kingdom (except Scotland which partly adopts the civil law system), the United States of America (US), Canada, Australia, New Zealand and other countries of the British Commonwealth have been known as common law jurisdictions.[143]

The civil law system (sometimes referred to as "statute law" or "statutory law" system by some legal scholars) pertains to the practice of deciding cases based on explicit provisions of law enacted by an authority like the legislature in the case of statutes or the people themselves in the case of constitutions. Here, courts ought to recognize "the generative capacity of legislation" for, according to orthodox civil law theory, a statute is conceived of as "being the most satisfactory and perfect method of realizing justice," and as the "unique source of judicial decisions." [144] In other words, Congress (or the people in the case of the Constitution) has the plenary power to enact laws pertaining to persons or things within its territorial jurisdiction; either to introduce new laws or repeal the old, unless prohibited expressly or by implication by the Constitution or limited or restrained by its own.[145] Concomitantly, case laws of civil law jurisdictions are governed by the doctrine of jurisprudence constante. Under the latter doctrine, a single decision is not binding on courts but, when a series of decisions form a "constant stream of uniform and homogenous rulings having the same reasoning," jurisprudence constante applies and operates with "considerable persuasive authority." [146]

Contrastingly, the common law system (sometimes refer to as "judge-made law" or "customary law" by some legal scholars) pertains to the practice of settling disputes based on customs supplemented with the general principles of justice, fairness and equity. In this legal system, parties to the dispute anchor their claims or defenses on common practices which they need to substantiate with evidence before the courts. Relatedly, case laws in common law jurisdictions are governed by the doctrine of stare decisis[147] where principles which have been

laid out in prior decisions create a binding precedents as regards future decisions dealing with essentially the same factual and/or legal questions.[148] This has the effect of rendering such prior judicial decisions as "customs" which essentially operate to bind future rulings.[149] Adherents to the common law system claim that their courts "find" rather than "make" the law and, "in doing so are fashioning and refining the law as it then existed in light of reason and experience;" thereby bringing "the law into conformity with reason and common sense." [150] They also claim that "those acts of Parliament, which have from time to time been made to enforce this universal law, or to facilitate the execution of [its] decisions, are not to be considered as introductive of any new rule, but merely as declaratory of the old fundamental constitutions of the Kingdom; without which it must cease to be a part of the civilized world." [151] In other words, common law consider statutes as merely re-affirmations of universal principles "discovered" thru logical reasoning and presumably used by judges in settling a particular dispute. Moreover, the practice where "justice must satisfy the appearance of justice" [152] is the legal norm.

The Philippines practices the mixed legal system due to its Spanish and American influence during the colonial periods. Its legal system which comprises primarily (and predominantly) of the civil law system inherited from Spain supplemented by common law principles inherited from the US.

The civil law aspect of the Philippine legal system derives its foundations from: (a) the presently defunct Act No. 2127 [153] which mandates that the language of the text of the law shall prevail in the interpretation of laws; [154] (b) the judicially-institutionalized maxims of *verba legis non est recedendum* [155] (from the words of a statute there should be no departure) and *noscitur a sociis* [156] (where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated); (c) Articles 7 and 10 of the Civil Code where "[l]aws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary" and "[i]n case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail;" [157] and (d) the constitutional power of this Court "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government" [158] and assess whether or not there is failure to act in contemplation of law. [159]

Concomitantly, the common law aspect of the Philippine legal system traces its roots from: (a) Articles 8 and 9 of the Civil Code where "[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines" and "[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws;" and (b) the long-standing judicial adage that "equity follows the law." [160]

As to the legal effect of case laws, the Philippines exercises a unique brand of the common law doctrine of *stare decisis*. Up to a certain degree, this Court will uphold an established precedent and, if need be, evaluate such prior ruling by: (a) determining whether the rule has proved to be intolerable simply in defying practical workability; (b) considering whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; (c) determining whether related principles of law have so far developed as to have the old rule no more than a remnant of an abandoned doctrine; and, (d) finding out whether facts have so changed or come to be seen differently, as to have robbed the old rule of significant application or justification. [161] It does not strictly and rigidly adhere to precedents akin to those of common law jurisdictions like the United Kingdom where judges make law as binding as an Act of Parliament. [162]

In line with the aforementioned backdrop of the Philippine legal system, the undersigned will now proceed with the merits of the case.

Here, the petitioners ask this Court to exercise its "equity jurisdiction" and to: (a) order their release on bail or on recognizance on humanitarian reasons; (b) order the creation of a "Prisoner Release Committee" to facilitate the release of all other clinically-vulnerable inmates all throughout the country; and (c) promulgate ground rules relevant to the release of eligible prisoners—all on the ground of "equity"

The undersigned maintains that this Court cannot grant their prayers due to the following reasons:

First, this Court cannot allow the release of the petitioners on the ground of equity without violating the Constitution.

Adoption by the Philippines of the civil law tradition as its predominant or primary attribute of its legal system finds its support in the principle of checks-and-balances or separation of powers. By the well-known distribution of the powers of government among the executive, legislative, and judicial departments by the Constitution, there was provided that marvelous scheme of check and balances which has been the wonder and admiration of the statesmen, diplomats, and jurists in every part of the civilized world.[163] In this system, the Legislative makes the law, the Executive implements the law, and the Judiciary applies and/or interprets the law. This tripartite distribution of powers is inherent in democratic governments where no single branch may dominate another. Stated differently, the principle of checks-and-balances is inherently woven into the fabric of democracy.

Under the Philippine civil law tradition, courts are principally bound to apply the law[164] and in such a way that it does not usurp legislative powers by judicial legislation.[165] It is only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent.[166] It ensures that laws are given full effect and that judicial doctrines are stable and consistent so that those who are bound may reasonably rely upon them in planning their affairs.[167]

Notwithstanding the presence of a considerably moderate leeway that the Judiciary enjoys in interpreting constitutional and statutory provisions, it is imperative to emphasize that there is a sharp distinction between: (a) liberal construction which courts are able to find out the true meaning of statutes from the language used, the subject matter, and the purposes of those framing them; and (b) the act of a court in engrafting upon a law something that has been omitted which someone believes ought to have been embraced—the former is a legitimate exercise of judicial power while the latter is judicial legislation forbidden by the tripartite division of powers among the three departments of government.[168] It presupposes that any perceived "gap" or legal vacuum should be within the parameters set by law for courts have no authority to short-circuit the democratic process of legislation and determine for themselves thru interpretation the best policy that should have been clearly enunciated by such statutes. As such, courts should always be mindful that, in establishing doctrines, it does not tread on the powers of Legislature—whose members are duly elected by the People as their representatives and as their instruments of enacting their Sovereign Will. This judicial paradigm ensures that the possibility of grave abuse of discretion is mitigated and that decisions are tethered to the law. Accordingly, it may be said that the primary duty of adhering to the text of the law is in recognition of the inherent nature of the democratic process wherein the people elect their representatives who, in turn, choose and pursue the appropriate policies on the former's behalf. Moreover, the principal judicial recourse of adhering to the text of the law before utilizing extrinsic aids or extraneous sources is the ultimate manifestation of impartiality and the most objective of ways to apply and interpret the law.

Presently, there is no constitutional provision or law which automatically grants bail, releases on recognizance or allows other modes of temporary liberty to all accused or inmates who are clinically-vulnerable (i.e. sickly, elderly or pregnant). As it stands, courts concerned will still have to consider the following guidelines for bail in Sections 5 and 9, Rule 114 of the Revised Rules of Criminal Procedure which is quoted hereunder:

Section 5. Bail, when discretionary. — Upon conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a)

That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;

(b)

That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;

(c)

That he committed the offense while under probation, parole, or conditional pardon;

(d)

That the circumstances of his case indicate the probability of flight if released on bail; or

(e)

That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu proprio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case.

x x x

Section 9. Amount of bail; guidelines. — The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to, the following factors:

(a) Financial ability of the accused to give bail;

(b) Nature and circumstances of the offense;

- (c) Penalty for the offense charged;
- (d) Character and reputation of the accused;
- (e) Age and health of the accused;
- (f) Weight of the evidence against the accused;
- (g) Probability of the accused appearing at the trial;
- (h) Forfeiture of other bail;
- (i) The fact that accused was a fugitive from justice when arrested; and
- (j) Pendency of other cases where the accused is on bail.

Excessive bail shall not be required. (Emphasis supplied)

The above-mentioned enumerations clearly pertain to purely factual questions that trial courts are equipped to pass upon. Moreover, the consideration of these factors which includes others not mentioned but are analogous to the ones provided means that such guidelines do not work in isolation.

In this case, the ground of "humanitarian reasons" raised by the petitioners only concerns the fifth factor—age and health of the accused. This means that, if this Court will make a pronouncement which automatically grants bail or recognizance thereby dispensing with the task of evaluating all the factors, such predetermination of an entitlement to provisional liberty will effectively create a class of prisoners with a substantive right for it is clear that inmates who are liberated are better off than those who are not. Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which in turn give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain redress for their invasions.[169] Since the function of adjudication implies a determination of facts,[170] dispensing with such function of evaluation will also have the effect of creating a substantive right. A judicial pronouncement which predetermines an eligibility or entitlement does not anymore undergo a "method of enforcing rights or obtaining redress of their invasions" which is the very essence of being "adjective" or "remedial" thereby intruding into the sphere of substantive law.

Admittedly, the Court may "fill in the gaps" of the law in some circumstances.[171] But such "gaps" should be within the parameters of the law and such act of "filling" should not amount to the creation of a substantive right with a corresponding substantive obligation. Besides, the factors in Section 9, Rule 114 are intended to "fix a reasonable amount of bail." In other words, they cannot be used in the same manner as the factors in Section 5 of the same Rule to determine whether an accused is entitled to bail.

Here, the undersigned acknowledges that, under Section 25 of the Revised Rules of Criminal Procedure, Executive Judges of the Regional Trial Courts have the responsibility to "conduct monthly personal inspections of provincial, city, and municipal jails and their prisoners within their respective jurisdictions;" "ascertain the number of detainees, inquire on their proper accommodation and health and examine the condition of the jail facilities;" and "order the segregation of sexes and of minors from adults, ensure the observance of the right of detainees to confer privately with counsel, and strive to eliminate conditions inimical to the detainees." However, this does not mean that the "age and health of the accused" shall be the only determining factor for the grant or denial of bail (assuming for the sake of argument that the factors in Sections 5 and 9 are interchangeable) as it is obvious that there are other factors that courts in bail applications should consider.

Relatedly, the creation of a "Prisoner Release Committee" entails the need for establishing funds for operational purposes. Since Section 24, Article VI of the Constitution explicitly states that appropriation bills shall originate exclusively at the House of Representatives, any attempt on the part of this Court to order (premised on interpretation) for a disbursement or release of funds for a particular purpose which is devoid of any constitutional or statutory fiat will cross the realm of legislative functions. Granting reliefs or inventing remedies which are totally devoid of clear constitutional or statutory basis is simply *ultra vires*. As maintained by Justice Bernabe, it is beyond the power of the Court to institute policies that are not judicial in nature. She further explains that, while the Court understands the plight of petitioners in light of this unprecedented public health emergency, the creation of a similar Prisoner Release Committee is a policy matter best left to the discretion of the political branches of government.

At this point, it becomes noteworthy to stress that the civil law tradition does not essentially allow courts to craft policies of substantive import. In a book co-authored with Bryan A. Garner (famously known as the Editor-in-Chief of Black's Law Dictionary), the late former US Supreme Court Associate Justice Antonin Scalia laments:

Ours is a common-law tradition in which judicial improvisation has abounded. Statutes were a comparatively infrequent source of English law through the mid-19th century. Where statutes did not exist, the law was the product of judicial invention, at least in those many areas where there was no accepted common law for courts to "discover." It is unsurprising that the judges who used to be the lawgivers took some liberties with the statutes that began to supplant their handiwork—adopting, for example, a rule that statutes in derogation of the common law (judge-made law) were to be narrowly construed and rules for filling judicially perceived "gaps" in statutes that had less to do with perceived meaning than with the judges' notions of public policy. Such distortion of texts that have been adopted by the people's elected representatives is undemocratic. In an age when democratically prescribed texts (such as statutes, ordinances, and regulations) are the rule, the judge's principal function is to give those texts their fair meaning.

Some judges, however, refuse to yield the ancient judicial prerogative of making the law, improvising on the text to produce what they deem socially desirable results—usually at the behest of an advocate for one party to a dispute. The judges are also prodded by interpretive theorists who avow that courts are "better able to discern and articulate basic national ideals than are the people's politically responsible representatives." On this view, judges are to improvise "basic national ideals of individual liberty and fair treatment, even when the content of these ideals is not expressed as a matter of positive law in the written Constitution."

To the extent that people give this view any credence, the notion that judges may (even should) improvise on constitutional and statutory text enfeebles the democratic polity. As Justice John Marshall Mariano warned in the 1960s, an invitation to judicial lawmaking results inevitably in "a lessening, on the one hand, of judicial independence and, on the other, of legislative responsibility, thus polluting the bloodstream of our system of government." Why these alarming outcomes? First, when judges fashion law rather than fairly derive it from governing texts, they subject themselves to intensified political pressures—in the appointment process, in their

retention, and in the arguments made to them. Second, every time a court constitutionalizes a new sliver of law—as by finding a "new constitutional right" to do this, that, or the other—that sliver becomes henceforth untouchable by the political branches. In the American system, a legislature has no power to abridge a right that has been authoritatively held to be part of the Constitution—even if that newfound right does not appear in the text. Over the past 50 years especially, we have seen the judiciary incrementally take control of larger and larger swaths of territory that ought to be settled legislatively.

