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, ET AL., *petitioners v.* **PEOPLE OF THE PHILIPPINES, ET AL.,** *respondents.*

Promulgated:

July 28, 2020

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SEPARATE OPINION

> "It is evident that the incredible overcrowding of the prison cells, that taxed facilities beyond measure and the starvation allowance of ten centavos per meal for each prisoner, must have rubbed raw the nerves and dispositions of the unfortunate inmates, and predisposed them to all sorts of violence to seize from their owners the meager supplies from outsider in order to take out their miserable existence. All this led inevitably to the formation of gangs that preyed like wolf packs on the weak, and ultimately to pitiless gang rivalry for the control of the prisoners, abetted by the inability of the outnumbered guards to enforce discipline, and which culminated in violent riots. The government cannot evade responsibility for keeping prisoners under such subhuman and dantesque conditions. Society must not close its eyes to the fact that if it has the right to exclude from its midst those who attack it, it has no right at all to confine them under circumstances that strangle all sense of decency, reduce convicts to the level of animals, and convert a prison term into prolonged torture and slow death."[1]

CAGUIOA, *J.*:

I concur.

The dystopian picture above that the Court refused to turn its gaze from was drawn over five decades ago, and yet the insufferable state of affairs in the penitentiary persists even today. So that although we, as a society, may have made dizzying advances in fields we consider of great consequence, because the least of us have continued to groan in unspeakable living conditions, and our detention facilities are constantly breaking at the seams, one must wonder how far we have truly come. Surely, we must have asked at one point if perhaps more than the deficient fiscal scaffolding and authoritative say-so, our institutions suffer the more destructive lack of empathy.

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[1] *People v. De los Santos*, 122 Phil. 55, 65-66 (1965).

This long-standing problem has been brought to the foreground by the current exigencies the country is facing, and the Court's decision to refer the instant petition to the concerned trial courts for the conduct of bail hearings and other proceedings is agreeably the better approach to take under the circumstances.[2]

While I agree that the Court cannot grant the petitioners' prayer for temporary release in the absence of a proper bail hearing, I also remain unconvinced that the Court, on its own, is powerless to protect the most vulnerable among us, especially those who cannot help themselves. Certainly in this case, the Court's mandate as the final and ultimate dispenser of justice must be more real than mere rhetoric. As proof of the Court's capacities, I write this Opinion to highlight the steps that the Court has already swiftly undertaken in response to the current pandemic. I also submit this Opinion to elaborate on my position and to expound on several issues raised by the petitioners, particularly the Court's equity jurisdiction, the propriety of using humanitarian considerations as a ground for the allowance of bail, and the invocation of the petitioners' rights under domestic and international law. This Opinion imagines that there may be no more opportune time for all material institutions to revisit their powers and awaken perceived apathies than now, with both historical underpinnings and the current crisis taking us all to task, by exposing once more that the unbearable conditions of persons deprived of liberty (PDLs) in our country is neither truly noticed nor new.

I.

The instant *Urgent Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the COVID-19 Pandemic* directly filed before this Court is essentially an application for bail or recognizance.[3] The petitioners, who are allegedly political prisoners charged with crimes punishable by *reclusion perpetua* and life imprisonment, seek their provisional release on bail or recognizance on the basis of humanitarian grounds. Citing *Enrile v. Sandiganbayan*[4] (*Enrile*), the petitioners plead that the Court exercise its equity jurisdiction and grant them temporary liberty as their health conditions and continued incarceration make them highly vulnerable to COVID-19.[5]

On the requirements for bail

Bail is the security required and given for the release of a person in custody of the law to guarantee his appearance before the court as may be

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2 Decision, p. 7.
3 Id.
4 767 Phil. 147 (2015).
5 Decision, pp. 3-4.

required under specified conditions.[6] Recognizance, on the other hand, refers to "an obligation of record, entered into before some court or magistrate duly authorized to take it, with the condition to do some particular act, the most usual condition in criminal cases being the appearance of the accused for trial."[7] If a person in custody or detention is unable to post bail due to abject poverty, he may be released on recognizance to the custody of a qualified member of the *barangay,* city or municipality where the accused resides.[8]

Section 13, Article III of the Constitution states that all persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. As a corollary matter, Section 7, Rule 114 of the Rules of Court provides that regardless of the stage of the criminal prosecution, no person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong. Further, Republic Act No. (R.A.) 10389[9] or the *Recognizance Act of 2012*, states that the release on recognizance of any person in custody or detention for the commission of an offense is a matter of right when the offense is *not* punishable by death, *reclusion perpetua,* or life imprisonment.[10]

Thus, before conviction, bail is either a matter of right or discretion. It is a matter of right when the offense charged is punishable by any penalty lower than *reclusion perpetua*. However, bail becomes a matter of judicial discretion if the offense charged is punishable by death, *reclusion perpetua*, or life imprisonment.[11] The court's discretion is, however, limited only to determining whether or not the evidence of guilt is strong. Consequently, bail is to be granted if evidence of guilt is not strong, and denied if evidence of guilt is strong.[12]

In *Obosa v. Court of Appeals,*[13] the Court reiterated its pronouncement in *De la Camara v. Enage,*[14] on the purpose of bail and the rationale for denying the said relief to persons charged with capital offenses when the evidence of guilt is strong:

> x x x Before conviction, every person is bailable except if charged with capital offenses when the evidence of guilt is strong. Such a

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6 *Heirs of Delgado v. Gonzalez*, G.R. Nos. 184337 & 184507, December 17, 2008 (Unsigned Resolution).
7 *People v. Abner*, 87 Phil. 566, 569 (1950).
8 R.A. 10389, Sec. 3.
9 AN ACT INSTITUTIONALIZING RECOGNIZANCE AS A MODE OF GRANTING THE RELEASE OF AN INDIGENT PERSON IN CUSTODY AS AN ACCUSED IN A CRIMINAL CASE AND FOR OTHER PURPOSES, approved on March 14, 2013.
10 R.A. 10389, Sec. 5.
11 *People v. Tanes*, G.R. No. 240596, April 3, 2019.
12 *Tanog v. Balindong*, 773 Phil. 542, 555 (2015).
13 334 Phil. 253 (1997).
14 148-B Phil. 502, 506-507 (1971).

> right flows from the presumption of innocence in favor of every accused who should not be subjected to the loss of freedom as thereafter he would be entitled to acquittal, unless his guilt be proved beyond reasonable doubt. Thereby a regime of liberty is honored in the observance and not in the breach. It is not beyond the realm of probability, however, that a person charged with a crime, especially so where his defense is weak, would just simply make himself scarce and thus frustrate the hearing of his case. A bail is intended as a guarantee that such an intent would be thwarted. It is, in the language of Cooley, a 'mode short of confinement which would, with reasonable certainty, insure the attendance of the accused' for the subsequent trial. Nor is there anything unreasonable in denying this right to one charged with a capital offense when evidence of guilt is strong, as the likelihood is, rather than await the outcome of the proceeding against him with a death sentence, an ever-present threat, temptation to flee the jurisdiction would be too great to be resisted. x x x[15] (Italics omitted)

In cases when bail is a matter of judicial discretion, the grant or denial thereof hinges on the singular issue of whether or not the evidence of guilt of the accused is strong.[16] As observed in the Court's Decision,[17] this necessarily requires the conduct of a bail hearing where the prosecution has the burden to prove that evidence of guilt is strong, subject to the right of the defense to cross-examine witnesses and introduce evidence in its own rebuttal.[18] The Court cannot perform the aforementioned bail hearing because of the well-entrenched principle that it is not a trier of facts. The Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower courts.[19] The discretion to grant or deny bail is primarily lodged with the trial court judge who is mandated under the rules to: (1) conduct a summary hearing and receive the prosecution's evidence; and (2) provide, in its order granting or denying bail, a summary of the evidence for the prosecution and his own assessment thereof.[20]

As mentioned, the petitioners are all charged with offenses that are punishable by *reclusion perpetua* or life imprisonment. Thus, their entitlement to bail is clearly a matter of judicial discretion. However, there is no showing that any of them had applied for bail or that bail hearings were conducted to determine whether the evidence of guilt against them is strong. Nevertheless, aware of such absence of bail application or hearing, the petitioners have nonetheless proceeded directly to the Court praying for it to grant them temporary liberty through bail or recognizance based on humanitarian grounds, invoking the Court's equity jurisdiction. The petitioners cite the ruling of the Court in *Enrile* to support their cause.

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15 *Obosa v. Court of Appeals*, supra note 13, at 269.
16 *Heirs of Delgado v. Gonzalez*, supra note 6.
17 Decision, pp. 6-7.
18 See *People v. Tanes* supra note 11; *Revilla, Jr. v. Sandiganbayan (First Division)*, G.R. Nos. 218232, 218235, 218266, 218903 & 219162, July 24, 2018.
19 *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 769 (2013).
20 See *People v. Presiding Judge of the RTC of Muntinlupa City*, 475 Phil. 234, 244 (2004).

