EN BANC

G.R. No. 252117 – IN THE MATTER OF THE URGENT PETITION FOR THE RELEASE OF PRISONERS ON HUMANITARIAN GROUNDS IN THE MIDST OF THE COVID-19 PANDEMIC, DIONISIO S. ALMONTE, represented by his wife Gloria P. Almonte, IRENEO O. ATADERO, JR., represented by his daughter Aprille Joy A. Atadero, ALEXANDER RAMONITA K. BIRONDO, represented by his sister Jeanette B. Goddard, WINONA MARIE O. BIRONDO, represented by her sister-in-law Jeanette B. Goddard, REY CLARO CASAMBRE, represented by his daughter Xandra Liza C. Bisenio, FERDINAND T. CASTILLO, represented by his wife Nona Andaya-Castillo, FRANCISCO FERNANDEZ, Jr., represented by his son Francis IB Lagtapon, RENANTE GAMARA, represented by his son Krisanto Miguel B. Gamara, VICENTE P. LADLAD, represented by his wife Fides M. Lim, EDIESEL R. LEGASPI, represented by his wife Evelyn C. Legaspi, CLEOFE LAGTAPON, represented by her son Francis IB Lagtapon, GEANN PEREZ represented by her mother Erlinda C. Perez, ADELBERTO A. SILVA, represented by his son Frederick Carlos J. Silva, ALBERTO L. VILLAMOR, represented by his son Alberto B. Villamor, Jr., VIRGINIA B. VILLAMOR, represented by her daughter Jocelyn V. Pascual, OSCAR BELLEZA, represented by his brother Leonardo P. Belleza, NORBERTO A. MURILLO, represented by his daughter Nally Murillo, REINA MAE NASINO, represented by her aunt Veronica Vidal, DARIO TOMADA, represented by his wife Amelita Y. Tomada, EMMANUEL BACARRA, represented by his wife Rosalia Bacarra, OLIVER B. ROSALES, represented by his daughter Kalayaan Rosales, LILIA BUCATCAT, represented by her grandchild Lelian A. Pecoro, *Petitioners,* **v. PEOPLE OF THE PHILIPPINES, EDUARDO AÑO, in his capacity as Secretary of the Interior and Local Government, MENARDO GUEVARRA, in his capacity as Secretary of Justice, J/DIRECTOR ALLAN SULLANO IRAL in his capacity as the Chief of the Bureau of Jail Management and Penology, USEC. GERALD Q. BANTAG, in his capacity as the Director General of the Bureau of Corrections, J/CINSP. MICHELLE NG - BONTO in her capacity as the Warden of the Metro Manila District Jail 4, J/CINSP. ELLEN B. BARRIOS, in her capacity as the Warden of the Taguig City Jail Female Dorm, J/SUPT. RANDEL H. LATOZA in his capacity as the Warden of the Manila City Jail, J/SUPT. CATHERINE L. ABUEVA, in her capacity as the Warden of the Manila City Jail-Female Dorm, J/CSUPT. JHAERON L. LACABEN, in his capacity as the Correction Superintendent New Bilibid Prison- West, CTSUPT. VIRGINIA S. MANGAWIT, in her capacity as the Acting Superintendent of the Correctional Institution for Women,** *Respondents.*

Promulgated:
July 28, 2020

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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.

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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-unkown-cause-china/en/ (last accessed: April 28, 2020); https://www.cdc.gov/coronavirus/types.html (last visited: April 28, 2020).

4 See: https://www.who.int/philippines/emergencies/covid-19-in-the-philippines (last accessed: April 28, 2020); 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).

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

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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).

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 coronavirus 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]

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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.

(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]

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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.

(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 ***DeShaney 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]

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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.

(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 [₱]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 in vulnerable 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]

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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.

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.

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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).

(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; swinding/*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. Birondo, Winona Marie O. Birondo, 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

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52 Comprehensive Dangerous Drugs Act of 2002 (January 23, 2002).
53 *Rollo*, p. 232.
54 *Id.* at 224-226.

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]

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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.

(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]

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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.

(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]

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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.

(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]

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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.*

(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...

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89 *Rollo*, p. 261.
90 *Id.* at 262.
91 *Id.* at 263-265.
92 *Id.* at 261.

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 *writ*s 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 *writ*s—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 *writ*s 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 *writ*s, a direct recourse to this Court seeking for such issuance is

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[93] G.R. No. 217158, March 12, 2019, citations omitted.

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

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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).

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.

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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.

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 co-operation 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

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[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.

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:

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[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).

(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.

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[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.").

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]

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[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.

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

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[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*.

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.

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[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.

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 Rockly 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?

FR. BERNAS: 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 Nolledo 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: Inasmuch 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 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**.

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:

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[121] 429 U.S. 97 (1976).

[122] See: ***Ient, et al. v. Tullett Prebon (Philippines), Inc.***, G.R. No. 189158, January 11, 2017, 803 Phil. 163, 186.

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*. 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)	Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

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

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[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.

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

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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.

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

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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.

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 **flagrance** (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 flagrance on the

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[134] Anti-Torture Act of 2009 (November 10, 2009).

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]

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[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.

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—

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[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.

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

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[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)*, 3rd Ed., (2007), p. 1.

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

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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.***, 774 So.2d 119 (2000), citations omitted.

147 *Stare decisis et non 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)*, 1st Ed., (1997), p. 4.

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]

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150 See: ***Rogers v. Tennessee***, 532 U.S. 451 (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.

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

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[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.

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

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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]*, 1st 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.

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

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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.

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 Harlan 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 20th 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

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[172] Scalia, *et al.*, *Reading Law: The Interpretation of Legal Texts*, 1st Ed. (2012), pp. 3-5.

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

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[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.

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

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[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…

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

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[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.

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,

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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. Quijano***, 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.

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)

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[197] G.R. No. 62051, March 18, 1985, 220 Phil. 95, 98.
[198] G.R. No. 170867, December 4, 2018, citations omitted.

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 suppletory 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

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[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.

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 *ejusdem 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:

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[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).

> 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.

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[205] See: Section 20, Rule 14 of the Rules of Criminal Procedure.

[206] See: Sections 6 to 8 of Republic Act No. 10389.

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)

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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.

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 reasonably 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]

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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.

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

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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 Elma***, 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.

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

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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 Cenon 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.

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

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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.

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 sever 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

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230 ***Juan v. Juan, et al.***, G.R. No. 221732, August 23, 2017, 817 Phil. 192, 205, citations omitted.

231 ***Republic v. Sandiganbayan (4th 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).

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

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[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.

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]

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[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.

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]

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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.

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**

[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.

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.

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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.

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]

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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.

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

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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.

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,

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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.

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

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[269] ***Representative Lagman, et al. v. Hon. Medialdea, et al.***, G.R. No. 231658, July 4, 2017, 812 Phil. 179, 324, citations omitted.

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

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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.

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:

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[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.

(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.

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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.

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.

EDGARDO L. DELOS SANTOS
Associate Justice

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[279] *Id.* at 295.

[280] See: ***Tañada v. Yulo, et al.***, G.R. No. L-43575, May 31, 1935, 61 Phil. 515, 519.