It used to be said that judges do not "make" law—they simply apply it. In the 20[th] century, the legal realists convinced everyone that judges do indeed make law. To the extent that this was true, it was knowledge that the wise already possessed and the foolish could not be trusted with. It was true, that is, that judges did not really "find" the common law but invented it over time. Yet this notion has been stretched into a belief that judges "make" law through judicial interpretation of democratically enacted statutes. x x x[172]

In the context of US Constitutional law, the aforementioned commentary will surely spark debates. Aside from the fact that the US had always considered itself as a common law jurisdiction since its inception, a perennial theoretical battle has always divided the US Supreme Court into two (2) opposing ideological camps primarily because of the "unenumerated rights clause" in the Ninth Amendment of their Constitution which reads:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. (Emphasis supplied)

The "liberal" justices of the US Supreme Court posit that they are constitutionally-empowered and authorized to recognize these "certain rights" which are "implied" by their Constitution. They are mostly known to be advocates of the "Living Constitution" doctrine where it is ideal to "interpret" the provisions in such a way as they "adapt to the times" and "as understood and intended by the people of the present." The "conservative" justices, on the other hand, argue that it should be Congress—being the people's representatives—who are constitutionally-authorized to determine these "implied certain rights." They believe that it is "undemocratic" to have the unelected judges craft or select policies to meet the exigent needs of the times. Understandably, the terms "certain rights" in the Ninth Amendment makes Justice Scalia's conservative and highly-textualist statements controversial in the arena of US Constitutional law discussions.

In the context of Philippine Constitutional law discussions, such "conservative-versus-liberal" debates have little bearing or relevance to jurisprudence. The present Philippine Constitution, although it draws most of its significant provisions from the US Constitution, does not have a provision similar or related to the "unenumerated rights clause" of the Ninth Amendment which suggests either the existence of implied rights or that the legal system or tradition should predominantly adhere or be based on common law instead of civil law. The Declaration of Principles and State Policies in Article II as well as the Bill of Rights in Article III contain no such "unenumerated rights" provision. Neither does Article VIII nor all the other articles in the Constitution have the effect of giving the Judiciary the power to "determine" any right which may have been "implied" in the Constitution. In fact, the opposite seems to be the case as it is explicitly shown in Section 1, Article VIII of the Constitution which states:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

There is nothing in the aforementioned provision that the power "to settle actual controversies" which can be

interpreted to mean that the Judiciary may "recognize certain rights" implied in the Constitution thru interpretation or simple application of laws. Even the word "includes," when used in the context of the whole second paragraph clearly appears to merely enumerate or state the scope of "judicial power" which includes both the duty to—(a) settle actual controversies; and (b) determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. Moreover, it cannot be reasonably implied that the term "justice" in the phrase "courts of justice" gives magistrates an unfettered prerogative of straying away from legislative enactments. On the contrary, the phrase "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction" strongly suggests that even judicial functions should be within the parameters of the law. Such principle is shown by rulings explaining that the writ of certiorari's purpose is supervisory to keep inferior courts within the parameters of their respective jurisdictions.[173] Since jurisdiction is "the power and authority of a court to hear, try, and decide a case"[174] "conferred only by the Constitution or by statute,"[175] it is inevitable to assume that explicit provisions define the limits of judicial power only to those matters within the confines of the law.

Besides, the adjudicative approach of primarily resorting or deferring to the text of the law is not without cogent reasons. It greatly minimizes, if not removes, any personal and subconscious bias that an unelected magistrate may inadvertently factor in weighing the rights or interests and obligations of conflicting parties. This is the reason why a judge must always maintain cold neutrality and impartiality for he or she is a magistrate, not an advocate.[176] Moreover, such approach is also in recognition of the idea that, in a democratic and republican system of government, laws are borne out of the general consensus of the people's directly chosen representatives. It ensures that magistrates do not wander far away into their own subjective preferences. As such, what it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say.[177]

Accordingly, those claiming that the resort to common law is "progressive" fail to realize that even such legal tradition is as ancient as the civil law tradition relative to the modern times. The idea is not novel or revolutionary such as to create a messianic realization that our Judiciary, all on its own, should suddenly discard the civil law aspect of its legal tradition and wholly replace it with common law.

However, the undersigned is not saying that the Philippines cannot change the primary aspect of its legal system or tradition from civil law to common law. Such shift in legal tradition should be done in a constitutionally-permissible manner. Stated differently, there are constitutionally-sanctioned processes or remedies available to change a policy, governmental structure, or legal culture. These processes should not be bypassed for the sake of convenience or disputable exigencies if this government is one "of laws and not of men." All that the undersigned is emphasizing is that a shift in legal tradition would require no less than a constitutional (or legislative for purely statutory rights and obligations) amendment or revision[178]—a process explicitly sanctioned in the Constitution itself. For now, the Judiciary cannot short-circuit the legislative democratic process and invent a new right in the guise of interpretation.

At some point, the people should be able to bear the brunt of being responsible in their exercise of the constitutional right to suffrage. The present existing policies are but fruits of the seeds sowed by the people thru the exercise of their right to vote. Policies are virtually the results of public consensus—of majoritarian choice, if the basic ideals of democracy itself are to be respected. Those who are unhappy with these policies have the option to vote for a new set of officials come elections. For the majority, this is relatively effortless; but for the minority, it is up to them to convince those on the other side on the merits of their choices—there should be no compulsion, even thru judicial enforcement, as it is a vice on sovereign will; unless, of course, fundamental rights

are arbitrarily violated. More importantly, those principles and values that we have come to accept as "absolute" or to recognize as "inherent" did not even start out as such—they arose and developed as a result of the people's collective and cumulative experiences as well as their corresponding responses over time. We might hold some values or principles dear to our hearts, but that does not mean that we are absolutely entitled to legally enforce them against others just because we strongly believe in them; more so that strong personal beliefs especially of unelected magistrates do not make general consensus. These values and principles must first be recognized by the Constitution or law in a clear and discernible manner. Surely, principles and values are not static just as all the other aspects of the world that influence or dictate our lives; but they have to function according to the legal platform in which they are recognized.

Besides, society has matured to the point where a fundamental safeguard known as the Bill of Rights have been positively recognized in the Constitution instead of implied from the vague and undefined concept of common or natural law. Thru experience and thru democracy's emergence, fears that fundamental rights and freedoms might be trumped by the arbitrariness of government's legislature in wielding its power have long dissipated. The Constitution had already placed sovereign power in the hands of the people and had bound the hands of the government from abusing its power.

Second, courts cannot take an unbridled approach of considering anything judicially-perceived to be "lacking" in the text of the law as "gaps" which instantaneously call for the application of equity because it violates the principle of separation of powers.

Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate.[179] It has been described as "'justice outside legality.'"[180] As the complement of legal jurisdiction, equity seeks to reach and do complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent so to do.[181]

In its previous rulings, this Court has applied the concept of "equity jurisdiction" to: (1) relax stringent procedural rules in order to serve substantial justice or to resolve the case on its merits based on the evidence;[182] (2) prevent unjust enrichment and ensure restitution;[183] (3) reconvey land to the party found to be the true owner;[184] (4) appoint a receiver in an intra-corporate dispute to prevent waste and dissipation of assets and commission of illegal acts as well as redress the injuries of the minority stockholders against the wrongdoing of the majority;[185] (5) review the records of the case in order to determine which findings should be preferred as more conformable to the evidentiary facts;[186] (6) adjusting the rights of parties in accordance with the circumstances obtaining at the time of rendition of judgment by reducing the cost of the land in a contract of sale due to the "depreciation of currencies" vis-à-vis the costs of completion of construction;[187] (7) fix the reckoning point of interest from the date of the finality of the decision;[188] (8) reduce interests and penalties;[189] (9) compel the registered owner to reconvey the right, interest, share and participation in the registered parcel of the one lawfully entitled thereto;[190] (10) settle boundary disputes;[191] (11) appoint a "special master" to conduct and supervise an election of directors when it appears that a fair election cannot otherwise be had;[192] (12) remand the case to the trial Court for determination on the merits of the issue of validity of the issuance of a free patent and of the title which followed as a matter of course;[193] (13) brush aside the reglementary periods in the filing of an election protest;[194] (14) give due course to or reverse the dismissal of an appeal;[195] or (15) order a refund in a case involving a contract of repurchase of real property where there would have been a forfeiture of both land and hard-earned money.[196] In all of these cases, the undersigned evinces his observations that: (1) the grant of a relief based on equity was, in turn, based on some specific provision of law found on the Civil Code and other laws which allow for the application of equity to some degree

(e.g. Articles 19, 477, 1192, 1229, 1310, 1359, 1362, 1423, 1486, 1520, 1547, 1601, 1603, 1711, 1722, 1741, 1762, 1794, 1797, 1798, 1819, 1831, 2142, 2208, 2215 and 2227 of the Civil Code); and (2) the exercise of equity jurisdiction was resorted to set aside the rules of procedure in favor of resolving cases on the merits or upholding substantive rights.

In the instant case, the petitioners' reliance on equity is misplaced for they are asking this Court to grant them a relief not supported by any provision of the Constitution or law. While the rules on bail appear to be inflexible on the petitioners' part, equity does not authorize courts to create substantive rights by way of "adjustment" and in the guise of interpretation. Granting provisional liberty to the petitioners may or may not be morally right depending on the personal belief of each individual person. However, what is "moral," "just," "fair," or "equitable" is highly subjective and relative; which is why a reasonable inference (such as the text of a law) is needed to minimize subjectivity and strengthen the impartiality of presiding magistrates and mitigate instances of grave abuse of discretion. As aptly put in *Rural Bank of Parañaque, Inc. v. Remolado, et al.*:^[197]

Justice is done according to law. As a rule, equity follows the law. There may be a moral obligation, often regarded as an equitable consideration (meaning compassion), but if there is no enforceable legal duty, the action must fail although the disadvantaged party deserves commiseration or sympathy.

More importantly, the Court sitting en banc in *Republic v. Provincial Government of Palawan*^[198] had emphatically declared:

The Court finds the submission untenable. Our courts are basically courts of law, not courts of equity. Furthermore, for all its conceded merits, equity is available only in the absence of law and not as its replacement. As explained in the old case of *Tupas v. Court of Appeals*:

Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law. We said in an earlier case, and we repeat it now, that all abstract arguments based only on equity should yield to positive rules, which pre-empt and prevail over such persuasions. Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force. The applicable maxim, which goes back to the ancient days of the Roman jurists - and is now still reverently observed - is "*aequetas nunquam contravenit legis*." (Emphasis supplied)

At this juncture, the undersigned deems it the proper time to point out that equity should not encompass all matters considered or perceived as "absence" or "gaps" of the law. The logic is simple: the areas or subjects beyond or outside the confines of written law are infinite in number. Individual cognition of humans allows each one to use his or her reasoning faculties differently from one another. In effect, it would almost certainly lead each magistrate to formulate his or her own version of natural law from the infinite area outside of written law. Consequently, if courts are allowed to grant reliefs in recognition of substantive rights not expressly intended by Congress to be included, judicial legislation would result. Specifically, if Articles 9 and 10 of the Civil Code are interpreted to give courts an unfettered discretion in choosing what subjects they perceive as "gaps" or "absence" in the law, then "the fundamental constitutional principles which underlie our tripartite system of government"^[199] would be put to naught as legislative functions may now be indirectly exercised by a branch of government other than Congress. If the constitutional policy on the separation of powers is to be respected, the same provisions of the Civil Code cannot also be interpreted to allow Congress to impliedly delegate its legislative powers to the courts in the guise of interpretation. Moreover, disregarding explicit provisions and even established precedents on the sole ground of equity creates jurisprudential instability because the application of laws and legal principles will become unpredictable. Certainly, society would be less chaotic if all those governed by our laws would have the ability to reasonably predict the consequences of their actions. Adverse sanctions

which can be reasonably foreseen diminish the exposure to exasperation as well as the allure of taking the law into one's own hands.

As such, a resort to equity is more of an exception rather than the general rule. It is not at par with written laws as it is subjective. Textual provisions are clear manifestations of what Congress intends to include as subjects of legislation—equity is, frankly, a mere adjudicative approximation of what such intent includes. The wisdom behind limiting equity's application within the confines of written law is to prevent magistrates from straying away from fairly discernible legislative intent. Such is the reason why interpolation is improper where the meaning of the law is clear and sensible, either with or without the omitted word or words, because the primary source of the legislative intent is in the language of the law itself.[200] Moreover, emotions used as an attempt to trigger the application of equity are unstable and an emotional approach to adjudication often promotes bias, thereby slowly eroding a magistrate's impartiality. Hence, for equity to be properly applied: (1) it must be supplementary to written law; (2) it must not amount to a creation or grant of judicially-enforceable substantive rights or obligations; (3) it must, at least, be based on or consistent with some specific provision of law in view of the principle "that every statute must be so interpreted and brought in accord with other laws as to form a uniform system of jurisprudence – *interpretere et concordare legibus est optimus interpretendi*;"[201]and (4) it must subject any catch-all provision to the principle of *eiusdem generis* "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned." [202] The undersigned's intention here is not to strangle equity but to put it in its proper place in the context of statutory law. Therefore, it is apt that the political branches of government be left to their devices to pursue adaptive measures while the Judiciary should endeavor itself to preserve and foster legal stability.