On the invocation of the Court's equity jurisdiction

In order to properly invoke the Court's equity jurisdiction, the controlling test is whether or not a court of law is unable to adapt its judgments to the special circumstances of a case as a result of the inflexibility of its statutory or legal jurisdiction.[21] Its aim is to enable the Court to rule on the basis of substantial justice in an instance when the prescribed or customary forms of ordinary law prove inadequate.[22]

In a number of cases, the Court has found equity jurisdiction as sufficient justification for the relaxation of rules in order to give way to substantial merit and justice. In the early case of *Catigbac v. Leyesa,*[23] equity jurisdiction was invoked in affording a litigant with a remedy through an action that did not exist in the Code of Civil Procedure. The Court ruled that although the existing body of rules no longer provided for such an ancient action, such was deemed to have subsisted by virtue of a substantive right granted under Article 384 of the Civil Code. The Court there held that where there is a right, there is also a remedy, and equity jurisdiction steps in to scaffold the gap between the substantive right granted and a remedy that ensures that right.[24]

In the 1973 case of *De los Reyes v. Ramolete,*[25] involving the question of ownership over a disputed land between *bona fide* possessors on the one hand, and valid patent holders on the other, the Court found that equity jurisdiction could be used to "set matters right". Still, in the succeeding case of *Serrano v. Court of Appeals,*[26] which concerned the true nature of a purported contract of sale, the Court iterated that procedural rules are not to be applied rigidly at the expense of merit.

Apart from cases of restitution, equity jurisdiction has also been invoked in criminal cases. In *Curammeng v. People,*[27] which involved an erroneous mode of appeal from a conviction, the Court ruled:

> Nevertheless, if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice in light of the prevailing circumstances of the case, such as where strong considerations of substantive justice are manifest in the petition, the Court

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21 *Reyes v. Lim*, 456 Phil 1, 10 (2003).

22 Id. at 10.

23 44 Phil. 221 (1922).

24 The case provides: "The remedy here sought is the old action of *deslinde y amojonamiento*. Though this action is not specifically provided for in the Code of Civil Procedure, there can be no doubt that it still exists. The substantive right upon which it is based is granted by article 384 of the Civil Code, and where there is a right there is also a remedy; the issuing of commissions to establish boundaries is an ancient branch of equity jurisdiction and this power no doubt still resides in our courts of general jurisdiction." (*Catigbac v. Leyesa*, id. at 223.)

25 207 Phil. 574 (1983).

26 223 Phil. 391 (1985).

27 799 Phil. 575 (2016).

> may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction. x x x[28]

Further, in *Daan v. Hon. Sandiganbayan (Fourth Division),*[29] where the accused therein was allowed to enter a plea bargain proposal pursuant to the higher interest of justice and fair play, the Court discussed the concept of equity as follows:

> Equity as the complement of legal jurisdiction seeks to reach and do complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent so to do. Equity regards the spirit of and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts.[30]

Even in extradition cases, the equity jurisdiction of the Court was invoked, as seen in *Secretary of Justice v. Lantion*:[31]

> We have ruled time and again that this Court's equity jurisdiction, which is aptly described as "justice outside legality," may be availed of only in the absence of, and never against, statutory law or judicial pronouncements (*Smith Bell & Co., Inc. vs. Court of Appeals*, 267 SCRA 530 [1997]; *David-Chan vs. Court of Appeals*, 268 SCRA 677 [1997]). The constitutional issue in the case at bar does not even call for "justice outside legality," since private respondent's due process rights, although not guaranteed by statute or by treaty, are protected by constitutional guarantees. We would not be true to the organic law of the land if we choose strict construction over guarantees against the deprivation of liberty. That would not be in keeping with the principles of democracy on which our Constitution is premised.
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> Verily, as one traverses treacherous waters of conflicting and opposing currents of liberty and government authority, he must ever hold the oar of freedom in the stronger arm, lest an errant and wayward course be laid.[32]

Ultimately, the Court's equity jurisdiction is found to be a sufficient justification for the relaxation of rules in order to give way to substantial merit of the case and the higher interest of justice.

Indeed, the peculiar nature of the instant petition prays for both prompt and blanket relief to be applied to differentiated cases of the individual petitioners. Thus, while I recognize their plea to resolve the instant petition based on compassion and humanitarian considerations, the want of necessary factual details brought about by a proper bail hearing

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28 Id. at 581.
29 573 Phil. 368 (2008).
30 Id. at 378-379.
31 379 Phil. 165 (2000).
32 Id. at 216-217.

precludes this Court from a full calibration of each petitioner's eligibility for either release on bail or recognizance.

On the applicability of the ruling in Enrile

In this regard, I agree with the position of some of my colleagues that the case of *Enrile* is inapplicable to the instant petition, though my reasoning differs.[33]

To recall, the Court in *Enrile* allowed therein petitioner to post bail on account of his advanced age and frail health – despite the fact that petitioner was charged with plunder and the absence of a proper hearing to determine whether the evidence of guilt against him is strong. This is inconsistent with the unambiguous Constitutional provision, which provides that a person shall not be entitled to bail if s/he is charged with an offense punishable by *reclusion perpetua* when evidence of guilt is strong.[34] Moreover, the same is contrary to established rules[35] and settled jurisprudence[36] on the necessity of a hearing for bail application when bail is discretionary. I was not yet part of the Court when the case was decided in 2015. Upon motion for its reconsideration however, being already a member of the Court, I voted to grant the motion and joined the dissent of Associate Justice Marvic M.V.F. Leonen.[37]

Consistent with my dissent therein, it is my position that *Enrile* should not be considered as having set a precedent inasmuch as it has not since found favor in subsequent decisions by the Court,[38] and the ruling by the majority therein does not find support in the Constitution and well-

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33 Concurring Opinion of Chief Justice Diosdado M. Peralta, pp. 5-6; Separate Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 5-6; Separate Opinion of Associate Justice Marvic M.V.F. Leonen, p. 18; Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 79.

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

35 RULE 114. *BAIL.*

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

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

36 The necessity of a bail hearing when the charge is a capital offense has been settled in jurisprudence as early as 1945 in the case of *Herras Teehankee v. Rovira*, 75 Phil. 634 (1945).

37 *Enrile v. Sandiganbayan (Third Division)*, 789 Phil. 679 (2016).

38 *N.B. Padua v. People* (G.R. 220913, February 4, 2019) cites only the Separate Opinion of Associate Justice Arturo D. Brion in *Enrile* and not the *ponencia* itself.

established rules and jurisprudence on bail proceedings. Hence, I agree with the position of Senior Associate Justice Estela M. Perlas-Bernabe that the ruling in *Enrile* should be viewed as *pro hac vice* in light of the special and unique considerations accorded to petitioner therein.[39]

For the same reason above, I disagree with the suggestion during deliberations that *Enrile* laid down a two-step test to authorize the grant of bail when it is discretionary to do so: (a) the detainee will not be a flight risk or a danger to the community; and (b) there exist special, humanitarian and compelling circumstances.[40] The ruling in *Enrile* deviates from entrenched legal principles concerning bail and it cannot be used to create doctrine for subsequent cases. To reiterate, petitioner therein was allowed to post bail even though he was charged with an offense punishable by *reclusion perpetua,* without any showing through a hearing that the evidence of his guilt is not strong. Having skirted the minimum requirements under the Constitution regarding bail, the ruling in *Enrile* should not be used to set precedent for cases involving discretionary bail.

Moreover, the grant of bail in *Enrile* on the basis of petitioner's age and health rests on shaky ground as the circumstances therein were quite peculiar. As illustrated in Justice Leonen's Dissenting Opinion therein:

> Neither was there grave abuse of discretion by the Sandiganbayan when it failed to release accused on bail for medical or humanitarian reasons. His release for medical and humanitarian reasons was not the basis for his prayer in his Motion to Fix Bail filed before the Sandiganbayan. Neither did he base his prayer for the grant of bail in this Petition on his medical condition.
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> The grant of bail, therefore, by the majority is a special accommodation for petitioner. It is based on a ground never raised before the Sandiganbayan or in the pleadings filed before this court. The Sandiganbayan should not be faulted for not shedding their neutrality and impartiality. It is not the duty of an impartial court to find what it deems a better argument for the accused at the expense of the prosecution and the people they represent.
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> The allegation that petitioner suffers from medical conditions that require very special treatment is a question of fact. We cannot take judicial notice of the truth contained in a certification coming from one doctor. This doctor has to be presented as an expert witness who will be subjected to both direct and cross-examination so that he can properly manifest to the court the physical basis for his inferences as well as the nature of the medical condition of petitioner. Rebutting evidence that may be presented by the prosecution should also be considered. All this would be proper before the Sandiganbayan. Again, none of this was considered by the Sandiganbayan because petitioner insisted that he was entitled to bail as a matter of right on grounds other than his medical condition.

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39 Separate Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 5-6.

40 See Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 81; see also Separate Opinion of Associate Justice Amy C. Lazaro-Javier, p. 8.