Third, equity is applied only in the absence— never in contravention— of statutory law.[203] In this regard, the Recognizance Act[204] provides for the statutory requirements for release on recognizance. Section 5 of the same law states:

Section 5. Release on Recognizance as a Matter of Right Guaranteed by the Constitution. – The release on recognizance of any person in custody or detention for the commission of an offense is a matter of right when the offense is not punishable by death, reclusion perpetua, or life imprisonment: Provided, That the accused or any person on behalf of the accused files the application for such:

(a)

Before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court; and

(b)

Before conviction by the Regional Trial Court: Provided, further, That a person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law, or any modifying circumstance, shall be released on the person's recognizance. (Bold and underscoring supplied)

Thus, when the offense is punishable by reclusion perpetua, life imprisonment, or death, the accused's release on recognizance is no longer a matter of right—it becomes discretionary.

In addition, Section 12 of the Recognizance Act provides:

Section 12. No Release on Recognizance After Final Judgment or Commencement of Sentence; Exception. – The benefits provided under this Act shall not be allowed in favor of an accused after the judgment has become final or when the accused has started serving the sentence: Provided, That this prohibition shall not apply to an accused who is entitled to the benefits of the Probation Law if the application for probation is made before the convict starts serving the sentence imposed, in which case, the court shall allow the release on recognizance of the convict to the custody of a qualified member of the barangay, city or municipality where the accused actually resides. (Emphasis supplied)

The afore-cited provision prohibits any release on recognizance after a judgment has become final or when the accused has started serving his sentence. The only recognized exception pertains only to the release of those detainees who are entitled to the benefits of the Probation Law; but only if the application for probation is made before the convict starts serving the sentence imposed.

As to the petitioners' prayer for the grant of bail, Section 13, Article III of the Constitution is clear that bail is not a matter of right in cases where the evidence of guilt is strong of those persons charged with offenses punishable by reclusion perpetua. This simply means that a specific constitutional provision exists which requires a prior determination that the evidence of guilt is not strong for those accused charged with offenses punishable by reclusion perpetua before bail may be granted. Such constitutionally-required prior determination cannot be dispensed by reason of equity or exercise of equity jurisdiction.

As aptly explained by Justice Bernabe, our Constitution and statutes prescribe a legal framework in granting bail or recognizance to persons deprived of liberty pending final conviction. When the accused is charged with an offense punishable by death, reclusion perpetua or life imprisonment, the usual procedure is for the accused to apply for bail with notice to the prosecutor. Pursuant to the rules, the accused may also seek a reduction of the recommended bail amount,[205] or seek a release through recognizance upon satisfaction of the conditions set for by law.[206]

Complementing this view, Associate Justice Amy C. Lazaro-Javier also opined that it is not necessary to invoke equity or humanitarianism so courts could have the needed flexibility to do justice in a particular case under specifically unique circumstances, or to be able to rely upon broad moral principles of reasonableness, fair dealing and good conscience in resolving issues.

In essence, the existence of the constitutional provisions on bail as well as the Recognizance Act evidently militates against the resort to equity.

Fourth, the Court's ruling in *Enrile v. Sandiganbayan*, et al.[207] is inapplicable in the instant case.

The grant or denial of bail applications contemplates three (4) scenarios:

(1)

Bail is granted as a matter of right before or after conviction of the accused by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities or Municipal Circuit Trial Court.[208]

(2)

Bail is granted as a matter of right before conviction of the accused by the Regional Trial Court for an offense not punishable by death, reclusion perpetua or life imprisonment.[209]

(3)

Bail is discretionary on the part of the Regional Trial Court upon conviction of the accused of an offense not punishable by death, reclusion perpetua or life imprisonment; or on the part of the appellate courts (Court of Appeals, Sandiganbayan and Court of Tax Appeals) if the records had already been transmitted to them or if the nature of the offense was downgraded by the trial court upon conviction from non-bailable to bailable.[210]

(4)

Bail shall be denied or cancelled if the penalty imposed by the trial court is imprisonment exceeding six (6) year due to the following or similar circumstances: (a) that the accused is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;(b) that the accused has previously escaped from legal confinement, evaded sentence, or violated the conditions of his or her bail without valid justification; (c) that the accused committed the offense while under probation, parole, or conditional pardon; (d) that the circumstances of the accused's case indicate the probability of flight if released on bail; or (e) that there is undue risk that he may commit another crime during the pendency of the appeal.[211]

(5)

Bail shall not be admitted if an accused is charged with a capital offense or an offense punishable by death, reclusion perpetua or life imprisonment when evidence of guilt is strong regardless of the stage of the criminal prosecution.[212]

In situations where bail is discretionary, the judge who either issues a warrant of arrest or grants a bail application while fixing a reasonable amount is duty-bound to primarily consider the following factors which are not limited to the previously mentioned factors in Section 9, Rule 114 of the Revised Rules of Criminal Procedure. In other words, a bail hearing is an indispensable requirement; especially when the accused is charged with an offense punishable by reclusion perpetua, life imprisonment, or death.[213]

In *Enrile*, the Court emphasized that while the Philippines honors its "commitment to uphold the fundamental human rights as well as value the worth and dignity of every person," the grant of bail to those charged in criminal proceedings as well as extraditees must be based upon a clear and convincing showing: (a) that the detainee will not be a flight risk or a danger to the community; and (b) that there exist special, humanitarian and compelling circumstances. Under the rules on syntax, the conjunctive word "and" denotes a "joinder or union" of words, phrases or clause.[214] This means that "special, humanitarian and compelling circumstances" as a ground for granting bail does work in isolation—it has to be accompanied by other considerations. Moreover, the same ruling also emphasized that the "principal purpose of bail... is to guarantee the appearance of the accused at the trial, or whenever so required by the court." Meaning, when this Court reviewed the factual findings of the Sandiganbayan which were exposed during the bail hearings, all relevant circumstances were first balanced on the scales of justice before a ruling was handed down—bail was not automatically granted as a matter of right due to humanitarian reasons; but as a matter of discretion due to other accompanying factors. Besides, as asserted by Chief Justice Peralta, the *Enrile* Ruling cannot be considered as *pro hac vice*—a Latin term meaning "for this one particular occasion"—cannot be relied upon as a precedent to govern other cases[215] because such type of ruling violates the equal protection clause of the Constitution.[216]

Here, the petitioners do not deny the allegations of the OSG that they are indeed charged with heinous crimes

related to national security and are also valuable members of the CPP-NPA-NDF and its affiliates. Even if the alleged facts underlying humanitarian reasons were to be accepted without question, they still have to be weighed against the fact that the charges against the petitioners involve serious matters of national security and public safety. In the petitioners' case, one need not stretch his or her imagination in contemplating a situation where a person of deteriorating health, for instance, can still commit crimes such as conspiracy to commit rebellion or can become an accomplice or accessory to the commission of rebellion. In the age of modern technology where the use of cellular phones is rampant and access to the internet is relatively effortless, a strong possibility looms that the petitioners may still possess the necessary ability to strategize hostile measures against the government or give aid to their active comrades by providing intelligence reports in their surroundings. Even if the Court were to ignore the concern of the possibility that some petitioners may be flight risks, the possibility of endangering the community is not remote. Such is the reason why this Court in *Villaseñor v. Abano, et al.*[217] enunciated that both "the good of the public as well as the rights of the accused" and "the need for a tie to the jurisdiction and the right to freedom from unnecessary restraint before conviction under the circumstances surrounding each particular accused" should all be balanced in one equation. As a consequence, the petitioners' reliance on this ruling is patently misguided. In the case of former Senator Juan Ponce Enrile, there was showing that he was neither a flight risk nor a danger to the community.

Fifth, the grant or denial of bail applications is within the jurisdiction of the trial courts well-equipped to handle questions of fact.

The Rules of Criminal Procedure requires a hearing before resolving a motion for bail by persons charged with offenses punishable by reclusion perpetua where the prosecution may discharge its burden of showing that the evidence of guilt is strong.[218] This hearing, whether summary or otherwise,[219] is mandatory and indispensable.[220] Connectedly, a "summary hearing" means such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is merely to determine the weight of the evidence for the purpose of bail.[221] If a party is denied the opportunity to be heard, there would be a violation of procedural due process.[222] Thus, in applications for bail, courts are duty-bound to: (a) notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation; (b) conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion; (c) decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution; and (d) if the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond—otherwise; bail should be denied.[223] Therefore, regardless of the trial court's disposition in applications for bail, the order should not be tainted with grave abuse of discretion and should give all parties an opportunity to present their respective pieces of evidence to support their causes or defenses.[224] As elucidated by Justice Bernabe, the Court would be betraying its mandate to apply the law and the Constitution should it prematurely order the release of petitioners on bail or recognizance absent the requisite hearing to determine whether or not the evidence of guilt against them is strong.

Relatedly, it is a settled rule that this Court is not a trier of facts.[225] With respect to a direct invocation of this Court's original jurisdiction writs, the same shall not be allowed unless the redress desired cannot be obtained in the appropriate courts.[226] The rationale for this rule is two-fold: (a) it would be an imposition upon the precious time of this Court; and (b) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts.[227] Like Justice Bernabe, Associate Justice Henri Jean Paul B. Inting also shares the view that the Court cannot prematurely order the petitioners' release, either on bail or recognizance, without the mandatory bail

hearing for the determination of the strength of the prosecution's cases against them because it is not equipped to receive evidence and make separate factual assessments for each petitioner in order to determine his or her entitlement to bail.

Here, the petitioners pray for their release on recognizance or bail and for the creation of a "Prisoner Release Committee" which strongly indicates that theirs is a petition for bail or recognizance filed directly before this Court. This cannot be done because, as previously pointed out, the factors enumerated in Sections 5 and 9, Rule 114 of the Revised Rules of Criminal Procedure are purely factual in nature. To determine whether evidence of guilt of the accused is strong, the conduct of bail hearings is required where the prosecution has the burden of proof, subject to the right of the defense to cross-examine witnesses and introduce evidence in rebuttal.[228] Only after weighing the pieces of evidence as contained in the summary will the judge formulate his or her own conclusion as to whether the evidence of guilt against the accused is strong based on his discretion.[229]

Besides, the principle espoused in *Enrile* cannot be applied in the instant case for the purpose of entertaining the present petition because, in the case of former Senator Juan Ponce Enrile, a bail hearing was indeed conducted by the Sandiganbayan. The same cannot be said of the petitioners who, whether deliberate or not, failed to provide enough data or information in their petition involving the following matters: (a) specific charges, nature of their crimes and corresponding penalties; (b) stages of trial or proceedings; (c) specific dates and lengths of detention; (d) any motion filed before the trial courts for provisional release and; (e) present results of physical examinations on their status of health relating to COVID-19. For this reason, the Court has no way of assessing whether or not the evidence of guilt as to the petitioners is strong. As observed by both Justice Bernabe and Justice Caguioa, the petitioners have not shown that any of them have filed the necessary bail applications. It was also not shown by the petitioners that bail hearings were conducted in their respective cases in order to determine whether or not there exists strong evidence of guilt, which would, in turn, determine their qualification or disqualification for the reliefs prayed for. As Justice Zalameda bluntly puts, the petitioners are seeking to carve out for themselves a special circumstance that is not present in our established rules but failed in their duty to present the reasons why the general rule is not applicable to them; in effect, they want this Court to turn a blind eye to the established rules which take into account the nature and gravity of the crimes committed, as well as the number of years served.

Even assuming for the sake of argument that the petitioners had managed to attach documents proving the foregoing pieces of information, the determination of whether or not guilt is strong should still be lodged with the trial courts who are well-equipped to handle them. As precisely declared by Justice Caguioa, the want of necessary factual details brought about by a proper bail hearing precludes this Court from a full calibration of each petitioner's eligibility for either release on bail or recognizance.

Incidentally, since the petitioners failed to provide the data as to whether they have previously applied for bail, the Court is also not in the proper position to direct all the trial courts where each of the petitioners' respective cases are pending to conduct bail proceedings or expedite unresolved bail applications. To do so would constitute an implied nullification of previously concluded bail proceedings in which some of the respective trial courts may have found strong evidence of guilt against some of the petitioners. This would result in a re-hearing or duplication of otherwise concluded proceedings. As such, the same petition should have been individually and separately filed before the respective trial courts where each the petitioners' cases are currently pending. Otherwise, this Court will be flooded with a deluge of bail applications seeking for a factual evaluation of every petitioner's unique circumstances.

Sixth, the respondents have adequately shown that they have already undertaken efforts to address the COVID-19 concern.

Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them.[230] Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support.[231] The principle is based on convenience and expediency in securing and introducing evidence on matters that are not ordinarily capable of dispute and are not bona fide disputed.[232]

Here, the Court can take judicial notice of the fact that COVID-19 is transmitted from person to person via droplets, contact, and fomites. It is transmitted when one individual talks, sneezes, or coughs producing 'droplets' of saliva containing the COVID-19 virus.[233] These droplets are then inhaled by another person. COVID-19 transmission usually occurs among close contacts. It is therefore important to maintain a distance of more than one meter away from any person who has respiratory symptoms.[234] Likewise, it has been conveyed to the general public that there are population groups who have a higher risk of developing severe COVID-19 infections such as individuals aged 60 and above, pregnant, and those with underlying conditions or co-morbidity at risk of COVID-19 exacerbation.[235] This information is of public knowledge as has been imparted not only by international COVID-19 experts through different information media but also through the official acts of the executive department, through the issuances and advisories of the Department of Health and the country's Inter-Agency Task Force on Emerging Infectious Diseases (IATF-EID). As such, mandatory and discretionary judicial notice can be taken on this fact.

On a related note, the OSG in its Comment stated the specific precautions used by the Bureau of Corrections and the Bureau of Jail Management and Penology (BJMP) to control the spread of the COVID-19 pandemic and attached as an annex the April 21, 2020 BJMP Verified Report[236] which included relevant information on the following matters:

(1)

COVID-19 Management in the:

(a)

Manila City Jail Male Dormitory

(b)

Manila City Jail Female Dormitory

(c)

Metro Manila District Jail - Annex 4

(d)

Taguig City Female Dormitory

(2)

Best Practices in COVID-19 Management in all Regions

(3)

Isolation Facilities

(4)

Distribution of Medical Health Personnel and;

(5)

Compendium of Policies and Interim Guidelines on COVID-19 Management.

In its Verified Report, the BJMP stated that it was adopting the following specific measures to prevent the spread of COVID-19 in detention facilities, to wit: (a) the suspension of inmate visitation as early as March 11, 2020; (b) continuous conduct of information dissemination on precautionary measures against COVID-19; (c) provision of facemasks and mandatory wearing of such among persons deprived of liberty (PDLs); (d) social distancing among PDLs; (e) regular exercise of PDLs to boost their immune system; (f) distribution of vitamins among PDLs; (g) medicines and special diets given to PDLs who have pre-existing medical conditions; (h) rigid disinfection of supplies and deliveries inside prison' cells; (i) regular sanitation and disinfection of the whole jail perimeter including jail buildings and jail cells; (j) improvised foot bath to prevent virus to be carried inside jail cells and; (k) special monitoring for PDLs with pre-existing conditions.

In case where PDLs become infected or show symptoms of COVID-19, the BJMP undertakes in its Verified Report to pursue the following safety measures: (a) immediate isolation of PDL with COVID-19 symptoms; (b) assessment by the jail nurse on the patient; (c) if associated with COVID-19, the jail officials refer the patient to the Department of Health (DOH) in accordance with the DOH referral procedure; (d) immediate conduct of contact tracing to monitor the extent of inmate exposure; and (e) the jail official also informs the inmate's family of the status and health condition of the inmate who is infected. Moreover, the BJMP Verified Report also states that there are already established isolation rooms equipped with medical equipment and supplies in case of inmate infection among PDLs. The jail infirmary also operates twenty-four (24) hours a day.[237]

Meanwhile, the April 22, 2020 Bureau of Corrections Verified Report[238] submitted along with the OSG's Comment provides for the following information:

(1)

COVID-19 Management in:

(a)

Correctional Institution for Women

(b)

New Bilibid Prison

(2)

Best Practices in COVID-19 Management in the Bureau of Corrections

(3)

Isolation Facilities

(4)

Compendium of Policies and Interim Guidelines on COVID-19 Management.

The Bureau of Corrections' Verified Report contains specific measures adopted throughout correctional facilities in the country, to wit: (1) general information drive about COVID-19; (2) no contact policy between inmates; (3) strict fourteen (14) days quarantine for newly committed PDLs; (4) proliferation and creation of isolation facilities to accommodate future COVID-19 patients; (5) no face mask, no entry policy; (6) the immediate deployment of manpower for the construction and renovation of facilities of PDLs and; (7) strict monitoring of ingress and egress of health personnel across jail buildings.[239]

Indeed, the whole nation is under unprecedented times with the spread of the COVID-19 pandemic. The threat of infection of COVID-19 reaches everyone even Filipinos outside prison jails. Although inmates of prison jails are at high risk of infection, the Bureau of Corrections and the BJMP have been steadfastly containing the spread of the pandemic inside jails throughout the country. Based on the records available to this Court, it appears that both bureaus have enforced proper social distancing and are safeguarding PDLs with special health conditions or high-risk inmates. Moreover, both bureaus also have in place isolation methods to secure PDLs in the unfortunate event an inmate becomes infected with COVID-19. As observed by Chief Justice Peralta, the Bureau of Corrections even put in place the necessary infrastructure to provide inmates a facility for online visits/video conference with their relatives. In light of these developments, the Filipino people including PDLs throughout the country should be secure in their thoughts that both bureaus are presumably performing their duties in properly handling the spread of the COVID-19 virus in detention facilities despite budgetary constraints.

Seventh, the petitioners have ample remedies under existing laws and Supreme Court issuances.

Notably, the Court is certainly attuned to the extreme needs of decongesting detention facilities to promote social distancing during this critical time. Initially, this Court thru the Office of the Chief Justice (OCJ) had already taken the initiative of issuing the following Administrative Circulars to address the problem of jail congestion in this time of the COVID-19 pandemic, to wit: (a) Administrative Circular No. 38-2020; (b) Administrative Circular No. 37-2020; (c) Administrative Circular No. 33-2020. Likewise, the Office of the Court Administrator (OCA) also issued the following circulars: (a) OCA Circular No. 93-2020; (b) OCA Circular No. 91-2020; and (c) OCA Circular No. 89-2020—to implement the OCJ's administrative circulars. Both the OCJ and the OCA's circulars are intended to expedite the process of resolving bail applications currently pending especially those of indigents as well as providing guidelines for videoconferencing and electronic filing. All that the petitioners have to do is avail of the benefits under these issuances which are more than adequate to address their concerns on the COVID-19 pandemic—unless they are not so qualified or they failed to post the required bail amount, then they have to remain in detention and undergo trial to prove their innocence.

To date, the following issuances have been promulgated to directly and indirectly facilitate the proceedings involving the possible release of PDLs:

DATE

ISSUANCE

SUBJECT

March 13, 2020

Administrative Circular No. 29-2020

To All justices and COURT personnel of the CA, SB, CTA and personnel of the first and second level courts"
Re: Rising Cases of COVID-19 Infection

March 13, 2020

Administrative Circular No. 30-2020

To All justices and personnel of the collegiate courts and judges and personnel of the first and second level courts
Re: NCJR under Community Quarantine

March 16, 2020

Administrative Circular No. 31-2020

To All litigants, justices, judges and personnel of the judiciary, and members of the Bar
Re: Rising Cases of COVID-19 Infection

March 31, 2020

Administrative Circular No. 33-2020

To All litigants, justices, judges and personnel of the judiciary, and members of the Bar
Re: Online Filing of Complaint or Information and Posting of Bail due to the rising cases of COVID-19 Infection

April 8, 2020

Administrative Circular No. 34-2020

To All litigants, justices, judges and personnel of the judiciary, and members of the Bar
Re: Extension of Enhance Community Quarantine Over Luzon Until 30 April 2020

April 3, 2020

OCA Circular No. 89-2020

To All litigants, justices, judges and personnel of the judiciary, and members of the Bar
Re: Implementation of SC AC 33-2020 on the Electronic Filing of Criminal Complaints and Informations, ad Posting of Bails

April 20, 2020

OCA Circular No. 91-2020

To All Judges of the First and Second Level Courts
Re: Release of Qualified Persons Deprived of Liberty

April 27, 2020

Administrative Circular No. 35-2020

To: All Litigants, Justices, Judges and Court Personnel of the Judiciary, and Members of the Bar
Re: Extension of the Enhanced Community Quarantine In Certain Areas Until 15 May 2020

April 27, 2020

Administrative Circular No. 36-2020

To: All Litigants, Justices, Judges and Court Personnel of the Judiciary, and Members of the Bar
Re: Areas Placed Under General Community Quarantine From 1 To 15 May 2020

April 27, 2020

Administrative Circular No 37-2020

To: All Litigants, Judges and Court Personnel of the First and Second Level Courts, and Members of the Bar
Re: Pilot Testing of Hearings of Criminal Cases Involving Persons Deprived of Liberty Through Videoconferencing

April 30, 2020

Administrative Circular No. 38-2020

To: All Justices, Judges, Prosecutors, Public Attorneys and Members of the Bar
Re: Reduced Bail and Recognizance as Modes for Releasing Indigent Persons Deprived of Liberty During this Period of Public Health Emergency, Pending Resolution of their Cases

May 4, 2020

OCA Circular No. 93-2020

To: All Concerned Litigants, Judges and Court Personnel of the First and Second Level Pilot Courts, and Members of the Bar
Re: Implementation of Supreme Court Administrative Circular No. 37 - 2020 on the Pilot Testing of Hearings of Criminal Cases Involving Persons Deprived of Liberty through Videoconferencing

May 8, 2020

OCA Circular No. 94-2020

To: All Concerned Litigants, Judges and Court Personnel of the First and Second Level Pilot Courts, and Members of the Bar
Re: Resumption of Raffle of Cases Through Videoconferencing

May 15, 2020

Administrative Circular No. 40-2020

To: All Litigants, Justices, Judges and Court Personnel of the Judiciary, and Members of the Bar
Re: Courts in Areas Placed Under General Community Quarantine from 16 to 31 May 2020

May 18, 2020

OCA Circular No. 96-2020

To: All Litigants, Concerned Judges and Court Personnel of the First and Second Level Courts, Members of the Bar

Re: Pilot Testing of Hearings Through Videoconferencing

May 29, 2020

Administrative Circular No. 41-2020

To: All Litigants, Justices, Judges and Court Personnel of the Judiciary, and Members of the Bar

Re: Court Operations Beginning 1 June 2020

June 1, 2020

OCA Circular No. 99-2020

To: All Judges of First and Second Level Courts

Required Reports During Community Quarantine Period

June 3, 2020

OCA Circular No. 100-2020

To: All Litigants, Concerned Judges and Court Personnel of the First and Second Level Court, and Members of the Bar

Additional Courts Authorized for Pilot-Testing of Hearing Through Videoconferencing

As emphasized by Chief Justice Peralta, applying for bail before the trial courts has not been rendered infeasible even amidst the COVID-19 pandemic and the Luzon-wide lockdown especially with the issuance of Administrative Circular Nos. 31-2020,[240] 33-2020,[241] 34-2020,[242] 37-2020[243] and 38-2020.[244]

At this point, it may be apt to disclose the data submitted by the OCA thru a Memorandum[245] to the OCJ pertaining to the incremental release of thirty thousand and five hundred twenty-two (30,522) PDLs from March 17, 2020 to June 22, 2020 as follows:

Period
(2020)

Number of PDLs
Released Nationwide

March 17 to April 29

9,731

April 30 to May 8

4,683

May 9 to May 15 (Region 5—affected by Typhoon— work suspended in almost all areas)

3,941

May 16 to May 22

4,167

May 23 to May 29

2,927

May 30 to June 5

2,149

June 6 to June 11

2,924

June 12 to June 22

3,268

Total PDLs released from March 17 to June 22, 2020

33,790

Simultaneously, Department of Justice Secretary Menardo I. Guevarra also submitted his letter[246] to the OCJ attaching the latest report[247] of the Board of Pardons and Parole (BPP) implementing BPP Resolution No. OT-04-05-2020 (Interim Rules on Parole and Executive Clemency) which: (a) granted parole to two hundred twenty-one (221) PDLs; (b) deferred parole to four hundred sixty-six (466) PDLs; (c) evaluated three hundred fifty-six (356) carpetas for executive clemency; (d) recommended fifty-six (56) PDLs for conditional pardon; (e) recommended fifty-six (56) PDLs for commutation of sentence; and (f) reviewed cases of old and sickly PDLs which comprises the majority of all cases under review. The pertinent data is reproduced hereunder as follows:

Date Acted Upon

PAROLE CASES

Granted Parole

Deferred Parole (NBI Records Check/Verify Pending Cases

Denied Parole

No Action

Total Parole Cases

May 18

46

42

11

1

100

May 20

86

338

33

11

468

May 27

4

48

3

0

55

June 3

29

26

1

0

56

June 10

56

12

2

0

70

TOTAL

221

466

50

12

749

Date Acted Upon

EXECUTIVE CLEMENCY CASES

Recommended for Conditional Pardon without Parole Conditions

Recommended for Conditional Pardon with Parole Conditions

Recommended for Commutation of Sentence

Deferred EC

Denied EC

No Action

Total Executive Clemency Cases

May 18

0

0

0

37

2

1

40

May 20

0

0

0

0

0

0

0

May 27

1

21

9

46

19

0

96

June 3

20

3

37

107
2
0
169
June 10
11
0
10
30
0
0
51
TOTAL
32
24
56
220
23
1
356

Clearly, the foregoing data shows that this Court's issuances thru the OCJ have made a significant impact in decongesting jails and other detention facilities in response to the COVID-19 pandemic. Indeed, ample judicial remedies are available to the petitioners and other similarly-situated PDLs who seek provisional liberty. Likewise, administrative remedies for PDLs who are currently serving their sentences like petitioner Lilia Bucatcat are also available to them. As pointed out by both Chief Justice Peralta and Justice Zalameda, such administrative actions present an incontrovertible proof that institutions of the justice system other than the Judiciary are indeed enacting measures to decongest our detention and penal facilities in order to mitigate the possible spread of COVID-19. As such, the petitioners have no valid reason to insist that they have no other judicial or administrative remedy save for a direct recourse to this Court.