> Furthermore, the majority's opinion—other than the invocation of a general human rights principle—does not provide clear legal basis for the grant of bail on humanitarian grounds. Bail for humanitarian considerations is neither presently provided in our Rules of Court nor found in any statute or provision of the Constitution.
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> This case leaves this court open to a justifiable criticism of granting a privilege ad hoc: only for one person—petitioner in this case.
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> Worse, it puts pressure on all trial courts and the Sandiganbayan that will predictably be deluged with motions to fix bail on the basis of humanitarian considerations. The lower courts will have to decide, without guidance, whether bail should be granted because of advanced age, hypertension, pneumonia, or dreaded diseases. They will have to decide whether this is applicable only to Senators and former Presidents charged with plunder and not to those accused of drug trafficking, multiple incestuous rape, serious illegal detention, and other crimes punishable by *reclusion perpetua* or life imprisonment. They will have to decide whether this is applicable only to those who are in special detention facilities and not to the aging or sick detainees in overcrowded detention facilities all over this country.
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> Our trial courts and the Sandiganbayan will decide on the basis of personal discretion causing petitions for certiorari to be filed before this court. This will usher in an era of truly selective justice not based on clear legal provisions, but one that is unpredictable, partial, and solely grounded on the presence or absence of human compassion on the day that justices of this court deliberate and vote.[41]

Ergo, a reading of the ruling in *Enrile* shows that there is no discernible standard for the courts to decide cases involving discretionary bail on the basis of humanitarian considerations. The ineluctable conclusion, as opined by Justice Leonen,[42] is that the grant of bail by the majority in *Enrile* was a special accommodation for petitioner therein. Thus, at the risk of being repetitious, the ruling in *Enrile* should be considered as a stray decision and, echoing Justice Bernabe,[43] must likewise be considered as *pro hac vice*. It should not be used as the benchmark in deciding cases involving the question on whether bail may be allowed on the basis of humanitarian considerations. Notably, under the Rules of Court, humanitarian considerations such as age and health are only taken into account in fixing the bail amount after a determination that evidence of guilt against the accused is not strong.[44]

However, the petitioners are not left without any other recourse that is legally permissible. Despite the inapplicability of *Enrile* and in view of the novel nature of this case, the Court should not be precluded from affording the petitioners the appropriate reliefs within the bounds of law.

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41 J. Leonen, Dissenting Opinion in *Enrile v. Sandiganbayan*, supra note 4, at 180-181,
42 Separate Opinion of Associate Justice Marvic M.V.F. Leonen, p. 20.
43 Separate Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 5-6.
44 RULES OF COURT, Rule 114, Sec. 9(e).

In this regard, a proper bail hearing before the trial court should first be conducted to determine whether the evidence of guilt against the petitioners is strong. This Court, not being a trier of facts, cannot receive and weigh the petitioners' evidence at the first instance. Factual and evidentiary matters must first be threshed out in a proper bail hearing, which may only be done in the lower courts. Trial courts are better equipped to assess the petitioners' entitlement to bail or recognizance based on the provisions of the Constitution, the relevant laws, and the Rules of Court.

Thus, instead of dismissing the petition outright, I agree with the Court's ruling to refer this petition to the concerned trial courts.[45] Exigency is better served if the trial courts where the criminal cases of the petitioners are respectively pending will hear their bail petitions and receive their evidence.

II.

All persons are guaranteed the right to life. This is constitutionally enshrined under Section 1, Article III of the Constitution, *to wit*:

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

More importantly, the right to life, being grounded on natural law, is inherent[46] and, therefore, not a creation of, or dependent upon a particular law, custom, or belief. It precedes and transcends any authority or the laws of men.[47] Its protection is guaranteed notwithstanding one's status; neither is this right forfeited by detention or incarceration.

Necessarily included in the right to life are the State policies found in Sections 11 and 15, Article II of the Constitution, which state:

> SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.
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> x x x x
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> SECTION 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

The above core principles in our Constitution mirror those found in several international laws, prominent of which is the Universal Declaration of Human Rights[48] (UDHR) stating that:

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45 Decision, p. 7.

46 *International Covenant on Civil and Political Rights* (ICCPR), Article 6(1).

47 *Sps. Imbong v. Ochoa, Jr.*, 732 Phil. 1, 135 (2014).

48 See *Mejoff v. Director of Prisons*, 90 Phil. 70 (1951).

> Article 1. All human beings are born free and equal in dignity and rights. x x x
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> x x x x
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> Article 3. Everyone has the right to life, liberty and security of person.
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> x x x x
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> Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Meanwhile, the right to health is included in the International Covenant on Economic, Social and Cultural Rights (ICESCR),[49] which obliges state parties to recognize the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[50] The Philippines signed and ratified the ICESCR,[51] which makes it a binding obligation on the part of the government.

These rights do not discriminate between offenders and non-offenders as it is the declared policy of the State under the 1987 Constitution to value "every human person."[52] Similarly, the UDHR recognizes that all persons are entitled to all the rights and freedoms set forth therein, "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[53]

Thus, the notion that persons deprived of liberty (PDLs) are not entitled to the guarantee of basic human rights should be disabused. While they do not enjoy the same latitude of rights as certain restrictions on their liberty and property are imposed as a consequence of their detention or imprisonment, the foregoing international covenants and our own Constitution prove that PDLs do not shed their human rights once they are arrested, charged, placed under the custody of law, and subsequently convicted and incarcerated. The International Covenant on Civil and

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49 UN General Assembly, International Covenant on Economic, Social and Cultural Rights, December 16, 1966, United Nations, Treaty Series, vol. 993, p. 3, available at <https://www.refworld.org/docid/3ae6b36c0.html> (last accessed June 14, 2020).

50 ICESCR, Article 12(1).

51 UN Human Rights, Office of the High Commissioner, UN Treaty Body Database, Ratification Status for Philippines, available at <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN> (last accessed June 14, 2020).

52 CONSTITUTION, Art. II, Sec. 11.

53 UDHR, Article 2.

Political Rights (ICCPR),[54] in particular, to which the Philippines is likewise a party,[55] positively requires the treatment of PDLs "with humanity and with respect for the inherent dignity of the human person."[56]

Our laws governing arrest and custodial investigation also do not deviate from the above principles. R.A. 7438,[57] otherwise known as the "Custodial Investigation Law of 1992," was created pursuant to the State policy of valuing the "dignity of every human being"[58] and guaranteeing "full respect for human rights."[59] It defines the positive rights of all persons under custodial investigation, and outlines the concomitant duties of arresting, detaining or investigating officers to secure said rights, which include the detained person's right to be assisted by counsel. In addition, R.A. 9745,[60] otherwise known as the "Anti-Torture Act of 2009" outlaws, foremost, any act that subjects people held in custody to any form of physical, psychological or mental harm, force, violence, threat or intimidation or any other act which degrades human dignity.[61] Finally, Article 32 of the New Civil Code enumerates the rights and liberties of all persons, several of which pertain to the rights of the accused, and includes the freedom from excessive fines or cruel and unusual punishment.[62] Article 32 further provides that the impeding or impairment of these rights shall be under pains of damages.

When a person is detained or imprisoned, the person is afforded certain fundamental rights that affirmatively remain in effect throughout the entire period of incarceration. These rights spring from Section 19, Article III of the Bill of Rights of the Constitution, which proscribes the infliction of cruel, degrading or inhuman punishment and the employment of physical, psychological, or degrading punishment against any prisoner or detainee. It likewise affirms that the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law. Notably, both the

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54 UN General Assembly, International Covenant on Civil and Political Rights, December 16, 1966, United Nations, Treaty Series, vol. 999, p. 171, available at <https://www.refworld.org/docid/3ae6b3aa0.html> (last accessed June 14, 2020).

55 UN Human Rights, Office of the High Commissioner, UN Treaty Body Database, Ratification Status for Philippines, available at <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN> (last accessed June 14, 2020).

56 ICCPR, Article 10(1).

57 AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF, approved on April 27, 1992.

58 R.A. 7438, Sec. 1.

59 Id.

60 AN ACT PENALIZING TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT AND PRESCRIBING PENALTIES THEREFOR, approved on November 10, 2009.

61 R.A. 9745, Sec. 2(b).

62 CIVIL CODE OF THE PHILIPPINES, Art. 32(18); In the early case of *People v. Dionisio*, 131 Phil. 408, 411 (1968), the Court clarified that the constitutional stricture referred to in the use of "cruel or unusual punishment" has been interpreted as penalties that are inhuman and barbarous, or shocking to the conscience.

UDHR[63] and the ICCPR[64] have similar prohibitions against the employment of cruel, degrading, or inhuman punishment.

Associate Justice Edgardo L. Delos Santos, however, opines that the Constitutional proscription against cruel, degrading or inhuman punishment is limited in application and may only be invoked to invalidate a law that imposes such penalty, but "not to recognize a substantive right."[65] Furthermore, he surmises from the deliberations that, as Section 19, Article III is currently worded, it is only the legislature that has the authority to deal with substandard or inadequate penal facilities.[66] I respectfully differ.