Besides, release on bail or recognizance is not the only way to decongest jails. This Court, thru former Chief Justices Hilario G. Davide, Jr. and Reynato S. Puno, had previously promulgated Administrative Circular Nos. 12-2000[248] and 08-2008[249] which gave the trial courts the option to impose the penalty of fine with subsidiary imprisonment instead of imprisonment itself. This is also supplemented by the enactment of Republic Act No. 11362[250] (Community Service Act) which authorized courts to require community service in lieu of jail service for offenses punishable by arresto menor and arresto mayor.[251] To claim that releasing prisoners on bail or recognizance is the only way to decongest jails is to ignore Congress and this Court's previous

decongestion efforts that have already been put in place for trial courts to apply either in deciding the case or upon motion of the parties.

Last, Philippine constitutional and statutory provisions remain in force despite the ongoing pandemic as well as the international calls for the release of prisoners.

As Chief Justice Peralta puts it, neither the pandemic nor the executive declaration of a Luzon-wide lockdown has the effect of suspending our laws and rules, much less of shutting down the Judiciary. In support of this finding, Justice Zalameda quoted Justice Leonen's ponencia in *Abogado, et al. v. Department of Environment and Natural Resources, et al.*[252] wherein the latter clearly enunciated that "[t]he imminence or emergency of an ecological disaster should not be an excuse for litigants to do away with their responsibility of substantiating their petitions before the courts." This is also supplemented by Associate Justice Jose C. Reyes, Jr.'s (Justice Reyes) opinion that the Philippine government is not expected to simply conform to the manner of releasing prisoners being adopted by other countries because such release is qualified by certain conditions. As pointed out by Chief Justice Peralta, the initiatives of other countries in decongesting prison facilities were based on laws and rules prevailing in those jurisdictions— the Philippines did not lag behind in this respect. Therefore, if the true ideals of independence are to be valued at all, supranational entities and foreign sovereigns should not be allowed to dictate how the Philippines should conduct or handle its internal affairs; especially when it comes to protecting the lives, health and safety of its citizens.

On the prerogative to choose appropriate strategies and the proper judicial approach when general welfare concerns clash with civil liberties in times of emergency:

Political questions refer to those which are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the government.[253] These questions are concerned with issues dependent upon the wisdom, not the legality, of a particular act or measure being assailed in which this Court will not normally interfere unless the case shows a clear need for it to step in to uphold the law and the Constitution.[254] Recourse to the political question doctrine necessarily raises the underlying doctrine of separation of powers among the three great branches of government that the Constitution has entrenched.[255]

In relation to the political questions doctrine, police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property;[256] although it also extends to providing for all public needs as *parens patriae*. [257] It has been established by jurisprudence that police power finds no specific Constitutional grant for the plain reason that it does not owe its origin to the Charter since it is inborn in the very fact of statehood and sovereignty.[258] However, no less than the Constitution declares that "[t]he maintenance of peace and order, the protection of life, liberty, and property, and promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy." [259] Such seemingly redundant constitutional declaration only serves to buttress the State's inherent prerogative "to prescribe regulations to promote the health, morals, education, good order or safety, and general welfare of the people [as it] flows from the recognition that *salus populi est suprema lex*— the welfare of the people is the supreme law." [260]

Concomitantly, the power to promote the health, morals, peace, education, good order or safety and general welfare of the people by making statutes or ordinances is vested in the legislature.[261] The most obvious manifestation of such power are penal statutes in which the State defines and punishes crimes as well as lays down the corresponding criminal rules of procedure.[262] Also, related to the enactment of penal statutes as an implement of police power, it is necessary either for the State agents to have "custody of the law" in bail applications or for the courts to acquire "jurisdiction over the person" of the accused[263]— the purpose of which

is for the accused "to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf." [264] In other words, the State's act of detaining a person charged with a crime even when his or her guilt is still to be proven by the prosecution is not without pragmatic and underlying wisdom. Deprivation of liberty, especially if evidence of guilt is strong or no bail was posted, in such instance ensures that: (a) the court will have jurisdiction over the person of the accused, as earlier stated, in order to render a binding judgment; (b) the state agents will be assured of having the ability to bring the accused to participate in necessary proceedings as required by the court; and (c) the accused will be prevented from committing another crime which endangers society or from undertaking further acts to conceal the crime being charged against him or her. Verily, it is reasonable to assume that police power which includes keeping persons accused of a crime in custody is not subject to a reasonable debate.

In the case of the petitioners' continued confinement in their respective detention facilities, the Court cannot issue an order for the creation of a "Prisoner Release Committee" in the absence of any law and in the absence of any concluded bail hearing which resulted in the grant of provisional liberty. As it stands, only the political branches of government (Executive and Legislative) have the power to determine for themselves if such recourse is warranted. The only act that the Court may do under the circumstances is to order the conduct of bail hearings before the trial courts with dispatch. Besides, it must be emphasized in the first place, that the legislature, which is the constitutional repository of police power and exercises the prerogative of determining the policy of the State, is by force of circumstances primarily the judge of necessity, adequacy or reasonableness and wisdom, of any law promulgated in the exercise of the police power, or of the measures adopted to implement the public policy or to achieve public interest. [265] In instances, the President may exercise police power to a limited extent only for the purpose of securing public safety. [266] Thus, it is the elected representatives of the People who should determine "the greatest good for the greatest number" [267] in times of national emergencies.

Besides, whenever a conundrum arises in times of emergency when police power collides with constitutionally-protected freedoms or fundamental rights, the political question doctrine will often tip the balance in favor of general welfare acts or policies in view of the State's duty to primarily protect general interests. Such rule of interpretation is consistent with the basic principle instilled in *Marcos, et al. v. Manglapus, et al.* [268] articulating that: "[i]t must be borne in mind that the Constitution, aside from being an allocation of power[,] is also a social contract whereby the people have surrendered their sovereign powers to the State for the common good." However, while public safety is the paramount and overriding concern of the State and, while it is also true that laws should be interpreted in favor of the greatest good of the greatest number during emergencies, individual freedoms also have to be respected. As Justice Reyes describes, such duty entails the complex task of harmonizing fundamental interests of every individual, both free and deprived of liberty, and the general public and, while certain individual's plea for the application of the "humanity of law" may be considered in exceptional circumstances, public protection is equally paramount and thus, can never be discounted. Thus, in upholding police power measures over constitutional freedoms in times of emergency, the Court should subject any encroachment of either constitutional or statutory rights to the following interpretational parameters:

(1)

Such encroachment shall be incidental to public safety and shall not enter the bounds of arbitrariness;

(2)

Measures pursued or concerns protected by the State should be reasonably related or linked to the attainment

of its legitimate objectives consistent with general welfare; and

(3)

The measure undertaken or concern addressed for the benefit of the majority pursuant to an exercise of police power must not be unnecessarily oppressive on the minority.

The current choice of the State to continually detain the petitioners satisfies the aforementioned criteria for these reasons:

First, the State's exercise of its prerogative to elect appropriate strategies under the present public health emergency situation branches have ample basis.

"Public safety" involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters— it is an abstract term with no physical form with a boundless range, extent or scope.[269]

In the case at hand, there is wisdom in the continued detention of the petitioners as the nature of their respective charges is serious enough to justify their continued detention until bail hearings have been conducted and their applications have been acted upon favorably. Viewed in the context of the Executive department's vantage point, the release of the petitioners endangers national security. It can be reasonably inferred under the circumstances that the Executive department has already made up its mind that the last thing they need in the fight against COVID-19 is to face the hostilities of armed rebel groups. As it is there are reports of COVID-19 cases already permeating in jails; there are also reports that rebel groups have launched armed attacks against the military and the police who are engaged in their duties of distributing relief goods and manning the check points. At this point, the most prudent course of action that the Court may do is to defer to the political branches as regards the matter of selecting the most appropriate strategy to maintain public order and preserve public safety. As Justice Zalameda opines, there has to be a balance between the State's duty to protect the specific victims of the crime as well as the general public, and the petitioners' rights under international law.

Second, the State's measure of continually detaining the petitioners is reasonably related to its objective of maintaining public order and preserving public safety. While there is still no judicially declared terrorist organization in our jurisdiction pursuant to Section 17[270] of R.A. No. 9372[271] to date,[272] the US and the European Union have both classified the CPP, NPA and Abu Sayyaf Group as foreign terrorist organizations.[273] Obviously, this is a legitimate and vital concern to national security. As earlier discussed, the government cannot afford to gamble its chances and resources by allowing the petitioners who are allegedly key members of the CPP-NPA-NDF to roam free while the COVID-19 pandemic remains an imminent and grave threat. During this time, the government cannot afford to lose its front-liners in its battle against the pandemic. The last thing that this Court should do in times of nationwide public health emergency is to tip the scales of justice against public safety and against national security interests. This realization alone adequately supports the reasonable link or relation between the petitioners' continued detention and the objective of suppressing the COVID-19 pandemic.

However, such pronouncement is merely for the very limited purpose of determining whether or not there is a reasonable link or relation between the assailed government measures or concerns and the legitimate objectives regarding general welfare in times of emergency. Admittedly, the undersigned cannot, in good conscience, naively ignore age-old and popular allegations that the CPP-NPA-NDF is a terrorist organization. But as part of due process, the undersigned cannot also preempt at this time any finding that the authorizing division of the

Court of Appeals may encounter in the future should the DOJ file an application under the newly-enacted Section 26 of R.A. No. 11479[274] (formerly Section 17 of R.A. No. 9372 which used to lodge proscription proceedings before the Regional Trial Court) to have the CPP-NPA-NDF declared "as a terrorist and outlawed group of persons, organization, or association." In essence, the DOJ still has to prove in such proscription proceedings that the CPP-NPA-NDF was and is indeed engaged in acts constitutive of terrorism. As voiced out by Justice Reyes, the Court should refrain at this time from making such pronouncements that goes into the merits of petitioners' pending cases.

Last, the petitioners' continued detention cannot be considered as an unnecessarily oppressive act of the State.

Oppression has been defined as "an act of cruelty, severity, unlawful exaction, domination or excessive use of authority." [275] Since the petitioners are allegedly members of the CPP-NPA-NDF, their continued detention is still deemed necessary until and unless they prove during the bail hearing that the evidence of their supposed guilt is not strong. Such unavoidable restraint of liberty is not "unnecessarily oppressive" as the petitioners have not shown that the State had been indifferent to their clinical needs. The medical certificates attached by the petitioners as annexes adequately prove that the Bureau of Corrections and the BJMP had not been remiss in their duties of assisting inmates in undergoing the required medical checkups. Had the opposite been the case, the petitioners would have been left to their own devices to deal with their own vulnerable health. Allowing the petitioners to undergo medical checkups with the necessary assistance from State agents negates the presence of "excessive use of authority," "cruelty" or "domination." Under the extant circumstances, the State cannot be reasonably considered by the Court as having acted cruelly in continually denying the petitioners of their liberty in the midst of the COVID-19 pandemic.

Treatment of the Petition

In a nutshell, the petitioners' prayers in seeking for the release on recognizance or bail and for the creation of a "Prisoner Release Committee" (along with the issuance of ground rules for eligible prisoners) indicate that theirs is a petition for bail or recognizance filed directly before this Court. As explained in detail earlier in the discussions, not one of these prayers may be granted for the following reasons:

(1)

The grant or denial of bail application requires a hearing and an evaluation of proven facts which are functions of trial courts;

(2)

This Court's time and resources will be better utilized by resolving cases within the scope of its exclusive jurisdiction;

(3)

The petitioners failed to provide any data or attachment pertaining to their bail applications filed, if any, with the respective trial courts handling their cases for this Court to evaluate;

(4)

The petitioners are not without any remedy to seek for provisional liberty before the proper forum if they so

choose;

(5)

This Court had already issued several guidelines to facilitate the proceedings involving the possible release of PDLs; and

(6)

The creation of a "Prisoner Release Committee" has no clear constitutional and statutory basis.

Although the Court may, in some instances, refer bail or recognizance applications filed before it to the trial courts, it is not feasible to do so in this case because: (a) some of the petitioners may have already filed their bail or recognizance applications before the respective trial courts handling their cases; (b) re-opening bail or recognizance applications may unnecessarily prolong the criminal proceedings if evidence of guilt adduced by the prosecution had already been adjudged by the respective trial courts as strong; (c) bail or recognizance application is an absolute prerogative or option of a detained accused; and (d) guidelines for the possible release of PDLs have been put in place. Under the circumstances, the most prudent course of action is to let the petitioners pursue their bail or recognizance applications before the proper forum. After all, this Court had already promulgated several issuances to facilitate the possible release of PDLs—all that the petitioners have to do is to abide by these guidelines.

At this point, it is wise to impart Chief Justice Peralta's conclusion that the petitioners are probably seeking administrative—not judicial—remedies that would genuinely address their concerns in regard to which this Court, as overseer of the Judiciary, could exercise no other prerogative than to direct the trial courts concerned to resolve the underlying criminal cases with deliberate dispatch. That judicial remedy is unavailable to the reliefs prayed for, is all the more apparent from their collective sentiment that the government-imposed quarantine and lockdown measures, which in the interim necessarily denied them of supervised access to their families and friends, have negatively affected their mental well-being. As the petitioners complain about languishing in isolation, they fail to see that in truth, the rest of the outside world is likewise socially isolating as a basic precautionary measure in response to a pandemic of this kind. They lament the lingering fear of a potential infection within their confinement on account of their respective physical vulnerabilities and hereby plead that they be indefinitely set free, without realizing that it is the same exact fear which looms outside of prison walls.

Conclusion

The world is currently facing a battle that harbors the potential to be one of the deadliest in history. The enemy cannot be seen and its workings cannot, as of yet, be understood even by the most brilliant of minds in the scientific community. Faced with a monumental task of balancing all governmental efforts of curbing a formidable enemy for the benefit of the general population against some sensible but conjectural fears that the health of some inmates or detainees might be neglected by authorities, it is prudent to interpret the Constitution and the law in a manner which places public safety as the pinnacle of all concerns for "[s]elf-preservation is the first law of nature"[276] and "the fundamental and paramount objective of the [S]tate [is to bring] about the greatest good to the greatest number." [277] However, as a matter of duty, such interpretation is of course subject to strict libertarian safeguards. While the undersigned sympathizes with the petitioners' miserable plight, it simply cannot act in a manner violative of the fundamental law. The remedy simply lies with the political branches to pursue. As lucidly explained in *Vera, et al. v. Avelino, et al.*[278] by Associate Justice (later Chief Justice) Cesar

Bengzon:

Let us not be overly influenced by the plea that for every wrong there is a remedy, and that the judiciary should stand ready to afford relief. There are undoubtedly many wrongs the judicature may not correct, for instance, those involving political questions. x x x

Let us likewise disabuse our minds from the notion that the judiciary is the repository of remedies for all political or social ills. We should not forget that the Constitution has judiciously allocated the powers of government to three distinct and separate compartments; and that judicial interpretation has tended to the preservation of the independence of the three, and a zealous regard of the prerogatives of each, knowing full well that one is not the guardian of the others and that, for official wrong-doing, each may be brought to account, either by impeachment, trial or by the ballot box.

Despite Associate Justice Gregorio Perfecto's livid and scathing dissent that the afore-cited ratiocination "is irrelevant" because the Court at that time was supposedly "dealing with a constitutional wrong which, under the fundamental law, can and must be redressed by the [J]udiciary,"[279] the reliefs prayed for by the petitioners are constitutionally-impossible to grant because it involves "engrafting upon a law something that has been omitted which someone believes ought to have been embraced"[280]—a clear act of judicial legislation. The petitioners and the public have to understand that, as guardian of the Constitution, this Court cannot break its sworn duty to uphold the fundamental law. Succinctly, the Court is not constitutionally-empowered to perform acts contrary to the principle of separation of powers no matter how lofty the underlying intentions may be.

Besides, impartiality demands that this Court should exercise an even-handed temperament in balancing the conflicting interests embodied in both the general welfare clause and the constitutionally-protected fundamental rights. An emotional approach to an extraordinarily tense situation betrays the objective resolution of highly-controversial disputes. Therefore, the undersigned is of the view that it is not what this Court is willing to do—but what it can do—under the circumstances which determines the fate of the present petition.

WHEREFORE, the undersigned votes to DENY the instant petition for lack of merit and for improperly invoking the Court's original jurisdiction.

[1] <https://www.cdc.gov/sars/about/fs-sars.html> (last accessed: April 28, 2020).

[2] <https://www.cdc.gov/coronavirus/mers/about/index.html> (last accessed: April 28, 2020).

[3] <https://www.who.int/csr/don/05-january-2020-pneumonia-of-unknown-cause-china/en/> (last accessed: April 28, 2020); See: <https://www.cdc.gov/coronavirus/types.html> (last visited: April 28, 2020); <https://www.who.int/philippines/emergencies/covid-19-in-the-philippines> (last accessed: April 28, 2020).

[4] <https://www.doh.gov.ph/doh-press-release/doh-confirms-first-2019-nCoV-case-in-the-country> (last accessed: April 28, 2020).

[5] <https://www.doh.gov.ph/doh-press-release/who-declares-2019-nCoV-ARD-public-health-emergency-of-international-concern> (last accessed: April 28, 2020).

[6] <https://www.doh.gov.ph/doh-press-release/doh-confirms-local-transmission-of-covid-19-in-ph> (last accessed: April 28, 2020).

[7] <https://www.officialgazette.gov.ph/downloads/2020/02feb/20200308-PROC-922-RRD-1.pdf> (last accessed: April 28, 2020).

[8] <https://www.officialgazette.gov.ph/downloads/2020/03mar/20200316-PROC-929-RRD.pdf> (last accessed: April 28, 2020).

[9] <https://www.officialgazette.gov.ph/downloads/2020/03mar/20200316-MEMORANDUM-FROM-ES-RRD.pdf> (last accessed: April 28, 2020).

[10] <https://www.senate.gov.ph/Bayanihan-to-Heal-as-One-Act-RA-11469.pdf> (last accessed: April 28, 2020).

[11] Corona Virus Disease.

[12] Rollo, p.14.

[13] Id. at 8.

[14] Id. at 20-21.

[15] Id. at 7.

[16] Id. at 6-7.

[17] Id. at 5.

[18] Id. at 6.

[19] Id. at 8.

[20] Id. at 10.

[21] Id.

[22] A.M. No. RTJ-97-1387, September 10, 1997, 344 Phil. 415-431.

[23] Rollo, p. 10.

[24] Id.

[25] Id. at 9.

[26] A.M. 10-4-20-SC (May 4, 2010).

[27] Rollo, p. 9.

[28] Id. at 10.

[29] G.R. No. 134241, August 11, 2003.

[30] G.R. No. 73471, May 8, 1990.

[31] G.R. Nos. 163972-77, March 28, 2008.

[32] 3 Wn. (C.C.) 224, Fed. Cas. No 15,495; cited in: Separate Concurring Opinion of Associate Justice Arturo D. Brion in *Enrile v. Sandiganbayan, et al.* G.R. No. 213847, July 12, 2016, 789 Phil. 679, 712-713.

[33] 489 US 189, 199-200(1989).

[34] 509 US 25 (1993).

[35] Rollo, pp. 7-8.

[36] Id. at 10.

[37] Id. at 42-54.

[38] Infra, note 207.

[39] No. L-982, October 2, 1946, 77 Phil. 461, 465-466.

[40] Rollo, pp. 54-58.

[41] Personal Protective Equipment.

[42] Persons Under Monitoring.

[43] Persons Under Investigation.

[44] Rollo, p. 6.

[45] Id. at 23-25.

[46] Id. at 25-29.

[47] Id. at 29-33.

[48] Id. at 34-42.

[49] Id. at 225; see also pp. 226-232.

[50] Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes (June 29, 1983).

[51] Comprehensive Firearms and Ammunition Regulation Act (May 29, 2013).

[52] Comprehensive Dangerous Drugs Act of 2002 (January 23, 2002).

[53] Rollo, p. 232.

[54] Id. at 224-226.

[55] Id. at 225.

[56] Id. at 226.

[57] Id. at 236-238.

[58] Id. at 256-259.

[59] Id. at 255.

[60] Id. at 238.

[61] Id. at 240-245.

[62] Id. at 242.

[63] Id. at 242-243.

[64] Id. at 256.

[65] Id. at 243.

[66] Id. at 244-245.

[67] *Infra*, note 204.

[68] Rollo, pp. 245-247.

[69] Id. at 247-249.

[70] Id. at 249-250.

[71] Id. at 249, citing: *David-Chan v. Court of Appeals, et al.*, G.R. No. 105294, February 26, 1997, 335 Phil. 1140, 1149.

[72] Id. at 250.

[73] *Infra*, note 207.

[74] Rollo, pp. 250-252.

[75] Id. at 252-256.

[76] Id. at 253.

[77] Id. at 254.

[78] Id.

[79] Id. at 254-255.

[80] Id. at 256.

[81] Id. at 259-263.

[82] Id. at pp. 259-260, citing: Justice Jose C. Vitug's Separate Opinion in *Government of the United States of America v. Purganan, et al.* (G.R. No. 148571, December 17, 2002, unreported extended resolution).

[83] Id. at 260.

[84] Id.

[85] Id.

[86] Rollo, p. 261.

[87] Id.

[88] Id.

[89] Rollo, p. 261.

[90] Id. at 262.

[91] Id. at 263-265.

[92] *Id.* at 261.

[93] G.R. No. 217158, March 12, 2019, citations omitted.

[94] The traditional definition of international law is that it is a body of rules and principles of action which are binding upon civilized states in their relations to one another (Bernas, *An Introduction to Public International Law*, 1st Ed. (2002) p. 1).

[95] More recently, the law of nations or international law is defined as "rules and principles of general application dealing with the conduct of States and of international organizations and with their relations inter se, as well as some of their relations with persons, natural or juridical." (*United States v. Al Bahlul*, 820 F.Supp.2d 1141 [2011]), citations omitted; see also: U.N. Charter Art. 93, ¶ 5.

[96] See: *Republic of Indonesia, et al. v. Vinzon*, G.R. No. 154705, June 26, 2003, 452 Phil. 1100, 1107, citations omitted.

[97] All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice (U.N. Charter Art. 93, ¶ 1).

[98] The Court in *Mijares, et al. v. Hon. Ranada, et al.* (G.R. No. 139325, April 12, 2005, 495 Phil. 372, 395, citations omitted) enunciated that "[t]he classical formulation in international law sees those customary rules accepted as binding result from the combination two elements: the established, widespread, and consistent practice on the part of States; and a psychological element known as the *opinion juris sive necessitates* (opinion as to law or necessity);" see also: *Vinuya, et al. v. Romulo, et al.*, G.R. No. 162230, April 28, 2010, 633 Phil. 538, 557-580, citations omitted. On a related note, the initial factor for determining the existence of custom is the actual behavior of states—this includes several elements: duration, consistency, and generality of the practice of states (Bernas, *op. cit.*, pp. 10-11).

[99] See: *Bayan Muna v. Romulo, et al.*, G.R. No. 159618, February 1, 2011, 656 Phil. 246, 306, citations omitted.

[100] *Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010, 651 Phil. 374, 427, citations omitted.

[101] Charter of the United Nations and Statute of the International Court of Justice (1945).

[102] Self-determination refers to the need for a political structure that will respect the autonomous peoples' uniqueness and grant them sufficient room for self-expression and self-construction (*Disomangcop, et al. v. Datumanong, et al.*, G.R. No. 149848, November 25, 2004, 486 Phil. 398, 442-443, citations omitted).

[103] Nothing is better settled than that the Philippines being independent and sovereign, its authority may be exercised over its entire domain. There is no portion thereof that is beyond its power. Within its limits, its decrees are supreme, its commands paramount. Its laws govern therein, and everyone to whom it applies must submit to its terms. That is the extent of its jurisdiction, both territorial and personal. Necessarily, likewise, it has to be exclusive. If it were not thus, there is a diminution of its sovereignty (*Reagan v. Commissioner of Internal Revenue*, G.R. No. L-26379, December 27, 1969, 141 Phil. 621, 625). In the final analysis, this Court already had the opportunity to clarify that "[t]he fact that international law has been made part of the law of the land does not pertain to or imply the primacy of international law over national or municipal law in the municipal sphere. The doctrine of incorporation, as applied in most countries, decrees that rules of international law are given equal standing with, but are not superior to, national legislative enactments. xxx In states where the constitution is the highest law of the land, such as the Republic of the Philippines, both statutes and treaties may be invalidated if

they are in conflict with the Constitution (Secretary of Justice v. Lantion, et al., G.R. No. 139465, January 18, 2000, 379 Phil. 165-213, citations omitted).

[104] See: Pharmaceutical and Health Care Association of the Philippines v. Duque, III, et al., G.R. No. 173034, October 9, 2007, 561 Phil. 386, 398, citations omitted. However, the "incorporation clause" in Section 2, Article II cannot be reasonably interpreted to automatically alter or deactivate other provisions of the Constitution without passing through the sanctioned process of amendment or revision outlined in Article XVII.

[105] Ratified by the Philippines on November 15, 1972.

[106] No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

[107] Pharmaceutical and Health Care Association of the Philippines v. Duque, III, et al., supra, footnote 104, citations omitted. Mindful of the basic idea of sovereignty, non-peremptory norms or "soft laws" should not be understood to automatically alter constitutional provisions even if they yield influence on a state's behavior.

[108] The Bureau of Corrections Act of 2013 (May 24, 2013).

[109] Manila Prince Hotel v. Government Service Insurance System, et al., G.R. No. 122156, February 3, 1997, 335 Phil. 82, 102, citations omitted.

[110] Cf. Kilosbayan, Incorporated, et al. v. Morato, et al., G.R. No. 118910, November 16, 1995, 320 Phil. 171, 183-184.

[111] See: Section 23 of R.A. No. 10575 (Implementing Rules and Regulations. - The DOJ, in coordination with the BuCor, the CSC, the DBM and the Department of Finance (DOF), shall, within ninety (90) days from the effectivity of this Act, promulgate the rules and regulations necessary to implement the provisions of this Act.")

[112] May 23, 2016.

[113] See: Dissenting Opinion of Senior Associate Justice Elias Finley Johnson in Nicolas v. Albeto, No. 28275, January 10, 1928, 51 Phil. 370, 382-383.

[114] See: Baking, et al. v. Director of Prisons, G.R. No. L-30364, July 28, 1969, 139 Phil. 110, 117.

[115] As amended by Republic Act No. 10592 (An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code [May 29, 2013]).

[116] See: Inmates of the New Bilibid Prison, et al. vs. Sec. Leila M. De Lima, et al., G.R. No. 212719, June 25, 2019.

[117] Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

[118] Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[119] See: Perez v. People, et al., G.R. No. 164763, February 12, 2008, 568 Phil. 491, 518, citations omitted.

[120] G.R. No. 132601, October 12, 1998, 358 Phil. 410, 430, 434-436, citations omitted.

[121] 429 U.S. 97 (1976).

[122] See: *Ient, et al. v. Tullett Prebott (Philippines), Inc.*, G.R. No. 189158, January 11, 2017, 803 Phil. 163, 186.

[123] Read in the entire context of this Decision, this statement is clearly not meant to foreclose any judicial relief to remedy subhuman conditions— it is meant to anchor these judicial reliefs on statutes positively enacted by Congress.

[124] *Francisco, Jr. v. House of Representatives, et al.*, G.R. No. 160261, November 10, 2003, 460 Phil 830, 886.

[125] *Atty. Macalintal v. Commission on Elections, et al.*, G.R. No. 157013, July 10, 2003, 453 Phil. 586, 632, citations omitted.

[126] *Atty. Macalintal v. Presidential Electoral Tribunal*, G.R. No. 191618, November 23, 2010, 650 Phil. 326, 341, citations omitted.

[127] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, June 22, 2010, 635 Phil. 447, 454.

[128] *Chavez v. Judicial and Bar Council, et al.*, G.R. No. 202242, July 17, 2012, 691 Phil. 173, 199.

[129] See: *Columbia Pictures, Inc., et al. v. Court of Appeals, et al.*, G.R. No. 110318, August 28, 1996, 329 Phil. 875, 907, citations omitted.

[130] Cf. *First Lepanto Ceramics, Inc. v. Court of Appeals, et al.*, G.R. No. 110571, March 10, 1994, 301 Phil. 32, 40, citations omitted; *Banco Filipino Savings and Mortgage Bank v. Navarro, et al.*, G.R. No. L-46591, July 28, 1987, 236 Phil. 370, 378-379, citations omitted; *Tayug Rural Bank v. Central Bank of the Philippines*, G.R. No. L-46158, November 28, 1986, 230 Phil. 216, 223-224, citations omitted; *People v. Que Po Lay*, No. 6791, March 29, 1954, 94 Phil. 640, 642, citations omitted; contra: *Jardeleza v. People*, G.R. No. 165265, February 6, 2006, 517 Phil. 179, 201-202.

[131] No. L-25513, March 27, 1968, 131 Phil. 408, 412.

[132] G.R. No. 149276, September 27, 2002, 438 Phil. 749, 754, cited in: *Maturan v. Commission on Elections, et al.*, G.R. No. 227155, March 28, 2017, 808 Phil. 86, 94.

[133] G.R. No. 171396, May 3, 2006, 522 Phil. 705, 795, citations omitted.

[134] Anti-Torture Act of 2009 (November 10, 2009).

[135] *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004, 472 Phil. 285, 302, citations omitted.

[136] *Philippine Airlines, Inc. v. National Labor Relations Commission, et al.*, G.R. No. 120567, March 20, 1998, 351 Phil. 172, 183, citations omitted.

[137] *Guingona, Jr., et al. v. Court of Appeals, et al.*, G.R. No. 125532, July 10, 1998, 354 Phil. 415, 426, citations omitted.

[138] *Estipona v. Lobrigo, et al.*, G.R. No. 226679, August 15, 2017, 816 Phil. 789, 800-806, citing: Section 5 (5), Article VIII of the 1987 Constitution.

[139] *Smart Communications, Inc., et al. v. National Telecommunications Commission*, G.R. No. 151908, August 12, 2003, 456 Phil. 145, 155-156 citations omitted.

[140] See: *H. Villarica Pawnshop, Inc., et al. v. Social Security Commission, et al.*, G.R. No. 228087, January 24,

2018, 824 Phil. 613, 633-634, citations omitted.

[141] *Swagman Hotels and Travel, Inc. v. Court of Appeals, et al.*, G.R. No. 161135, April 8, 2005, 495 Phil. 161, 172, citations omitted.

[142] See: Merryman, et al., *The Civil Law Tradition (An Introduction to the Legal Systems of Europe and Latin America)*, 3[rd]Ed., (2007), p. 1.

[143] See: <https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf> (last accessed: May 1, 2020).

[144] See: Concurring and Dissenting Opinion of Associate Justice (later Chief Justice) Enrique M. Fernando in *People v. Sabio, Sr., et al.*, G.R. No. L-45490, November 20, 1978, 176 Phil. 212, 232, citations omitted.

[145] *The City of Davao, et al. v. The Regional Trial Court, Branch XII, Davao City, et al.*, G.R. No. 127383, August 18, 2005, 504 Phil. 543, 560, citations omitted.

[146] See: *Doerr, et al. v. Mobil Oil Corporation, et al.*, 11A So.2d 119 (2000), citations omitted.

[147] *Stare decisis et nan quieta movere*—stand by the decisions and disturb not what is settled (see: *Lazatin, et al. v. Desierto, et al.*, G.R. No. 147097, June 5, 2009, 606 Phil. 271, 281-283, citations omitted).

[148] See: *United Coconut Planters Bank v. Spouses Uy*, G.R. No. 204039, January 10, 2018, 823 Phil. 284, 293-295, citations omitted; *Pepsi-Cola (Phils.), Inc. v. Espiritu, et al.*, G.R. No. 150394, June 26, 2007, 552 Phil. 594, 599-600, citations omitted.

[149] See: Scalia, *A Matter of Interpretation (Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws)*, 1[st] Ed., (1997), p. 4.

[150] See: *Rogers v. Tennessee*, 532 U.S. 45 1 (2001).

[151] See: *Sosa v. Alvarez-Machain, et al.*, 542 U.S. 692 (2004), citations omitted.

[152] See: *Levine v. United States*, 362 U.S. 610 (1960), citing: *Offutt v. United States*, 348 U.S. 11 (1954).

[153] *An Act Amending Section Thirteen of Act Numbered Twenty-Six Hundred and Fifty-Seven, Known As The "Administrative Code"* (March 17, 1917).

[154] See: *People v. Soler*, G.R. No. 45263, December 29, 1936, 63 Phil. 868, 871-872.

[155] *Bolos v. Bolos*, G.R. No. 186400, October 20, 2010, 648 Phil. 630, 637, citations omitted.

[156] *Coca-Cola Bottlers, Phils., Inc. (CCBPI), Naga Plant v. Gomez, et al.*, G.R. No. 154491, November 14, 2008, 591 Phil. 642, 659, citations omitted.

[157] See: *Gamboa v. Teves, et al.*, G.R. No. 176579, June 28, 2011, 668 Phil. 1, 37, citations omitted.

[158] Section 1, Article VIII of the Constitution.

[159] See: *Reyes, Jr. v. Belisario, et al.*, G.R. No. 154652, August 14, 2009, 612 Phil. 936, 956, citations omitted.

[160] See: *Philippine Rabbit Bus Lines, Inc. v. Arciaga, et al.*, G.R. No. L-29701, March 16, 1987, 232 Phil. 400, 405, citations omitted.

[161] *Ting v. Velez-Ting*, G.R. No. 166562, March 31, 2009, 601 Phil. 676, 690, citations omitted.

[162] See: *De Castro v. Judicial and Bar Council, et al.*, G.R. No. 191002, April 20, 2010, 632 Phil. 657, 686,

citations omitted.

[163] See: Concurring Opinion of Senior Associate Justice Elias Finley Johnson in *Government of the Philippine Islands v. Spinger, et al.*, No. 26979, April 1, 1927, 50 Phil. 259, 305.

[164] *Abello, et al. v. Commissioner of Internal Revenue, et al.*, G.R. No. 120721, February 23, 2005, 492 Phil. 303, 309, citations omitted.

[165] *Corpuz v. People*, G.R. No. 180016, April 29, 2014, 734 Phil. 353, 416, citations omitted.

[166] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013, 706 Phil. 442, 450, citations omitted.

[167] The evolution of any legal doctrine takes place slowly. Law normally changes that way. Otherwise[,] the law would lack the stability necessary for ordinary citizens to rely upon it in planning their lives. xxx (Breyer, *The Court and the World [American Law and the New Global Realities]*, 1[st] Ed. [2015], p 15.).

[168] *Fetalino, et al. v. Commission on Elections*, G.R. No. 191890, December 4, 2012, 700 Phil. 129, 153, citations omitted.

[169] *Primicias v. Ocampo, et al.*, No. L-6120, June 30, 1953, 93 Phil. 446, 452, citations omitted.

[170] Cf. *Hon. Cariño, et al. v. Commission on Human Rights, et al.*, G.R. No. 96681, December 2, 1991, 281 Phil. 547, 562, citations omitted.

[171] See: *Victorio-Aquino v. Pacific Plans, Inc., et al.*, G.R. No. 193108, December 10, 2014, 749 Phil. 790, 822.

[172] *Scalia, et al., Reading Law: The Interpretation of Legal Texts*, 1[st] Ed. (2012), pp. 3-5.

[173] *Tagle v. Equitable PCI Bank, et al.*, G.R. No. 172299, April 22, 2008, 575 Phil. 384, 395-396, citations omitted.

[174] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015, 760 Phil. 954, 960, citations omitted.

[175] *Philippine Migrants Rights Watch, Inc., et al. v. Overseas Workers Welfare Administration, et al.*, G.R. No. 166923, November 26, 2014, 748 Phil. 348, 356, citations omitted.

[176] *Dela Cruz (Concerned Citizen of Legaspi City) v. Judge Carretas*, A.M. No. RTJ-07-2043, September 5, 2007, 559 Phil. 5, 18, citations omitted.

[177] *Ifurung v. Carpio-Morales, et al.*, G.R. No. 232131, April 24, 2018, citations omitted.

[178] Includes initiative and referendum in the case of purely statutory rights and obligations...

[179] *Reyes v. Lim, et al.*, G.R. No. 134241, August 11, 2003, 456 Phil. 1, 10, citations omitted.

[180] *Chavez v. Bonto-Perez, et al.*, G.R. No. 109808, March 1, 1995, 312 Phil. 88, 98, citations omitted.

[181] *Elcee Farms, Inc., et al. v. Semillano, et al.*, G.R. No. 150286, October 17, 2003, 460 Phil. 81, 93, citations omitted.

[182] *University of the Philippines, et al. v. Dizon, et al.*, G.R. No. 171182, August 23, 2012, 693 Phil. 226, 260-261, citations omitted; *United Feature Syndicate Inc. v. Munsingwear Creation Manufacturing Company*, G.R. No. 76193, November 9, 1989, 258-A Phil. 841, 849, citations omitted.

- [183] *Regulus Development, Inc. v. Dela Cruz*, G.R. No. 198172, January 25, 2016, 779 Phil. 75, 86, citations omitted.
- [184] *Atty. Gomez, et al. v. Court of Appeals, et al.*, G.R. No. 77770, December 15, 1988, 250 Phil. 504, 513.
- [185] *Angeles, et al. v. Santos, et al.*, No. 43413, August 31, 1937, 64 Phil. 697, 706-707.
- [186] *Philippine Airlines, Inc. v. National Labor Relations Commission, et al.*, G.R. No. 126805, March 16, 2000, 384 Phil. 828, 838, citations omitted.
- [187] *Agcaoili v. Government Service Insurance System*, G.R. No. L-30056, August 30, 1988, 247-A Phil. 74, 83.
- [188] *Zubiri v. Oujano*, No. 48696, November 28, 1942, 74 Phil. 47, 48.
- [189] *Spouses Valenzuela v. Kalayaan Development & Industrial Corporation*, G.R. No. 163244, June 22, 2009, 608 Phil. 177, 191-192, citations omitted.
- [190] *Aragon, et al. v. Aragon, et al.*, No. L-11472, March 30, 1959, 105 Phil. 365, 368.
- [191] *Catigbac, et al. v. Leyesa, et al.*, No. 18806, December 23, 1922, 44 Phil. 221, 223.
- [192] *The Board of Directors and Election Committee of the SMB Workers Savings and Loan Association, Inc., et al. v. Tan, et al.*, No. L-12282, March 31, 1959, 105 Phil. 426, 430-431, citations omitted.
- [193] *Armamento v. Guerrero*, G.R. No. L-34228, February 21, 1980, 185 Phil. 115, 120-121.
- [194] *Ramos v. Court of First Instance of Zamboanga Del Norte, et al.*, G.R. Nos. 55245-46, December 19, 1984, 218 Phil. 530, 536.
- [195] *Citybank, N.A. v. National Labor Relations Commission, et al.*, G.R. No. 159302, August 22, 2008, 585 Phil. 83, 86-87, citations omitted; *Moll v. Hon. Buban, et al.*, G.R. No. 136974, August 27, 2002, 436 Phil. 627, 640, citations omitted.
- [196] *Genova v. De Castro*, G.R. No. 132076, July 22, 2003, 454 Phil. 662, 677-678.
- [197] G.R. No. 62051, March 18, 1985, 220 Phil. 95, 98.
- [198] G.R. No. 170867, December 4, 2018, citations omitted.
- [199] *Neri v. Senate Committee on Accountability of Public Officers and Investigations, et al.*, G.R. No. 180643, March 25, 2008, 572 Phil. 554, 664.
- [200] *De Castro v. Judicial and Bar Council, et al.*, G.R. No. 191002, April 20, 2010, 632 Phil. 657, 689, citations omitted.
- [201] See: *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, June 22, 2010, 635 Phil. 447, 458, citations omitted.
- [202] See: *Alta Vista Golf and Country Club v. City of Cebu, et al.*, G.R. No. 180235, January 20, 2016, 778 Phil. 685, 704, citations omitted.
- [203] *Agra, et al. v. Philippine National Bank*, G.R. No. 133317, June 29, 1999, 368 Phil. 829, 833.
- [204] Republic Act No. 10389 (March 14, 2013).
- [205] See: Section 20, Rule 14 of the Rules of Criminal Procedure.

- [206] See: Sections 6 to 8 of Republic Act No. 10389.
- [207] G.R. No. 213847, August 18, 2015, 767 Phil. 147, 165-178.
- [208] Section 4 (a), Rule 114 of the Revised Rules of Criminal Procedure.
- [209] Section 4 (b), Rule 114 of the Revised Rules of Criminal Procedure.
- [210] Section 5, Rule 114 of the Revised Rules of Criminal Procedure.
- [211] Ibid.
- [212] Section 7, Rule 114 of the Revised Rules of Criminal Procedure.
- [213] See: Aguirre, et al. v. Belmonte, A.M. No. RTJ-93-1052, October 27, 1994, 307 Phil. 804, 810-817.
- [214] Microsoft Corporation v. Manasala, et al., G.R. No. 166391, October 21, 2015, 772 Phil. 14, 22, citations omitted.
- [215] Partido ng Manggagawa, et al. v. Commission on Elections, G.R. No. 164702, March 15, 2006, 519 Phil. 644, 671; citations omitted.
- [216] Knights of Rizal v. DMCI Homes, Inc., et al., G.R. No. 213948, April 18, 2017, 809 Phil. 453, 533.
- [217] G.R. No. L-23599, September 29, 1967, 128 Phil. 385, 391, citations omitted.
- [218] People v. Dacudao, etc., et al., G.R. No. 81389, February 21, 1989, 252 Phil. 507, 514.
- [219] People v. Antona, etc., et al., G.R. No. 137681, January 31, 2002, 426 Phil. 151, 157, citations omitted.
- [220] Atty. Gacal v. Judge Infante, etc., A.M. No. RTJ-04-1845 (Formerly A.M. No. IPI No. 03-1831-RTJ), October 5, 2011, 674 Phil. 324, 340; Concerned Citizens v. Judge Elina, A.M. No. RTJ-94-1183, February 6, 1995, 311 Phil. 99, 104, citations omitted.
- [221] Go v. Court of Appeals, et al., G.R. No. 106087, April 7, 1993, 293 Phil. 425, 447, citations omitted.
- [222] Basco v. Rapatalo, etc., A.M. No. RTJ-96-1335, March 5, 1997, 336 Phil. 214, 233.
- [223] Narciso v. Sta. Romana-Cruz, G.R. No. 134504, March 17, 2000, 385 Phil. 208, 220, citations omitted.
- [224] See: People v. Cabral, etc., et al., G.R. No. 131909, February 18, 1999, 362 Phil. 697, 709, 716-717, citations omitted.
- [225] Heirs of Teresita Villanueva v. Heirs of Petronila Syquia Mendoza, G.R. No. 209132, June 5, 2017, 810 Phil. 172, 177.
- [226] See: Lacson Hermanas, Inc. v. Heirs of Canon Ignacio, et al., G.R. No. 165973, June 29, 2005, 500 Phil. 673, 677, citations omitted.
- [227] Hiyas Savings and Loan Bank, Inc. v. Acuña, et al., G.R. No. 154132, August 31, 2006, 532 Phil. 222, 228.
- [228] People v. Tanes, G.R. No. 240596, April 3, 2019.
- [229] See: People v. Dr. Sobrepeña, et al., G.R. No. 204063, December 5, 2016, 801 Phil. 929, 936, citations omitted.
- [230] Juan v. Juan, et al., G.R. No. 221732, August 23, 2017, 817 Phil. 192, 205, citations omitted.

[231] Republic v. Sandiganbayan (4[th] Division), et al., G.R. No. 152375, December 16, 2011, 678 Phil. 358, 425.

[232] Flight Attendants' and Stewards' Association of the Philippines v. Philippine Airlines, Inc., et al., G.R. No. 178083, March 13, 2018, 827 Phil. 680, 733, citations omitted.

[233] Current data suggest person-to-person transmission most commonly happens during close exposure to a person infected with the virus that causes COVID-19, primarily via respiratory droplets produced when the infected person speaks, coughs, or sneezes. Droplets can land in the mouths, noses, or eyes of people who are nearby or possibly be inhaled into the lungs of those within close proximity. Transmission also might occur through contact with contaminated surfaces followed by self-delivery to the eyes, nose, or mouth. The contribution of small respirable particles, sometimes called aerosols or droplet nuclei, to close proximity transmission is currently uncertain. However, airborne transmission from person-to-person over long distances is unlikely (<https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html> [last accessed: April 28, 2020]); see also: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last accessed: April 28, 2020).

[234] <https://www.doh.gov.ph/COVID-19/FAQs> (last accessed: May 3, 2020).

[235] See DOH Secretary Administrative Order No. 2020-0015 (RE: Guidelines on the Risk-Based Public Health Standards for COVID-19 Mitigation) dated 27 April 2020 available at <https://www.doh.gov.ph/sites/default/files/health-update/ao2020-0015.pdf> (last accessed May 3, 2020).

[236] Signed by: Jail Director Allan Sullano Irial (Chief of the Bureau of Jail Management and Penology); see also: Annexes A to G and H to H-41 of the April 21, 2020 Verified Report of the Bureau of Jail Management and Penology.

[237] Bureau of Jail Management and Prisons' Verified Report - Annex C.

[238] Signed by: Undersecretary Gerald Q. Bantag (Director General of the Bureau of Corrections); see also: Annexes A to E of the April 22, 2020 Verified Report of the Bureau of Corrections.

[239] Bureau of Corrections' Verified Report Annex E-Compendium of Policies.

[240] The Court explicitly assured that court hearings on urgent matters—including that of "petitions, motions or pleadings related to bail"—will continue during the entire period of the community quarantine.

[241] The Court specifically allowed the electronic filing of applications for bail and granted trial court judges a wider latitude of discretion for a lowered bail amount effective during the period of the present public health emergency. The circular also sanctioned the electronic transmission of bail application approvals and directed the consequent release order to be issued within the same day to the proper law enforcement authority or detention facility to enable the release of the accused.

[242] The Court expanded the efficacy of electronic filing criminal complaints and informations, together with bail applications, to keep up with the executive determination of the need to extend the period of the enhanced community quarantine in critical regions of the country.

[243] The Court ordered the pilot-testing of videoconference hearings on urgent matters in criminal cases, including bail applications, in critical regions where the risk of viral transmission is high.

[244] The Court authorized the grant of reduced bail and recognizance to indigent PDLs pending the continuation

of the proceedings and the resolution of their cases.

[245] Re: Updated Report on the Number of Persons Deprived of Liberty (PDLs) Released from Custody (July 2, 2020).

[246] Letter of Secretary Menardo I. Guevarra to Chief Justice Diosdado M. Peralta (June 15, 2020).

[247] Prepared by: Assistant Parole Officer Laine Apple M. Gernale; reviewed and endorsed by: Executive Director III Reynaldo G. Bayang.

[248] RE: PENALTY FOR VIOLATION OF B.P. BLG. 22 (November 12, 2000); subsequently clarified by: Administrative Circular No. 13-2001 (SUBJECT: CLARIFICATION OF ADMINISTRATIVE CIRCULAR NO. 12-2000 ON THE PENALTY FOR VIOLATION OF BATAS PAMBANSA BLG. 22, OTHERWISE KNOWN AS THE BOUNCING CHECK LAW [February 14, 2001]).

[249] SUBJECT: GUIDELINES IN THE OBSERVANCE OF A RULE OF PREFERENCE IN THE IMPOSITION OF PENALTIES IN LIBEL CASES (January 25, 2008).

[250] An Act Authorizing the Court to Require Community Service in lieu of Imprisonment for the Penalties of Arresto Menor and Arresto Mayor, amending for the purpose Chapter 5, Title 3, Book I of Act No. 3815, As Amended, Otherwise Known As "The Revised Penal Code" (August 8, 2019).

[251] Section 2 of Republic Act No. 11362.

[252] G.R. No. 246209, September 3, 2019.

[253] Tañada, et al. v. Cuenco, et al., No. L-10520, February 28, 1957, 103 Phil. 1051, 1066, citations omitted.

[254] Integrated Bar of the Philippines v. Zamora, et al., G.R. No. 141284, August 15, 2000, 392 Phil. 618, 637-638.

[255] Congressman Garcia v. The Executive Secretary, et al., G.R. No. 157584, April 2, 2009 602 Phil. 64 77.

[256] Gerochi, et al. v. Department of Energy (DOE), et al., G.R. No. 159796, July 17, 2007, 554 Phil. 563, 579, citations omitted.

[257] See: JMM Promotion and Management, Inc., et al. v. Court of Appeals, et al., G.R. No. 120095, August 5, 1996, 329 Phil. 87, 93-94, citations omitted.

[258] Zabal, et al. v. Duterte, et al., G.R. No. 238467, February 12, 2019, citations omitted.

[259] Section 5, Article II of the 1987 Constitution.

[260] Metropolitan Manila Development Authority v. Viron Transport Co., Inc., G.R. No. 170656, August 15, 2007, 557 Phil. 121, 140.

[261] Cruz, et al. v. Pandacan Hiker's Club, Inc., G.R. No. 188213, January 11, 2016, 776 Phil. 336, 348- 349, citations omitted.

[262] Cf. People v. Santiago, G.R. No. 17584, March 8, 1922, 43 Phil. 120, 124, 127-128.

[263] See: David v. Agbay, et al., G.R. No. 199113, March 18, 2015, 756 Phil. 278, 292-293.

[264] Section 14 (2), Article III of the 1987 Constitution.

[265] Ichong v. Hernandez, et al., G.R. No. L-7995, May 31, 1957, 101 Phil. 1155, 1165-1166.

[266] See: *Fortun, et al. v. Macapagal-Arroyo, et al.*, G.R. No. 190293, March 20, 2012, 684 Phil. 526, 556- 557, citing: Section 18, Article VII of the Constitution.

[267] See: *Churchill, et al. v. Rafferty*, G.R. No. L-10572, December 21, 1915, 32 Phil. 580, 604, citations omitted; *Philippine Long Distance Telephone Company v. City of Davao, et al.*, G.R. No. L-23080, October 30, 1965 (With Resolution of October 30, 1965), 122 Phil. 478, 490, citations omitted.

[268] G.R. No. 88211, September 15, 1989, 258 Phil. 479, 504.

[269] *Representative Lagman, et al. v. Hon. Medialdea, et al.*, G.R. No. 231658, July 4, 2017, 812 Phil. 179, 324, citations omitted.

[270] Proscription of Terrorist Organizations, Association, or Group of Persons. — Any organization, association, or group of persons organized for the purpose of engaging in terrorism, or which, although not organized for that purpose, actually uses the acts to terrorize mentioned in this Act or to sow and create a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give in to an unlawful demand shall, upon application of the Department of Justice before a competent Regional Trial Court, with due notice and opportunity to be heard given to the organization, association, or group of persons concerned, be declared as a terrorist and outlawed organization, association, or group of persons by the said Regional Trial Court.

[271] Human Security Act of 2007 (March 6, 2004).

[272] Section 17 of Republic Act No. 9372 (Human Security Act of 2007 [March 6, 2004]) had been recently repealed and replaced by Section 26 of Republic Act No. 11479 (The Anti-Terrorism Act of 2020 [July 3, 2020]) which now reads:

"Proscription of Terrorist Organizations, Association, or Group of Persons. — Any group of persons, organization, or association, which commits any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, or organized for the purpose of engaging in terrorism shall, upon application of the DOJ before the authorizing division of the Court of Appeals with due notice and opportunity to be heard given to the group of persons, organization or association, be declared as a terrorist and outlawed group of persons, organization or association, by the said Court. The application shall be filed with an urgent prayer for the issuance of a preliminary order of proscription. No application for proscription shall be filed without the authority of the ATC upon the recommendation of the National Intelligence Coordinating Agency (NICA)."

[273] See: *Southern Hemisphere Engagement Network, Inc., et al. v. Anti-Terrorism Council, et al.*, G.R. No. 178552, October 5, 2010, 646 Phil. 452, 475.

[274] The Anti-Terrorism Act of 2020 (July 3, 2020).

[275] *Golangco v. Atty. Fung*, G.R. No. 147640, October 12, 2006, 535 Phil. 331, 341, citations omitted.

[276] *Soplente v. People*, G.R. No. 152715, July 29, 2005, 503 Phil. 241, 242, quoting: Samuel Butler.

[277] See: *Calalang v. Williams, et al.*, G.R. No. 47800, December 2, 1940, 70 Phil. 726, 735.

[278] G.R. No. L-543, August 31, 1946, 77 Phil. 192, 205-206.

[279] *Id.* at 295.

[280] See: *Tañada v. Yulo, et al.*, G.R. No. L-43575, May 31, 1935, 61 Phil. 515, 519.

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