Preliminarily, while I agree with how Justice Delos Santos presented the evolution of Section 19, Article III, showing how the deliberations of the 1986 Constitutional Commission manifested an original intention to only protect against "law[s] which [impose] a penalty that is cruel, degrading or inhuman,"[67] it is clear from the exchanges that this original intention was expanded.

In particular, Commissioner Teodulo C. Natividad passionately argued that the provision should contemplate the abatement of inhuman conditions in prison facilities. The following exchanges, likewise quoted in Justice Delos Santos' opinion,[68] demonstrate the accommodation of Commissioner Natividad's proposition that the gross inadequacy of the prison facilities constitutes an impairment of this constitutional right:

> MR. NATIVIDAD. May I go on to Section 22 which says: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment, or the death penalty inflicted." I will not deal with the death penalty because it has already been belabored in many remarks. In due time, perhaps I will be given a chance to say a few words on that, too. But I am referring to cruel, degrading and inhuman punishment. I am drawing upon my experience as the Chairman of the National Police Commission for many years. As Chairman of the National Police Commission, the same way that General de Castro here was, one of my duties was to effect the inspection of jails all over the country. We must admit that our jails are a shame to our race. Once we were invited by the United Nations' expert on penology — I do not remember his name, but he is a doctor friend of mine — and he reported back to us that our jails are penological monstrosities.
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> 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.

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63 UDHR, Article 5.
64 ICCPR, Article 7.
65 Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 38.
66 Id. at 53.
67 I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 703 (1986).
68 Separate Opinion of Associate Justice Edgardo L. Delos Santos, pp. 35-38.

One-half of them sleep while the other half sit up to wait, until the other half wake up, so that they can also sleep. In the toilets, right beside the bowl, there are people sleeping. I visited the prisons and that was the time I fought for the Adult Probation Law because I remember what Winston Churchill and the criminologist Dostoevski said: "If you want to know the level of civilization of a country, all you have to do is visit their jails." In jurisprudence, the interpretation of "cruel and unusual punishment" in the United States Constitution was made by the Supreme Court when it said, and I quote: "Interpretation of the Eight Amendment in the phrase 'cruel and unusual punishment,' must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Courts in the United States in 10 landmark cases — some of these I would like to mention in passing: *Halt v. Sarver, Jackson v. Bishop, Jackson v. Handrick, Jordan v. Fitzharris and Rockly v. Stanley* — stated that subhuman conditions in a prison is an unconstitutional imposition of cruel and unusual punishment.

I would just like to — even without an amendment — convince the Committee that if a prison is subhuman and it practices beatings and extended isolation of prisoners, and has sleeping cells which are extremely filthy and unsanitary, these conditions should be included in the concept of "cruel and inhuman punishment." Even without amendment but with this concept, I would like to encourage the legislature to give higher priority to the upliftment of our jails and for the judiciary to act because the judiciary in *habeas corpus* proceedings freed some prisoners. So, by means of injunction, the courts stopped these practices which are inimical to the constitutional rights of inmates. On the part of the executive, it initiated reforms in order that the jails can be more humane and fair. **If this concept of "cruel and inhuman punishment" can be accepted, Mr. Presiding Officer, I may not even ask for an amendment so that in the future, the judiciary, the executive and the legislative can give more remedial measures to this festering problem of subhuman conditions in our jails and prisons.**

I submit, Mr. Presiding Officer.

FR. BERNAS. Mr. Presiding Officer, although I would say that the description of the situation is something that is inhuman, I wonder if it fits into the purpose of Section 22. The purpose of Section 22 is to provide a norm for invalidating a penalty that is imposed by law. Let us say that thieves should be punished by imprisonment in a filthy prison, that would be "cruel and unusual punishment." But if the law simply say that thieves should be punished by imprisonment, that by itself does not say that it is cruel. So, it does not invalidate the penal law. So my own thinking is that what the Gentleman has in mind would be something more proper, even for ordinary legislation or, if at all, for Section 21.

MR. NATIVIDAD. The Gentleman said that he is not going to sentence him in a filthy prison. Of course not. But this is brought out in the petition for *habeas corpus* or for injunction. This is revealed in a proper petition.

FR. BERNAS. I agree with the Commissioner, but as I said, the purpose of Section 22 is to invalidate the law itself which imposes a penalty that is cruel, degrading or inhuman. That is the purpose of this law. The Commissioner's purpose is different.

MR. NATIVIDAD. My purpose is to abate the inhuman treatment, and thus give spirit and meaning to the banning of cruel and inhuman punishment. In the United States, if the prison is declared unconstitutional, and what is enforced is an unconstitutional punishment, the courts, because of that interpretation of what is cruel and inhuman, may impose conditions to improve the prison; free the prisoners from jail; transfer all prisoners; close the prison; or may refuse to send prisoners to the jail.

FR. BERNAS. **We would await the formulation of the Commissioner's amendment.**

MR. NATIVIDAD. **So, in effect, it is abating the continuance of the imposition of a cruel and inhuman punishment.** I believe we have to start somewhere in giving hope to a big segment of our population who are helplessly caught in a trap. Even the detention prisoners, 85 percent of whom are jailed in the metropolitan area, are not convicted prisoners, and yet although not convicted in court, they are being made to suffer this cruel and inhuman punishment. I am saying this in their behalf, because as Chairman of the National Police Commission for so many years, it was my duty to send my investigators to chronicle the conditions in these jails day by day. I wrote letters to the President asking for his help, as well as to the Batasan, but there was no reply.

Finally, I am now here in this Commission, and I am writing this letter through the Chairman of this Committee. I hope it will be answered.

FR. BERNAS. **Mr. Presiding Officer, as I said, we have no quarrel whatsoever with the objective. We will await the formulation of the amendment**.

MR. NATIVIDAD. Thank you.[69] (Emphasis supplied)

When Commissioner Regalado E. Maambong posed the same concern as Commissioner Natividad, Fr. Joaquin G. Bernas again agreed that the formulation of the provision may be amended to integrate the protection being sought, *viz.*:

MR. MAAMBONG. Yes, so that I do not have to waste the time of the body and the Committee, considering that the Committee has understood our purpose, perhaps the Committee could help by giving us just one section to be inserted there or one sentence or one phrase which would satisfy the requirements that we have presented, **considering that in the United States, circumstances of this nature which happen inside the jail are considered under the provisions and jurisprudence of the United States as cruel and unusual punishment. Probably, we can have a parallel provision along that line and I hope the Committee will help**. Would that be all right?

FR. BERNAS. **Yes. And I thought the Gentleman already has the formula which we can discuss**.

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[69] I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 702-703 (1986).

THE PRESIDING OFFICER (Mr. Bengzon). The Floor Leader is recognized.

MR. MAAMBONG. So, we reserve our right to insert something here in coordination with the Committee.

Thank you very much.[70] (Emphasis supplied)

During the period of amendments, several points were raised, including letting the legislature define the concept of substandard or inadequate facilities:

FR. BERNAS. **This is more of a command to the State saying that beyond having recognized these things as prohibited, the State should do something to remedy whatever may be a violation.**

x x x x

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

MR. REGALADO. How do we determine what is substandard?

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

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

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

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

FR. BERNAS. Yes.

x x x x

MR. RODRIGO. I would like to call attention to the fact that the word "DEGRADING" is already in the first sentence of this section: "Excessive fine shall not be imposed nor cruel, degrading or inhuman punishment inflicted." So, why repeat the word "DEGRADING"?

FR. BERNAS. Precisely, Madam President, yesterday, we said that the provision we have in the present Constitution has reference to the punishment that is prescribed by the law itself; whereas what we are dealing with here is the punishment or condition which is actually being practised. In other words, we are, in the present Constitution, talking about punishment which, if imposed by the law, renders the law invalid.

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[70] Id. at 779.

In this paragraph, we are describing conditions of detainees who may be held under valid laws but are being treated in a manner that is subhuman or degrading.

x x x x

MR. FOZ. May I just ask one question of the proponent of the amendment. I get it that the law shall provide penalties for the conditions described by his amendment.

MR. MAAMBONG. In line with the decisions of the Supreme Court on the interpretation of cruel and unusual punishments, there may be a law which punishes this violation precisely or there may not be a law. **What could happen is that the law could provide for some reliefs other than penalties**.

In the United States, there are what is known as injunctive or declaratory reliefs and that is not exactly in the form of a penalty. But I am not saying that the legislature is prevented from passing a law which will inflict punishment for violations of this section.

MR. FOZ. In case the law passed by the legislature would impose sanctions, not so much in the case of the first part of the amendment but in the case of the second part with regard to substandard or outmoded legal penal facilities characterized by degrading surroundings and insanitary or subhuman conditions, on whom should such sanctions be applied?

MR. MAAMBONG. It would have to be applied on the administrators of that penal institution. In the United States, in my reading of the cases furnished to me by Commissioner Natividad, there are instances where the law or the courts themselves ordered the closure of a penal institution and, in extreme cases, in some states, they even set the prisoners free for violations of such a provision.

MR. FOZ. I am concerned about the features described as substandard or outmoded penal facilities characterized by degrading surroundings, because we know very well the conditions in our jails, particularly in the local jails. It is not really the fault of those in charge of the jails but these conditions are the result of lack of funds and the support by local government, in the first instance, and by the national government.

Does the Gentleman think we should penalize the jailers for outmoded penal facilities?

MR. MAAMBONG. No, Madam President. **What we are trying to say is that lack of funds is a very convenient alibi for the State, and I think with these provisions, the State should do something about it.**

MR. FOZ. Thank you, Madam President.

FR. BERNAS. **Madam President, we are not telling the legislature what to do; we are just telling them that they should do something about it.**

MR. DE CASTRO. Madam President.

THE PRESIDENT. Commissioner de Castro is recognized.

MR. DE CASTRO. Thank you.

The provision which says: "The employment of PHYSICAL, psychological OR DEGRADING PUNISHMENT against ANY PRISONER OR DETAINEE SHALL be dealt with BY LAW" is already provided for by our present laws. We already have laws against third-degree punishments or even psychological punishments. Do we still need this provision?

Thank you. Madam President.

MR. MAAMBONG. **As I was saying, Madam President, the law need not penalize; the law may only put in corrective measures as a remedy.**

MR. REGALADO. Madam President.

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. May I just rejoin the statement of Commissioner de Castro that we have laws already covering situations like this. The law we have on that in the Revised Penal Code is maltreatment of prisoners which comes from the original text *maltratos de los encarcerados*. That presupposes that the prisoner is incarcerated.

The proposed legislation sought here will apply not only to incarcerated prisoners, but also to other detainees who, although not incarcerated, are nevertheless kept, their liberty of movement is controlled before incarceration. So, this is for the legislature to fill that void in the law.[71] (Emphasis supplied)

The foregoing exchanges, in my view, belie a restrictive interpretation that severely limits the application of Section 19, Article III. What is apparent instead is that the Framers reached a consensus on three important points: *first*, that the use of substandard or inadequate penal facilities under subhuman conditions constitutes cruel, degrading or inhuman punishment and shall be dealt with by legislation; *second*, that the said subhuman conditions during detention may be appreciated for **both** PDLs under preventive detention, and PDLs who are detained after conviction; and *third*, the State has the positive duty to undertake measures for the improvement of these conditions.

Justice Delos Santos makes much of the fact that the second paragraph of Section 19, Article III contains the phrase "shall be dealt with by law," thus advancing the view that the Framers intended to leave to Congress the authority of determining the conditions for substandard or inhuman prison facilities and of providing penalties therefor.[72] It bears emphasis, however, that both Commissioners Natividad and Maambong referred to the United States (US) Supreme Court's interpretation of the

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71 II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 23-26 (1986).

72 See Separate Opinion of Associate Justice Edgardo L. Delos Santos, pp. 54-55.

Eighth Amendment[73] in their Constitution, which similarly proscribes the infliction of cruel and inhuman punishment.

Indeed, the US Supreme Court ruled in *Estelle v. Gamble*[74] (*Estelle*) that the Eighth Amendment, which traditionally proscribes physically barbarous punishments, should extend to the provision of adequate medical care to PDLs. The US Supreme Court, in effect, acknowledged the positive obligation of the State over PDLs in its custody, *to wit*:

> Our more recent cases, however, have held that the Amendment proscribes more than physically barbarous punishments. x x x The Amendment embodies "broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . . ," x x x against which we must evaluate penal measures. Thus, we have held repugnant to the Eighth Amendment punishments which are incompatible with "the evolving standards of decency that mark the progress of a maturing society," x x x.
>
> **These elementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration. An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical "torture or a lingering death," x x x the evils of most immediate concern to the drafters of the Amendment. In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose. x x x The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency as manifested in modern legislation codifying the common law view that "it is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself."**[75] (Emphasis supplied; citations omitted)

Thus, while torture is the ordinary and usual contemplation of cruel and inhuman punishment, the deliberations of the 1986 Constitutional Commission reveal the explicit intention of the Framers to depart from or expand the understanding of this convention. For this reason, the Framers clearly agreed to extend the guarantee in Section 19, Article III for the protection against the employment of substandard prison facilities. That this "shall be dealt with by law" is an exhortation to the government — not only the legislature — to create or otherwise ensure humane conditions for PDLs during their incarceration. It is not a condition for Section 19 to operate.[76]

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

74 429 U.S. 97 (1976).

75 Id. at 102-104.

76 FR. BERNAS. This is more of a command to the State saying that beyond having recognized these things as prohibited, the State should do something to remedy whatever may be a violation.

x x x x

MR. MAAMBONG. No, Madam President. What we are trying to say is that lack of funds is a very convenient alibi for the State, and I think with these provisions, the State should do something about it. [II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 23, 25 (1986).]

In this regard, if the penal institutions are so grossly inadequate, there is a culpable omission on the part of the State to observe an affirmative obligation under the Constitution. Section 19, Article III may therefore be invoked to grant reliefs not only when, as suggested by some members, there is "flagrant or intentional infliction of pain or suffering,"[77] **but also when the conditions of incarceration are neglected to such a degree that the punishment becomes cruel and excessive**.

It is also worth repeating, as cited by Justice Delos Santos, that as early as 1986, the Framers had wrestled with the means with which this deplorable situation of PDLs can be redressed. Over three decades ago, there was already an acute sense of failure of the detention system of the country, with one soberly recognizing that our detention facilities were "penological monstrosities"[78] and another calling for an uplifting of the detention conditions to a "level of constitutional tolerability."[79]

The above discussion only goes to show that the Framers neither intended to preclude individuals, such as the petitioners, from invoking the right under Section 19, Article III to obtain redress for their grievances, nor designed to foreclose any complementary action on the part of the Court or the Executive. In fact, a more circumspect consideration of the material deliberations draws a conceptualization of Section 19, Article III that is far from static, but is instead dynamic, and constantly attuned to the moral moorings and convictions of the times. In *Echegaray v. Secretary of Justice*,[80] which Justice Delos Santos likewise cites positively, the Court significantly held that "[w]hat is cruel and unusual 'is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice' and 'must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.'"[81]

Against this backdrop, therefore, it is most difficult to surmise that during the Framers' deliberations, Section 19, Article III was conceived with the idea of minimizing its enforceability, or confining its remedial curative measures only to the Executive and the Legislative branches. If at all, it is perhaps even reasonably discernible that the appreciation of the severity of the condition in the detention facilities tilted the arc of the provision towards enabling **all three branches of the government** to be able to move within its powers to remedy the appalling conditions suffered by PDLs under custody.

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77 Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 57.
78 Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 36, quoting Commissioner Natividad.
79 Id. at 39, quoting Commissioner Maambong.
80 358 Phil. 410 (1998), quoted in Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 35.
81 Id. at 436.

Of equal import, Commissioner Maambong remarked that "the law need not penalize; the law may only put in corrective measures as a remedy."[82] As I have already mentioned, there are laws already in place to protect the rights of PDLs against the employment of cruel, degrading, and inhuman punishment, from the moment of custodial investigation until the service of their sentence. R.A. 7438 and R.A. 9745 provide for penalties, while Article 32 of the Civil Code grants PDLs a recourse to collect damages in cases of violations of their rights.

Verily, the Constitutional rights afforded to PDLs create corresponding duties on the part of the State to protect and promote them. In line with this, it is noteworthy that as early as 1955, the UN adopted the Standard Minimum Rules for the Treatment of Prisoners (UNSMRTP), which constituted the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners.[83] While these rules were merely recommendatory, they have been of tremendous value and influence in the development of prison laws, policies and practices in Member States all over the world.[84] The UNSMRTP was subsequently revised in 2015 into what is now known as the *Nelson Mandela Rules*. The recent revision took into consideration the development of other international law instruments on human rights.[85]

The UNSMRTP and the *Nelson Mandela Rules* were concretized and situated within the sphere of the national experience mainly through the enabling laws of the two main agencies in charge of the country's prison system, namely the Bureau of Jail Management and Penology (BJMP) and the Bureau of Corrections (BuCor). These enabling laws contain the very corrective measures, as Commissioner Maambong adverted to during the deliberations, which seek to address the use of substandard or inadequate penal facilities under subhuman conditions.

The BuCor's enabling statute, R.A. 10575,[86] explicitly declares as a policy the promotion of the general welfare and the safeguarding of prisoners' rights in the national penitentiary.[87] For this purpose, R.A. 10575 vests the BuCor with the mandate of safekeeping national inmates, by ensuring the "decent provision of quarters, food, water and clothing in compliance with established United Nations standards."[88] Repeated

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82 II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 26 (1986).

83 United Nations, Nelson Mandela Rules available at <https://www.un.org/en/events/mandeladay/mandela_rules.shtml> (last accessed on June 14, 2020).

84 Id.

85 The Whereas Clauses of the Nelson Mandela Rules explicitly took into account "the progressive development of international law pertaining to the treatment of prisoners since 1955, including in international instruments such as the [ICCPR], the [ICESCR] and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto."

86 AN ACT STRENGTHENING THE BUREAU OF CORRECTIONS (BUCOR) AND PROVIDING FUNDS THEREFOR, approved on May 24, 2013.

87 R.A. 10575, Sec. 2.

88 Id., Sec. 4(a). Underscoring supplied.

references to the UNSMRTP are also made in its Revised Implementing Rules and Regulations (Revised IRR). Section 2 of said Revised IRR echoes the declaration of policy in the BuCor's enabling act, further stating that the basic rights of every prisoner should be safeguarded by, among other things, "creating an environment conducive to [the] rehabilitation [of prisoners] and compliant with the [UNSMRTP]." This section quotes the concept of imprisonment, in particular, as stated in Rule 57 of the UNSMRTP,[89] *to wit*:

> Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore **the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.** (Emphasis supplied)

The definition of safekeeping in the Revised IRR also expounded that the basic needs which PDLs must be provided with comprise of "**habitable quarters**, food, water, clothing, and **medical care**, in compliance with the established UNSMRTP, and consistent with restoring the dignity of every inmate and guaranteeing full respect for human rights."[90] It is likewise stated that the core objective of "according the dignity of man" to inmates while serving sentence is in accordance with the following provisions of the UNSMRTP:[91]

> 60. (1) **The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.**
>
> (2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.[92] (Emphasis supplied)

The enabling statute of the BJMP,[93] on the other hand, mandates a secure, clean, adequately equipped, and sanitary jail in every district, city and municipality, for the custody and safekeeping of detainees.[94] The mission of the BJMP is to enhance jail management by formulating policies and guidelines on **humane safekeeping** of inmates and ensuring their

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89 Now found in Rule 3 of the *Nelson Mandela Rules*.

90 Revised IRR of R.A. 10575, Sec. 3(ee). Emphasis and underscoring supplied.

91 Id., Sec. 4.

92 Now found in Rules 5(1) and Rule 87 of the *Nelson Mandela Rules*.

93 R.A. 6975, AN ACT ESTABLISHING THE PHILIPPINE NATIONAL POLICE UNDER A REORGANIZED DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, AND FOR OTHER PURPOSES, approved on December 13, 1990, Sec. 6.

94 Id., Sec. 63; RULES AND REGULATIONS IMPLEMENTING THE DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT ACT OF 1990, Sec. 62.

compliance in all district, city and municipal jails.[95] One of its objectives is to ensure that the BJMP complies with the principles in the different international instruments relative to the humane treatment of inmates.[96] The BJMP likewise endeavors to improve the living conditions of offenders in accordance with the accepted standards set by the United Nations.[97]

In the BJMP Operations Manual, what especially stands out are the provisions on the handling and safekeeping of inmates with special needs. Included herein are inmates who are pregnant,[98] senior citizens,[99] and infirm.[100] Section 43 also significantly provides that emergency plans for both natural and man-made calamities and other forms of jail disturbances shall be formulated to suit the physical structure and other factors peculiar to every jail. An epidemic is among the enumerated examples of a natural calamity.

These laws affirm the State's duty of safekeeping PDLs, as carried out by the BuCor and BJMP, in relation to the constitutional proscription against cruel and inhumane punishment, and substandard conditions for penal facilities. At the same time, what may not be divorced from this proscription is the duty to protect the health of PDLs while incarcerated, and ultimately,

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95 BJMP COMPREHENSIVE OPERATIONS MANUAL, 2015 Edition, Sec. 6(b).

96 Id., Sec. 6(c).

97 Id., Sec. 10(a).

98 Section 34. HANDLING INMATES WITH SPECIAL NEEDS. – The following guidelines shall be observed in handling inmates with special needs:

x x x x

13. Pregnant Inmates/Female Inmates with Infants
    a. Pregnant inmates must be referred to jail physician or nurse for pre-natal examination;
    b. They should be given tasks that are deemed fit and proper, their physical limitations, considered;
    c. During active labor, pregnant inmates should be transferred nearest government hospital;

x x x x

99 Section 34. x x x

x x x x

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

100 Section 34. x x x

x x x x

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

realize their right to life,[101] both fundamental rights — as I have stressed previously — which PDLs do not forfeit upon arrest and detention.

As it stands, therefore, the right to health, as a "component to the right to life,"[102] is inextricably linked with the guarantees under Section 19, Article III, of the Constitution, which are self-executing provisions and, as such, are judicially enforceable.

Apart from the domestic laws earlier mentioned, the more relevant consideration is that the enabling statutes of the BuCor and the BJMP have expressly adopted the standards set by the UN for the safekeeping of PDLs. There is no question, therefore, that included herein are the universally accepted minimum standards set by the *Nelson Mandela Rules*. The BuCor's enabling law, in particular, has explicitly referred thereto. **Consequently, notwithstanding the non-binding and recommendatory nature of the *Nelson Mandela Rules*, they have effectively been transformed as part of the law of the land.**

Furthermore, flowing from the right to health guaranteed by ICESCR, PDLs cannot be discriminated upon when it comes to access to health facilities and services.[103] They are entitled to receive the same standard of care normally available to those not incarcerated. This is referred to as the principle of "equivalence of care,"[104] initially adopted by the UN in General Assembly Resolution 37/194, which declared principles for the role of physicians in protecting PDLs against torture and cruel or degrading punishment:

> Principle 1
>
> Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of **the same quality and standard as is afforded to those who are not imprisoned or detained.**[105] (Emphasis supplied)

This was further echoed in Rule 24 of the *Nelson Mandela Rules,* which states that:

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[101] See Committee on Economic, Social and Cultural Rights, General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12), UN Document E/C.12/2000/4, par. 3, available at <https://www.refworld.org/pdfid/4538838d0.pdf> (last accessed June 14, 2020).

[102] *Sps. Imbong v. Ochoa, Jr.,* supra note 47, at 156.

[103] See Committee on Economic, Social and Cultural Rights, General Comment 14, supra note 101, par. 43(a).

[104] Gen Sander and Rick Lines, HIV, Hepatitis C, TB, Harm Reduction, and Persons Deprived of Liberty: What Standards Does International Human Rights Law Establish? 18 (2) Health and Human Rights Journal 171 (December 2016).

[105] United Nations, Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Resolution 37/194, Principle 1 (December 18, 1982).

> 1. The provision of health care for prisoners is a State responsibility. **Prisoners should enjoy the same standards of health care that are available in the community**, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.
>
> 2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence. (Emphasis supplied)

It is interesting to note that under the BuCor Operating Manual, there is an evident adherence to the principle of equivalence and non-discrimination, which is apparent in the following provision:

> Part V
>
> Rehabilitation and Treatment of Inmates
>
> x x x x
>
> Chapter 2
>
> Inmate Services
>
> x x x x
>
> SECTION 2. *Health Services.* — Health care and services shall be given to inmates **similar to those available in the free community** and subject to prison regulations. A prison shall have at least one qualified medical doctor and a dentist. (Emphasis supplied)

Guided by the principle of equivalence of care, the petitioners and all other PDLs are entitled to the same safeguards against illnesses that are available to those not incarcerated. But considering the present state of our penal facilities, and in light of the gravity of the present pandemic, the fulfillment of the minimum standards for the safekeeping and health of PDLs has taken on a new sense of urgency.

The problem with congestion within our penal facilities is no longer a disputable matter. The New Bilibid Prison alone reportedly has a 353% congestion rate.[106] The acuteness of the consequences of overcrowded jails and prisons, however, has been sharpened by the highly infectious nature of COVID-19. The Court can take judicial notice of the precautions published by the World Health Organization on the import of social distancing and self-isolation as effective measures to prevent the spread of COVID-19.[107] But given the notorious conditions within prison walls, these recommended

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[106] BuCor Statistics on Prison Congestion, available at <http://www.bucor.gov.ph/inmate-profile/Congestion-04062020.pdf> (last accessed June 14, 2020).

[107] World Health Organization, Coronavirus Disease (COVID-19) Advice for the Public, at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public> (last accessed June 14, 2020).

measures intended for the protection of the health and safety of PDLs may well be unattainable. The respondents themselves, in their Comment, admitted to the near impossibility of adhering to these measures.[108] In the context of the present global pandemic, therefore, the interwoven rights of PDLs run the risk of being impaired. And, while it might be true that respondents have taken steps to address and contain the spread of COVID-19 among the inmates, these measures may be easily negated by the congestion of prison facilities, which render PDLs vulnerable to the risk of contracting the virus.

If the causal link between PDLs' poor health and exclusion from standards of care available to free individuals, on the one hand, and the fact of facility congestion on the other, are both sufficiently established, such may give rise to an actionable claim based on the violation of the proscription against cruel and inhuman punishment, and the State's commitment to various international law instruments. Such a claim may be demonstrably supported by a showing that within the present configuration of the prison systems, PDLs are deprived of the means to practice standard protocols to ensure their health, including even the simplest ones such as physical distancing and self-isolation.

In the case of *Helling v. McKinney*[109] (*Helling*), the US Supreme Court was confronted with the question of whether a prison inmate's health risk as a result of involuntary exposure to environmental tobacco smoke in the Nevada State prison was a proper basis for a claim under the Eighth Amendment. The US Supreme Court held that denial of a remedy for such health risk exposure was tantamount to deliberate indifference in the contemplation of *Estelle* and further rejected the proposition that only deliberate indifference to serious health problems was actionable, *viz.*:

> We have great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate's current health problems but may ignore a condition of confinement **that is sure or very likely to cause serious illness and needless suffering the next week or month or year**. In *Hutto* v. *Finney,* 437 U. S. 678, 682 (1978), we noted that inmates in punitive isolation were crowded into cells and that some of them had infectious maladies such as hepatitis and venereal disease. This was one of the prison conditions for which the Eighth Amendment required a remedy, even though it was not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed. We would think that a prison inmate also could successfully complain about demonstrably unsafe drinking water without waiting for an attack of dysentery. Nor can we hold that prison officials may be deliberately indifferent to the exposure of inmates to a serious, communicable disease on the ground that the complaining inmate shows no serious current symptoms.

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[108] OSG Comment, p. 31.
[109] 509 U.S. 25 (1993).

> **That the Eighth Amendment protects against future harm to inmates is not a novel proposition. The Amendment, as we have said, requires that inmates be furnished with the basic human needs, one of which is "reasonable safety."** *DeShaney, supra,* at 200. **It is "cruel and unusual punishment to hold convicted criminals in unsafe conditions."** *Youngberg* v. *Romeo,* 457 U. S. 307, 315-316 (1982). It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them. x x x[110] (Emphasis and underscoring supplied)

Again, quite notably, the US Supreme Court proclaimed in *Helling* that there need not be an actual infection or affliction on the part of the inmate before the protection of the Eighth Amendment can apply. As applied to petitioners' situation, it is unnecessary to require them to submit to a physical examination, or to first show symptoms of COVID-19 before recognizing a violation or threatened violation of their rights. Such a proposition may be evidence of indifference to the toll that substandard living conditions in our prison systems exact until it may be too late. Perhaps that premise has been rejected not in the least because it may well result in an exercise in futility, where the grave and possibly irreversible consequences on the right to health of PDLs must precede a proper recognition of such a right to begin with. I thus respectfully express my reservations to the proposition of some of my colleagues that absent a clear showing of the petitioners' health status, or that they are "actually suffering from a medical condition [requiring] immediate and specialized attention,"[111] the actual risk for the petitioners to contract COVID-19 in their respective penal facilities is speculative.[112]

In the later case of *Brown, et al. v. Plata, et al.*[113] involving a protracted violation of inmates' rights in a California prison through substandard and unsafe conditions of detainment, the US Supreme Court held that a court-mandated decongestion of the prison facilities, as authorized by the Prison Litigation Reform Act of 1995, was crucial in providing a remedy to these violations, and steps taken to that end should only be affirmed, *to wit*:

> Yet so too is the continuing injury and harm resulting from these serious constitutional violations. For years the medical and mental health care provided by California's prisons has fallen short of minimum constitutional requirements and has failed to meet prisoners' basic health needs. Needless suffering and death have been the well-documented result. Over the whole course of years during which this litigation has been pending, no other remedies have been found to be sufficient. **Efforts to remedy the violation have been frustrated by severe overcrowding in California's prison system.** Short term gains in the provision of care

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110 Id. at 33.
111 Concurring Opinion of Chief Justice Diosdado M. Peralta, p. 7.
112 Separate Opinion of Associate Justice Rodil v. Zalameda, p. 7.
113 563 U.S. 493 (2011).

> have been eroded by the long-term effects of severe and pervasive overcrowding.
>
> **Overcrowding has overtaken the limited resources of prison staff; imposed demands well beyond the capacity of medical and mental health facilities; and created unsanitary and unsafe conditions that make progress in the provision of care difficult or impossible to achieve.** The overcrowding is the "primary cause of the violation of a Federal right," 18 U. S. C. §3626(a)(3)(E)(i), specifically the severe and unlawful mistreatment of prisoners through grossly inadequate provision of medical and mental health care.[114] (Emphasis supplied)

Further echoing the ruling in *Estelle*, the US Supreme Court brought to the fore the positive duty on the part of the State to ensure the basic dignity of the human lives that it detains, premised on the fact that the detainees, by virtue of their detention, are severely limited in their capacity to ensure such dignity themselves, *viz.:*

> As a consequence of their own actions, prisoners may be deprived of rights that are fundamental to liberty. Yet the law and the Constitution demand recognition of certain other rights. **Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment. " 'The basic concept underlying the Eighth Amendment is nothing less than the dignity of man.' "** *Atkins* v. *Virginia*, 536 U. S. 304, 311 (2002) (quoting *Trop* v. *Dulles*, 356 U. S. 86, 100 (1958) (plurality opinion)).
>
> To incarcerate, society takes from prisoners the means to provide for their own needs. Prisoners are dependent on the State for food, clothing, and necessary medical care. **A prison's failure to provide sustenance for inmates "may actually produce physical 'torture or a lingering death.' "** *Estelle* v. *Gamble*, 429 U. S. 97, 103 (1976) (quoting *In re Kemmler*, 136 U. S. 436, 447 (1890)); see generally A. Elsner, Gates of Injustice: The Crisis in America's Prisons (2004). Just as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care. **A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.**[115] (Emphasis supplied)

It bears emphasis, however, that in these cases, the US Supreme Court only ruled on the existence of causes of actions or possible claims under the Eighth Amendment, **but left it to the trial courts to try and hear said claims**, aided by the subjective and objective elements that plaintiffs would need to prove to establish an Eighth Amendment violation.

There is no valid reason to depart from this practice of the US Supreme Court, considering that claims for violations of a PDL's

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[114] Id.
[115] Id.

fundamental rights are replete with factual matters best threshed out in the trial courts. Justice Bernabe is of the same view, recommending that the petition be referred to the appropriate trial court for a full-blown hearing on the petitioners' respective situations, which should be examined using the "deliberate indifference" test.[116] **As such, in the same manner that the prayer of the petitioners for themselves and for other similarly situated PDLs to be granted bail or recognizance must be brought before the proper trial court for hearings, so should any claim for violation under the proscription against cruel and inhuman punishment and substandard living conditions.**

The Court, on a previous occasion, has affirmed its power to review alleged violations of the constitutional rights of PDLs. In *In the Matter of Petition for Habeas Corpus of Alejano v. Caubay*,[117] it held:

> x x x Regulations and conditions in detention and prison facilities that violate the Constitutional rights of the detainees and prisoners will be reviewed by the courts on a case-by-case basis. The courts could afford injunctive relief or damages to the detainees and prisoners subjected to arbitrary and inhumane conditions.[118]

At this juncture, I return to the elephant in the room: the causal link between the congestion within prison walls and the exclusion of PDLs from the standard of care that should be made available to them.

The Court should be mindful of the fact that the remedies of bail and recognizance are not available for every PDL. To be more precise, these remedies are not extended to PDLs who have already started serving their sentence. There should be no reason, however, to ignore their plight in the midst of this global pandemic, lest there arise a cause of action under the Constitution. It is important to note that the US cases referred to earlier were decided outside the circumstances of a global pandemic. It is with more reason that, in light of the current situation, the State should recognize and acknowledge the possible impairment of every PDL's basic right to life and human dignity.

In a proper action initiated at a more opportune time, courts may be taken to task to provide relief against the employment of physical, psychological, or degrading punishment or against the use of substandard or inadequate penal facilities with subhuman conditions. The Court, unfortunately, must move only within the bounds of its jurisdiction; nonetheless, it has taken the necessary measures within its power, in order to guarantee the rights of PDLs in the face of this global pandemic. Ultimately, however, the task of providing farsighted and enduring solutions to the

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[116] Separate Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 17-18.
[117] 505 Phil. 298 (2005).
[118] Id. at 323.

problem of overcrowding in penal facilities is a policy question and formulation that is best within the powers of the Legislative and Executive branches.

All told, pursuant to the significant body of laws both within and outside our borders that affirms the positive rights of PDLs, I submit that it remains incumbent upon the State to organize and utilize its whole apparatus so that these human rights are safeguarded.[119] In other words, any attendant limitation may not excuse a slackening of efforts, but on the contrary serve as compulsion for the State to exhaust all measures available to it to ensure that these fundamental rights of PDLs are appreciated as such.

III.

For its part, in the exercise of its mandate to promulgate rules concerning the protection and enforcement of constitutional rights[120] and its power of supervision over all persons in custody for purposes of eliminating unnecessary detention,[121] the Court has been implementing systems in promoting rehabilitative and restorative criminal justice.

One such measure is Administrative Matter (A.M.) No. 12-11-2-SC, or the *Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial.* With the current public health emergency, these measures are supplemented by various Court issuances aimed at ensuring easy access to PDLs of the different modes of securing provisional liberty. Taken together, laws and regulations in place have created a framework, essential facets of which are as follows:

> 1. For PDLs currently in custody for a period equal to or more than the possible maximum imprisonment prescribed for the offense charged, he or she shall be released immediately, without prejudice to the continuation of the trial or the proceedings on appeal, as the case may be;[122]
>
> 2. For PDLs detained for a period of at least equal to the minimum of the penalty for the offense charged against him, he or she shall be ordered released, *motu proprio* or on motion and after notice and hearing, on his own recognizance without prejudice to the continuation of the proceedings against him,[123] subject further to the

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119 Supreme Court Annotation on the Writ of Amparo, citing decision of the Inter-American Court of Human Rights.

120 CONSTITUTION, Art. VIII, Sec. 5(5).

121 RULES OF COURT, Rule 114, Sec. 25.

122 Id., Rule 114, Sec. 16

123 Id.; A.M. No. 12-11-2-SC "Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial" dated March 18, 2014, Sec. 5; R.A. No. 10389, Sec. 5(b).

guidelines set forth in Administrative Circular (A.C.) No. 33-2020,[124] as implemented by OCA Circular No. 89-2020,[125] on online bail proceedings and electronic transmission of release orders;

3. For PDLs who qualify for provisional dismissal pursuant to A.M. No. 12-11-2-SC, Section 10,[126] they may secure their release pursuant to said guidelines. For this purpose, judges for the first and second level courts are directed to immediately conduct an inventory of their pending criminal cases to determine cases eligible for provisional dismissal.[127]

4. For all other PDLs who do not meet the above criteria, they may apply for bail. Special considerations are given for indigent PDLs who may post bail at a reduced amount or be released on recognizance:

a. All PDLs may still avail of their rights to bail pursuant to the provisions of Rule 114 of the Revised Rules of Criminal Procedure.

b. In promoting social and restorative justice especially in this period of public health emergency, indigent PDLs may avail of the reduced bail and recognizance under A.C. No. 38-2020:[128]

The amounts of bail for indigent PDLs are reduced following the schedule below:

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124 Re: Online Filing of Complaint or Information and Posting of Bail Due to the Rising Cases of COVID-19 Infection, dated March 31, 2020.

125 Re: Implementation of Supreme Court Administrative Circular No. 33-2020 on the Electronic Filing of Criminal Complaints and Informations, and Posting of Bails, dated April 3, 2020.

126 Sec. 10. *Provisional dismissal.* – (a) When the delays are due to the absence of an essential witness whose whereabouts are unknown or cannot be determined and, therefore, are subject to exclusion in determining compliance with the prescribed time limits which caused the trial to exceed one hundred eighty (180) days, the court shall provisionally dismiss the action with the express consent of the detained accused.

(b) When the delays are due to the absence of an essential witness whose presence cannot be obtained by due diligence though his whereabouts are known, the court shall provisionally dismiss the action with the express consent of the detained accused provided:

(1) the hearing in the case has been previously twice postponed due to the non-appearance of the essential witness and both witness and the offended party, if they are two different persons, have been given notice of the setting of the case for third hearing, which notice contains a warning that the case would be dismissed if the essential witness continues to be absent; and

(2) there is proof of service of the pertinent notices of hearings or subpoenas upon the essential witness and offended party at their last known postal or e-mail addresses or mobile phone numbers.

127 See OCA Circular No. 91-2020, Re: Release of Qualified Persons Deprived of Liberty, dated April 20, 2020.

128 Re: Reduced Bail and Recognizance as Modes for Releasing Indigent Persons Deprived of Liberty During This Period of Public Health Emergency, Pending Resolution of Their Cases, dated April 30, 2020.

Penalty of Crime Charged	*Computation of Reduced Bail*
Maximum period of *reclusion temporal* or twelve (12) years and one (1) day to twenty (20) years	Medium period of the penalty of the crime charged multiplied by ₱3,000.00 for every year of imprisonment
Maximum period of *prision mayor* or six (6) years and one (1) day to twelve (12) years	Medium period of the penalty of the crime charged multiplied by ₱2,000.00 for every year of imprisonment
Maximum period of *prision correccional* or six (6) months and one (1) day to six (6) years	Medium period of the penalty of the crime charged multiplied by ₱1,000.00 for every year of imprisonment

For indigent PDLs charged with crimes punishable by *arresto mayor* or one (1) month and one (1) day to six (6) months, and *arresto menor* or one (1) day to thirty (30) days, they may be released on their own recognizance.

For indigent PDLs who meet the criteria set forth in R.A. 10389, specifically Sections 5, 6, and 7 thereof, they shall be released on recognizance pursuant to the provisions therein.

In further implementation of these rights, and considering the exigencies of the situation brought about by the current public health crisis, courts have introduced new capacities and accessible processes:

1. Proceedings concerning the right of the accused to bail[129] and proceedings on provisional dismissal[130] are classified as urgent matters that are immediately heard and resolved by courts during the public health emergency;

2. A.C. No. 33-2020 further provides that motions for bail as a matter of right, in accordance with Rule 114, Section 4 of the Revised Rules of Criminal Procedure,[131] and proceedings on provisional dismissal[132] are applied for and argued electronically, as implemented by OCA Circular No. 89-2020.

3. Approval of the bail and the consequent release order shall likewise be electronically transmitted by the Judge on duty to the Executive Judge who in turn shall electronically transmit the same within the same day to the proper law enforcement authority or detention facility to enable the release of the accused. The electronically transmitted approval of bail and release order by the

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129 See A.C. No. 32-2020.
130 See OCA Circular No. 91-2020.
131 A.C. No. 33-2020, No. 4.
132 OCA Circular No. 91-2020.

Executive Judge shall be sufficient to cause the release of PDL concerned.[133]

In light of the imposition of modified community quarantine in certain areas and the transition into general community quarantine for the rest of the country, the courts implemented hearings through videoconferencing in a number of pilot courts through A.C. No. 37-2020,[134] as implemented by OCA Circular No. 93-2020,[135] which will cover all PDLs and may apply to all stages of newly-filed and pending criminal cases including, but not limited to, arraignment, pre-trial, bail hearings, trial proper, and promulgation.

It is hoped that these measures are sufficient to address the exigencies brought about by the current pandemic for the benefit of PDLs, including the petitioners herein.

IV.

In sum, the Court acknowledges the petitioners' and all other PDLs'' current predicament in the face of this pandemic. Thus, prudence and exigency dictate that instead of denying the petition outright, the better course of action is to refer the petition to the respective trial courts for the conduct of bail proceedings. In the process, it is my view that the respective trial courts should also look into the petitioners' claims for violations of their rights under domestic and international laws to ensure that they are not subjected to arbitrary and inhumane conditions in their confinement.

Indeed, the Court is not unmindful of the current situation faced by PDLs. The COVID-19 pandemic has become an unprecedented public health crisis, and the sickness and death it leaves in its wake have forced all of us to a reckoning. The incredible scale of the present problem has perhaps even begun to tug at the seams of the familiar limits of institutional jurisdictions. In the clamor to quell the spread of the virus on the one hand and address competing public concerns on the other, government institutions are hard-pressed at confronting issues that fall within the respective provinces of their agencies.

It is also pivotal that all material institutions acknowledge that the issue of congestion in our prison systems, along with the manner by which it has been brought before the unforgiving light of this global pandemic, finds its root in an interplay of system failures, over which the penal system is not

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[133] A.C. No. 33-2020, No. 5.

[134] Re: Pilot Testing of Hearings of Criminal Cases Involving Persons Deprived of Liberty Through Videoconferencing, dated April 27, 2020.

[135] Re: Implementation of Supreme Court Administrative Circular No. 37-2020 on the Pilot Testing of Hearings of Criminal Cases Involving Persons Deprived of Liberty Through Videoconferencing, dated May 4, 2020.

the sole author. **The sheer expanse of this crisis requires the synergized response that must outlive the present emergency, <u>from all three branches of government</u> and all relevant stakeholders**. Any measure that is less than farsighted and all-inclusive is a mere stop-gap that is myopic and wasteful at a time such as this.

For its part, the Court, as the ultimate dispenser of justice, has taken concrete steps to address the matter at hand in ways allowed by law, as seen from the previous enumeration of issuances. To my mind, these circulars afford the petitioners sufficient reliefs for the protection of their rights.

Verily, the Court has the unenviable role of balancing the scales of justice. In this exceptional time, justice compels the Court to exercise compassion and humanity but only within the parameters granted to it by law. The same spirit that moves the Court to address the concerns of PDLs also constrains it not to overstep its bounds.

It is in this light that I **CONCUR** in the Court's disposition to **refer** the present bail and recognizance applications to the respective trial courts where the petitioners' criminal cases are pending, without prejudice to any relief available to the parties under the circumstances, and to **direct** the aforesaid trial courts to act on the petitioners' cases with *utmost dispatch*.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice