EN BANC

G.R. No. 252117 – IN THE MATTER OF THE URGENT PETITION FOR THE RELEASE OF PRISONERS ON HUMANITARIAN GROUNDS IN THE MIDST OF THE COVID-19 PANDEMIC.

DIONISIO S. ALMONTE, represented by his wife Gloria P. Almonte, IRENEO O. ATADERO, JR., represented by his daughter Aprille Joy A. Atadero, ALEXANDER RAMONITA K. BIRONDO, represented by his sister Jeanette B. Goddard, WINONA MARIE O. BIRONDO, represented by her sister-in-law Jeanette B. Goddard, REY CLARO CASAMBRE, represented by his daughter Xandra Liza C. Bisenion, FERDINAND T. CASTILLO, represented by his wife Nona Andaya-Castillo, FRANCISCO FERNANDEZ Jr., represented by his son Francis IB Lagtapon, RENANTE GAMARA, represented by his son Krisanto Miguel B. Gamara, VICENTE P. LADLAD, represented by his wife Fides M. Lim, EDIESEL R. LEGASPI, represented by his wife Evelyn C. Legaspi, CLEOFE LAGTAPON, represented by her son Francis IB Lagtapon, GEANN PEREZ represented by her mother Erlinda C. Perez, ADELBERTO A. SILVA, represented by his son Frederick Carlos J. Silva, ALBERTO L. VILLAMOR, represented by his son Alberto L. Villamor, Jr., VIRGINIA B. VILLAMOR, represented by her daughter Jocelyn V. Pascual, OSCAR BELLEZA, represented by his brother Leonardo P. Belleza, NORBERTO A. MURILLO, represented by his daughter Nally Murillo, REINA MAE NASINO, represented by her aunt Veronica Vidal, DARIO TOMADA, represented by his wife Amelita Y. Tomada, EMMANUEL BACARRA, represented by his wife Rosalia Bacarra, OLIVER B. ROSALES, represented by his daughter Kalayaan Rosales, LILIA BUCATCAT, represented by her grandchild Lelian A. Pecoro, *Petitioners* **v. PEOPLE OF THE PHILIPPINES, EDUARDO AÑO, in his capacity as Secretary of the Interior and Local Government, MENARDO GUEVARRA, in his capacity as Secretary of Justice, J/DIRECTOR ALLAN SULLANO IRAL in his capacity as the Chief of the Bureau of Jail Management and Penology, USEC. GERALD Q. BANTAG, in his capacity as the Director General of the Bureau of Corrections, J/CINSP. MICHELLE NG- BONTO in her capacity as the Warden of the Metro Manila District Jail 4, J/CINSP. ELLEN B. BARRIOS, in her capacity as the Warden of the Taguig City Jail Female Dorm, J/SUPT. RANDEL H. LATOZA in his capacity as the Warden of the Manila City Jail, J/CSUPT. CATHERINCE L. ABUEVA, in her capacity as the Warden of the Manila City Jail – Female Dorm, J/CSUPT. JHAERON L. LACABEN, in his capacity as the Correction Superintendent New Bilibid Prison-West, CTSUPT. VIRGINIA S. MANGAWIT, in her capacity as the Acting Superintendent of the Correctional Institution of Women,** *Respondents.*

Promulgated:
July 28, 2020

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SEPARATE OPINION

LEONEN, *J.*:

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

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

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

Second, persons deprived of liberty should be able to file an action for violations of their constitutional right against cruel, inhuman, and degrading punishment, and their rights to life, health, and security. As proposed by Senior Associate Justice Estela Perlas-Bernabe (Justice Perlas-Bernabe), we should not diminish the possibility that they may avail of these rights.[3] This Court is not powerless to ensure that these fundamental rights are respected and implemented. It is why this Court exists. This aspect of judicial review, to measure the constitutionality of a government act or inaction vis-à-vis a legal right, is even more established than the expanded jurisdiction now contained in Article VIII, Section 1 of the 1987 Constitution.

Thus, I opine that Article III, Section 19 of the Bill of Rights, which addresses the conditions of detention and service of sentence, may be invoked by a detainee or a convict through either mode: (1) a motion for release when

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1 C.J. Peralta, Separate Opinion, p. 8.
2 767 Phil. 147 (2015) [Per J. Bersamin, En Banc].
3 J. Perlas-Bernabe, Separate Opinion, p. 10.

the case is still on trial or on appeal; or (2) a petition for *habeas corpus* as a post-conviction remedy, consistent with *Gumabon v. Director of Prisons*.[4]

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

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

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

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

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

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

the Judiciary, but also our collective humanity, as we adapt to the unique circumstances brought upon by the pandemic.

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

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

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

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

As such, petitioners pray that this Court apply equity in their situation. They assert that their release will not prejudice the State or the prosecution, and will lessen state costs and health risks to jail personnel. They insist that they are not flight risks, citing the quarantine and their advanced age, physical conditions, and lack of resources to avoid trial.[10] They further point out that

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5 Petition, p. 57.
6 Id. at 5–6 and 34.
7 Petitioners assert these are recognized in the Philippines as they are referred in Republic Act No. 10575 or the Bureau of Corrections Act and the Jail Manual of Operations.
8 Petition, pp. 40–52.
9 Id. at 48–52.
10 Id. at 11 and 54.

they are not hardened criminals, as the charges against them are due to political beliefs.[11] They likewise stress that they have not yet been convicted, and are thus presumed innocent.[12]

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

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

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

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

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

Respondents also claim that petitioners cannot be temporarily released on recognizance or on bail. They say recognizance cannot be granted as petitioners have all been charged with offenses punishable by *reclusion*

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11 Id. at 55.
12 Id. at 41.
13 Id. at 42. The Petition states "Republic Act No. 10375."
14 Id. at 40.
15 Id. at 3, 27 and 30.
16 Id. at 27.
17 Id. at 56.
18 Id.
19 767 Phil. 147 (2015) [Per J. Bersamin, En Banc].
20 77 Phil. 461 (1946) [Per J. Feria, En Banc].
21 Petition, pp. 53–54.
22 Comment, pp. 17–18.
23 Id. at 20–22.

perpetua.[24] Specifically, petitioners are allegedly members of the Communist Party of the Philippines-New People's Army-National Democratic Front (CPP-NPA-NDF), which has been identified as a terrorist organization in 2017.[25] As to bail, respondents point out that it is a matter of discretion which requires notice and hearing, in line with due process.[26]

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

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

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

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

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24 Id. at 22–24.
25 Id. at 10.
26 Id. at 24–26.
27 Id. at 27–29.
28 Id. at 29–33.
29 Id. at 38.
30 Id. at 33–36.
31 Id. at 36–38.
32 Id. at 40.
33 Reply, pp. 4–5.
34 Id. at 5–11.

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

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

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

I

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

Article III, Section 13 of the 1987 Constitution provides:

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

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35 Id. at 12–16.

36 Id. at 50–56.

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

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

Generally, all persons are entitled to the right to be released on bail.[39] However, the grant of bail is subject to several conditions,[40] requirements,[41]

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

39 RULES OF COURT, Rule 114, sec. 4 provides:
SECTION 4. *Bail, a Matter of Right*; *Exception.* — All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua,* or life imprisonment.

40 RULES OF COURT, Rule 114, sec. 2 provides:
SECTION 2. *Conditions of the Bail*; *Requirements.* — All kinds of bail are subject to the following conditions:
(a) The undertaking shall be effective upon approval, and unless cancelled, shall remain in force at all stages of the case until promulgation of the judgment of the Regional Trial Court, irrespective of whether the case was originally filed in or appealed to it;
(b) The accused shall appear before the proper court whenever required by the court or these Rules;
(c) The failure of the accused to appear at the trial without justification and despite due notice shall be deemed a waiver of his right to be present thereat. In such case, the trial may proceed in *absentia*; and
(d) The bondsman shall surrender the accused to the court for execution of the final judgment.
The original papers shall state the full name and address of the accused, the amount of the undertaking and the conditions required by this section. Photographs (passport size) taken within the last six (6) months showing the face, left and right profiles of the accused must be attached to the bail. (2a)

41 RULES OF COURT, Rule 114, sec. 17 provides:
SECTION 17. *Bail, Where Filed.* — (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any regional trial court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein.
(b) Where the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application may only be filed in the court where the case is pending, whether on preliminary investigation, trial, or appeal.
(c) Any person in custody who is not yet charged in court may apply for bail with any court in the province, city, or municipality where he is held. (17a)

procedures,[42] and qualifications.[43] Likewise, there are circumstances when release on bail shall not be granted.[44]

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

> Bail is the security given for the temporary release of a person who has been arrested and detained but "whose guilt has *not* yet been proven" in court beyond reasonable doubt. The right to bail is cognate to the fundamental right to be presumed innocent. In *People v. Fitzgerald*:
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> > The right to bail emanates from the [accused's constitutional] right to be presumed innocent. It is accorded to a person in the custody of the law who may, by reason of the presumption of innocence he [or she] enjoys, be allowed provisional liberty upon filing of a security to guarantee his [or her] appearance before any court, as required under specified conditions. . . . (Citations omitted)
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> Bail may be a matter of right or judicial discretion. The accused has the right to bail if the offense charged is "not punishable by death, *reclusion*

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42 RULES OF COURT, Rule 114, secs. 8 and 18 provide:
SECTION 8. *Burden of Proof in Bail Application.* — At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, *reclusion perpetua*, or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify.
SECTION 18. *Notice of Application to Prosecutor.* — In the application for bail under section 8 of this Rule, the court must give reasonable notice of the hearing to the prosecutor or require him to submit his recommendation. (18a)

43 RULES OF COURT, Rule 114, sec. 5 provides
SECTION 5. *Bail, When Discretionary.* — Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.
Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.
If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:
(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;
(c) That he committed the offense while under probation, parole, or conditional pardon;
(d) That the circumstances of his case indicate the probability of flight if released on bail; or
(e) That there is undue risk that he may commit another crime during the pendency of the appeal.
The appellate court may, *motu proprio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case. (5a)

44 RULES OF COURT, Rule 114, sec. 7 provides
SECTION 7. *Capital Offense or an Offense Punishable by Reclusion Perpetua or Life Imprisonment, not Bailable.* — No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution. (7a)

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

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

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

> When a person has been in custody for a period equal to or more than the possible maximum imprisonment prescribed for the offense charged, he shall be released immediately, without prejudice to the continuation of the trial or the proceedings on appeal. If the maximum penalty to which the accused may be sentenced is *destierro*, he shall be released after thirty (30) days of preventive imprisonment.
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> A person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law or any modifying circumstance, shall be released on a reduced bail or on his own recognizance, at the discretion of the court. (16a)

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

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

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

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

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46 Id. at 884.

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

48 Rules of Court, Rule 114, sec. 15 provides:
SECTION 15. *Recognizance.* — Whenever allowed by law or these Rules, the court may release a person in custody on his own recognizance or that of a responsible person. (15a)

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

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

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

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

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

50 Id. at 569–570.

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

52 Republic Act No. 10389 (2013), sec. 5 provides:
SECTION 5. *Release on Recognizance as a Matter of Right Guaranteed by the Constitution.* — The release on recognizance of any person in custody or detention for the commission of an offense is a matter of right when the offense is not punishable by death, *reclusion perpetua*, or life imprisonment: *Provided,* That the accused or any person on behalf of the accused files the application for such:
(a) Before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court; and
(b) Before conviction by the Regional Trial Court: *Provided, further*, That a person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law, or any modifying circumstance, shall be released on the person's recognizance.

53 Republic Act No. 10389 (2013), secs. 6 and 7 provide:
SECTION 6. *Requirements.* — The competent court where a criminal case has been filed against a person covered under this Act shall, upon motion, order the release of the detained person on recognizance to a qualified custodian: *Provided,* That all of the following requirements are complied with:
(a) A sworn declaration by the person in custody of his/her indigency or incapacity either to post a cash bail or proffer any personal or real property acceptable as sufficient sureties for a bail bond;
(b) A certification issued by the head of the social welfare and development office of the municipality or city where the accused actually resides, that the accused is indigent;
(c) The person in custody has been arraigned;

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

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

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

(d) The court has notified the city or municipal *sanggunian* where the accused resides of the application for recognizance. The *sanggunian* shall include in its agenda the notice from the court upon receipt and act on the request for comments or opposition to the application within ten (10) days from receipt of the notice. The action of the *sanggunian* shall be in the form of a resolution, and shall be duly approved by the mayor, and subject to the following conditions:

. . . .

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

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

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

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

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

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

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

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

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

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

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

55 Id. at 832–833.

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

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

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

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

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

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

1. An inmate may be released through:
   a. Service of sentence;
   b. Order of the Court;
   c. Parole;
   d. Pardon; and
   e. Amnesty.

. . . .

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

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

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

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

> 1. Death or serious illness of spouse, father, mother, brother, sister, or children.
>
> 2. Inmates who are seriously ill or injured may, under proper escort, be allowed hospitalization leave or medical attendance. However, such leave shall require prior approval of the Courts having jurisdiction over them;
>
> Provided, however, that in life and death cases where immediate medical attention is imperative, the warden, at his/her own discretion, may allow an inmate to be hospitalized or moved out of jail for medical treatment; Provided further, that when the emergency has ceased as certified by the attending physician, the warden shall cause the inmate's immediate transfer back to the jail, except when there is a court order directing him to continue the inmates confinement in a hospital until his/her recovery or upon order of the Court for his/her immediate return to the jail.[56]

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

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

However, there are no legal provisions that provide for the release of detainees based on humanitarian grounds. Neither does the Constitution nor any statute allow for the automatic grant of bail or release on recognizance for inmates who are of vulnerable health.

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

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56 Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule VIII, sec. 65.
57 578 Phil. 1002 (2008) [Per J. Carpio Morales, En Banc].
58 Petition, p. 8.
59 Id. at 6.
60 Id. at 7.
61 Id.
62 767 Phil. 147 (2015) [Per J. Bersamin, En Banc].
63 Petition, pp. 53–55.

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

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

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

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

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

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

This Court's equity jurisdiction has been exercised in cases where the absence or insufficiency of an express provision or procedural rule will result in unjust enrichment or prevent rightful restitution.[71] It has also been applied

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64 J. Delos Santos, Separate Opinion, pp. 41–43.
65 Id. at 56, 59, and 66–67; J. Reyes, Separate Opinion, pp. 3–4.
66 J. Reyes, Separate Opinion, p. 3.
67 456 Phil. 1 (2003) [Per J. Carpio, First Division]. *See also Regulus Development, Inc. v. Dela Cruz*, 779 Phil. 75 (2016) [Per J. Brion, Second Division].
68 Id. at 10.
69 *Reyes v. Lim,* 456 Phil. 1 (2003) [Per J. Carpio, First Division].
70 Id. at 10.
71 Id. *See also Regulus Development, Inc. v. Dela Cruz,* 779 Phil. 75 (2016) [Per J. Brion, Second Division].

where a strict application of procedural rules will overrule "strong considerations of substantial justice[.]"[72] In *Orata v. Intermediate Appellate Court*,[73] this Court held:

> Be that as it may, this Court has in a number of cases, in the exercise of equity jurisdiction decided to disregard technicalities in order to resolve the case on its merits based on the evidence.
>
> Furthermore, it is well settled that litigations should, as much as possible, be decided on their merits and not on technicalities; that every party-litigant must be afforded the amplest opportunity for the proper and just determination of his case, free from unacceptable plea of technicalities. This Court has ruled further that being a few days late in the filing of the petition for review does not merit automatic dismissal thereof. And even assuming that a petition for review is filed a few days late, where strong considerations of substantial justice are manifest in the petition, this Court may relax the stringent application of technical rules in the exercise of its equity jurisdiction. In addition to the basic merits of the main case, such a petition usually embodies justifying circumstances which warrant Our heeding the petitioner's cry for justice, inspite of the earlier negligence of counsel.[74] (Citations omitted)

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

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

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

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

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

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72 *Orata v. Intermediate Appellate Court*, 263 Phil. 846, 852 (1990) [Per J. Paras, Second Division].
73 263 Phil. 846 (1990) [Per J. Paras, Second Division].
74 Id. at 851–852.
75 275 Phil. 597 (1991) [Per J. Medialdea, First Division].
76 Id. at 604.
77 330 Phil. 1074 (1996) [Per J. Padilla, First Division].
78 Id. at 1081.
79 694 Phil. 223 (2012) [Per J. Villarama, Jr., First Division].

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

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

This is precisely why I dissented in *Enrile*.

I (A)

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

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

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

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80 Id. at 224–225.
81 J. Delos Santos, Separate Opinion, pp. 79–81.
82 Id. at 81.
83 Id. at 83.
84 Id.
85 Id. at 84.
86 C.J. Peralta, Separate Opinion, p. 5.

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

In *Enrile v. Sandiganbayan*,[87] the petitioner, then Senator Juan Ponce Enrile (Enrile), was charged with plunder, punished by *reclusion perpetua*. Later, when a warrant for his arrest was served, he proceeded to the Criminal Investigation and Detection Group of the Philippine National Police and filed a Motion to Fix Bail. He asserted that his voluntary surrender and age were extenuating circumstances that would lower the imposable penalty to *reclusion temporal*. He also argued that he was not a flight risk because of his age and physical condition.

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

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

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

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

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

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

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

90 J. Perlas-Bernabe, Separate Opinion, pp. 6–7.

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

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

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

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

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

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

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91 Id. at 181.

92 J. Lazaro-Javier, Separate Opinion, p. 8.

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

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

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

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

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

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

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93 809 Phil. 453 (2017) [Per J. Carpio, En Banc].
94 J. Lazaro-Javier, Separate Opinion, p. 12.
95 J. Caguioa, Separate Opinion, p. 8; J. Perlas-Bernabe, Separate Opinion, p. 5.
96 Id. at 10.

courts the facts, circumstances, and qualifications that will warrant their release on bail or recognizance.

I (B)

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

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

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

> A crime is "an offense against society." It "is a breach of the security and peace of the people at large[.]"
>
> A criminal action, where "the State prosecutes a person for an act or omission punishable by law," is thus pursued "to maintain social order." It "punish[es] the offender in order to deter him [or her] and others from committing the same or similar offense, . . . isolate[s] him [or her] from society, reform[s] and rehabilitate[s] him [or her]." One who commits a crime commits an offense against all the citizens of the state penalizing a given act or omission: "a criminal offense is an outrage to the very sovereignty of the State[.]" Accordingly, a criminal action is prosecuted in the name of the "People" as plaintiff. Likewise, a representative of the State, the public prosecutor, "direct[s] and control[s] the prosecution of [an] offense." As such, a public prosecutor is:
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> > [T]he representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he [or she] is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.
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> *The capacity to prosecute and punish crimes is an attribute of the State's police power.* It inheres in "the sovereign power instinctively charged by the common will of the members of society to look after, guard and defend the interests of the community, the individual and social rights

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

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

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

> and the liberties of every citizen and the guaranty of the exercise of his rights."[100] (Emphasis supplied, citations omitted)

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

> In the present case, it is uncontroverted that petitioner's application for bail and for release on recognizance was denied. *The determination that the evidence of guilt is strong, whether ascertained in a hearing of an application for bail or imported from a trial court's judgment of conviction, justifies the detention of an accused as a valid curtailment of his right to provisional liberty.* This accentuates the proviso that the denial of the right to bail in such cases is "regardless of the stage of the criminal action." *Such justification for confinement with its underlying rationale of public self defense applies equally to detention prisoners like petitioner or convicted prisoners* appellants like Jalosjos. As the Court observed in *Alejano v. Cabuay*, it is impractical to draw a line between convicted prisoners and pre-trial detainees for the purpose of maintaining jail security; and *while pre-trial detainees do not forfeit their constitutional rights upon confinement, the fact of their detention makes their rights more limited than those of the public.* The Court was more emphatic in *People v. Hon. Maceda*:
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> > As a matter of law, when a person indicted for an offense is arrested, he is deemed placed under the custody of the law. *He is placed in actual restraint of liberty in jail so that he may be bound to answer for the commission of the offense.* He must be detained in jail during the pendency of the case against him unless he is authorized by the court to be released on bail or on recognizance. Let it be stressed that all prisoners whether under preventive detention or serving final sentence cannot practice their profession nor engage in any business or occupation, or hold office, elective or appointive, while in detention. This is a necessary consequence of arrest and detention.
>
> These inherent limitations, however, must be taken into account only to the extent that confinement restrains the power of locomotion or actual physical movement. It bears noting that in Jalosjos, which was decided *en banc* one month after Maceda, the Court recognized that the accused could somehow accomplish legislative results. The trial court thus correctly concluded that the presumption of innocence does not carry with it the full enjoyment of civil and political rights.[102] (Emphasis supplied)

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[100] Id.

[101] CONST. art. 3, sec. 13 states:
SECTION 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

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

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

> (1) Such encroachment shall be incidental to public safety and shall not enter the bounds of arbitrariness;
>
> (2) Measures pursued or concerns protected by the State should be reasonably related or linked to the attainment of its legitimate objectives consistent with general welfare; and
>
> (3) The measure undertaken or concern addressed for the benefit of the majority pursuant to an exercise of police power must not be unnecessarily oppressive on the minority.[103]

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

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

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

Rather, as Justice Reyes notes, this Court must refrain from making conclusions on the merits of petitioners' pending cases,[108] as it is premature to make pronouncements based on unverified information.[109] Both he and

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103 J. Delos Santos, Separate Opinion, p. 97.
104 Id. at 98.
105 Id. at 98–99.
106 Id. at 99.
107 Id. at 58.
108 J. Reyes, Separate Opinion, p. 7.
109 Id. at 6.

Justice Lazaro-Javier share the opinion that petitioners' membership in the CPP-NP-NDF is an allegation that is still being litigated.[110]

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

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

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

II

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

In keeping with our constitutional duty to recognize the intrinsic value of every human being, as well as our power to provide guidance to Bench and Bar, I discuss the following causes of action submitted by petitioners: (1) the right against cruel, degrading, and inhuman punishment; (2) the right to life and health; and (3) the rights of prisoners and detainees under international law principles and conventions and our own local laws, rules, and procedures.

II (A)

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

> SECTION 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua.*
>
> (2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or

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[110] Id. at 6; J. Lazaro-Javier, Separate Opinion, p. 32.
[111] J. Perlas-Bernabe, Separate Opinion, p. 14.

> inadequate penal facilities under subhuman conditions shall be dealt with by law.

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

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

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

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

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

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

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

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

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

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112 505 Phil. 298 (2005) [Per J. Carpio, En Banc] citing Fisher v. Winter, 564 F Supp. 281 (1983).
113 Id. at 315.
114 1935 CONST., art. I, sec. 1(19).
115 1973 CONST., art. IV, sec. 1.
116 795 Phil. 529 (2016) [Per J. Leonen, En Banc].

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

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

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

> Neither fines nor imprisonment constitute in themselves cruel and unusual punishment, for the constitutional stricture has been interpreted as referring to penalties that are inhuman and barbarous, or shocking to the conscience and fines or imprisonment are definitely not in this category.
>
> Nor does mere severity constitute cruel and unusual punishment. In *People vs. Estoista,* 93 Phil. 655, this Court ruled:
>
> > "It takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the Constitution. 'The fact that the punishment authorized by the statute is severe does not make it cruel and unusual.' Expressed in other terms, it has been held that to come under the ban, the punishment must be 'flagrantly and plainly oppressive,' 'wholly disproportionate to the nature of the offense as to shock the moral sense of the community.' (Idem.) Having in mind the necessity for a radical measure and the public interest at stake, we do not believe that five years' confinement for possessing firearms, even as applied to appellant's and similar cases, can be said to be cruel and unusual, barbarous, or excessive to the extent of being shocking to public conscience. It is of interest to note that the validity on constitutional grounds of the Act in question was contested neither at the trial nor in the elaborate printed brief for the appellant; it was raised for the first time in the course of the oral argument in the Court of Appeals. It is also noteworthy, as possible gauge of popular and judicial reaction the duration of the imprisonment stipulated in the statute, that some members of the court at first expressed opposition to any recommendation for executive clemency

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[117] Id. at 572–573.

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

> for the appellant, believing that he deserved imprisonment within the prescribed range."[119] (Citations omitted)

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

> We have already settled that the constitutional proscription under the Bill of Rights extends only to situations of extreme corporeal or psychological punishment that strips the individual of his humanity. The proscription is aimed more at the form or character of the punishment rather than at its severity, as the Court has elucidated in *Lim v. People*, to wit:
>
> > Settled is the rule that a punishment authorized by statute is not cruel, degrading or disproportionate to the nature of the offense unless it is flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community. **It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution.** Based on this principle, the Court has consistently overruled contentions of the defense that the penalty of fine or imprisonment authorized by the statute involved is cruel and degrading.
> >
> > In *People vs. Tongko*, this Court held that **the prohibition against cruel and unusual punishment is generally aimed at the form or character of the punishment rather than its severity in respect of its duration or amount, and applies to punishments which never existed in America or which public sentiment regards as cruel or obsolete. This refers, for instance, to those inflicted at the whipping post or in the pillory, to burning at the stake, breaking on the wheel, disemboweling and the like. The fact that the penalty is severe provides insufficient basis to declare a law unconstitutional and does not, by that circumstance alone, make it cruel and inhuman.**[121] (Emphasis in the original, citation omitted)

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

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

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119 Id. at 411.
120 808 Phil. 86 (2017) [Per J. Bersamin, En Banc].
121 Id. at 94.
122 Republic Act No. 9745 (2009), the Anti-Torture Act of 2009.

> (a) "Torture" refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
>
> (b) "Other cruel, inhuman and degrading treatment or punishment" refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter.[123]
>
> . . . .
>
> SECTION 4. *Acts of Torture.* — For purposes of this Act, torture shall include, but not be limited to, the following:
>
> (a) Physical torture is a form of treatment or punishment inflicted by a person in authority or agent of a person in authority upon another in his/her custody that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:
>
> (1) Systematic beating, headbanging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;
>
> (2) Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;
>
> (3) Electric shock;
>
> (4) Cigarette burning; burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s);
>
> (5) The submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation;
>
> (6) Being tied or forced to assume fixed and stressful bodily position;

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

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

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

(9) Dental torture or the forced extraction of the teeth;

(10) Pulling out of fingernails;

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

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

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

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

(14) Other analogous acts of physical torture; and

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

(1) Blindfolding;

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

(3) Confinement in solitary cells or secret detention places;

(4) Prolonged interrogation;

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

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

(7) Maltreating a member/s of a person's family;

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

(9) Denial of sleep/rest;

> (10) Shame infliction such as stripping the person naked, parading him/her in public places, shaving the victim's head or putting marks on his/her body against his/her will;
>
> (11) Deliberately prohibiting the victim to communicate with any member of his/her family; and
>
> (12) Other analogous acts of mental/psychological torture.
>
> SECTION 5. *Other Cruel, Inhuman and Degrading Treatment or Punishment.* — Other cruel, inhuman or degrading treatment or punishment refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against another person in custody, which attains a level of severity sufficient to cause suffering, gross humiliation or debasement to the latter. The assessment of the level of severity shall depend on all the circumstances of the case, including the duration of the treatment or punishment, its physical and mental effects and, in some cases, the sex, religion, age and state of health of the victim.[124]

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

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

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

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

> SECTION 9. *Institutional Protection of Torture Victims and Other Persons Involved.* — A victim of torture shall have the following rights in the institution of a criminal complaint for torture:
>
> (a) To have a prompt and an impartial investigation by the CHR and by agencies of government concerned such as the Department of Justice (DOJ), the Public Attorney's Office (PAO), the PNP, the National Bureau of Investigation (NBI) and the AFP. A prompt investigation shall mean a maximum period of sixty (60) working

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

> days from the time a complaint for torture is filed within which an investigation report and/or resolution shall be completed and made available. An appeal whenever available shall be resolved within the same period prescribed herein;
>
> (b) To have sufficient government protection against all forms of harassment, threat and/or intimidation as a consequence of the filing of said complaint or the presentation of evidence therefor. In which case, the State through its appropriate agencies shall afford security in order to ensure his/her safety and all other persons involved in the investigation and prosecution such as, but not limited to, his/her lawyer, witnesses and relatives; and
>
> (c) To be accorded sufficient protection in the manner by which he/she testifies and presents evidence in any *for a* in order to avoid further trauma.
>
> SECTION 10. *Disposition of Writs of Habeas Corpus, Amparo and Habeas Data Proceedings and* Compliance *with a Judicial Order.* — A *writ of habeas corpus* or *writ of amparo* or *writ of habeas data* proceeding, if any, filed on behalf of the victim of torture or other cruel, degrading and inhuman treatment or punishment shall be disposed of expeditiously and any order of release by virtue thereof, or other appropriate order of a court relative thereto, shall be executed or complied with immediately.
>
> SECTION 11. *Assistance in Filing a Complaint* — The CHR and the PAO shall render legal assistance in the investigation and monitoring and/or filing of the complaint for a person who suffers torture and other cruel, inhuman and degrading treatment or punishment, or for any interested party thereto.
>
> The victim or interested party may also seek legal assistance from the Barangay Human Rights Action Center (BHRAC) nearest him/her as well as from human rights nongovernment organizations (NGOs).[125]

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

II (B)

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

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

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[125] Republic Act No. 9745 (2009), secs. 9–11.

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

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

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

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

> A closer look at the right to security of person would yield various permutations of the exercise of this right.
>
> *First, the right to security of person is "freedom from fear".* In its "whereas" clauses, the Universal Declaration of Human Rights (UDHR) enunciates that "a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people." Some scholars postulate that "freedom from fear" is not only an aspirational principle, but essentially an individual international human right. *It is the "right to security of person" as the word "security" itself means "freedom from fear".* Article 3 of the UDHR provides, viz.:
>
> > Everyone has the right to life, liberty and security of person.

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[126] 589 Phil. 1 (2008) [Per J. Puno, En Banc].
[127] Id. at 50.

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

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

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

. . . .

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

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

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

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

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

An overture to an interpretation of the right to security of person as a right against torture was made by the European Court of Human Rights (ECHR) in the recent case of Popov v. Russia. In this case, the claimant, who was lawfully detained, alleged that the state authorities had physically abused him in prison, thereby violating his right to security of person. Article 5 (1) of the European Convention on Human Rights provides, viz.: "Everyone has the right to liberty and security of person. No one shall be

deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law . . ." (emphases supplied) Article 3, on the other hand, provides that "(n)o one shall be subjected to torture or to inhuman or degrading treatment or punishment." Although the application failed on the facts as the alleged ill-treatment was found baseless, the ECHR relied heavily on the concept of security in holding, viz.:

> . . . the applicant did not bring his allegations to the attention of domestic authorities at the time when they could reasonably have been expected to take measures in order to ensure his security and to investigate the circumstances in question.
>
> . . . .
>
> . . . the authorities failed to ensure his security in custody or to comply with the procedural obligation under Art. 3 to conduct an effective investigation into his allegations.

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

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

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

> (The duty to investigate) must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without

> an effective search for the truth by the government.[128] (Emphasis supplied, citations omitted)

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

> So too, all our previous Constitutions, including the first one ordained at Malolos, guarantee that "(n)o person shall be deprived of life, liberty or property without due process of law." This primary right of the people to enjoy life — life at its fullest, life in dignity and honor — is not only reiterated by the 1987 Charter but is in fact fortified by its other pro-life and pro-human rights provisions. *Hence, the Constitution values the dignity of every human person and guarantees full respect for human rights, expressly prohibits any form of torture which is arguably a lesser penalty than death,* emphasizes the individual right to life by giving protection to the life of the mother and the unborn from the moment of conception and establishes the people's rights to health, a balanced ecology and education.
>
> This Constitutional explosion of concern for man more than property, for people more than the state, and for life more than mere existence augurs well for the strict application of the constitutional limits against the revival of death penalty as the final and irreversible exaction of society against its perceived enemies.
>
> Indeed, volumes have been written about individual rights to free speech, assembly and even religion. But the most basic and most important of these rights is the right to life. Without life, the other rights cease in their enjoyment, utility and expression.[130] (Emphasis supplied)

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

> A component to the right to life is the constitutional right to health. In this regard, the Constitution is replete with provisions protecting and promoting the right to health.
>
> Section 15, Article II of the Constitution provides:
>
> > Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.
>
> A portion of Article XIII also specifically provides for the States' duty to provide for the health of the people, viz.:

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128 Id. at 50–55.

129 335 Phil. 343 (1999) [Per Curiam, En Banc].

130 J. Panganiban, Separate Opinion in *People v. Echegaray*, 335 Phil. 343, 407 (1999) [Per Curiam, En Banc].

131 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].

HEALTH

> Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.
>
> Section 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health, manpower development, and research, responsive to the country's health needs and problems.
>
> Section 13. The State shall establish a special agency for disabled persons for their rehabilitation, self-development, and self-reliance, and their integration into the mainstream of society.[132]

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

> (1) *Everyone has the right to a standard of living adequate for the health and well-being of himself* and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
>
> (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. (Emphasis supplied)

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

> Article 12
>
> 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
>
> 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

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[132] Id. at 156.

> (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
>
> (b) The improvement of all aspects of environmental and industrial hygiene;
>
> (c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
>
> (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness. (Emphasis supplied)

II (C)

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

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

> SECTION 2. *Statement of Policy.* — It is hereby declared the policy of the State:
>
> (a) To value the dignity of every human person and guarantee full respect for human rights;
>
> (b) To ensure that the human rights of all persons, including suspects, detainees and prisoners are respected at all times; and that no person placed under investigation or held in custody of any person in authority or, agent of a person in authority shall be subjected to physical, psychological or mental harm, force, violence, threat or intimidation or any act that impairs his/her free will or in any manner demeans or degrades human dignity;
>
> (c) To ensure that secret detention places, solitary, *incommunicado* or other similar forms of detention, where torture may be carried out with impunity, are prohibited; and
>
> (d) To fully adhere to the principles and standards on the absolute condemnation and prohibition of torture as provided for in the 1987 Philippine Constitution; various international instruments to which the Philippines is a State party such as, but not limited to, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women

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[133] CONST., art. II, sec. 11.
[134] Republic Act No. 9745 (2009).

> (CEDAW) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and all other relevant international human rights instruments to which the Philippines is a signatory.[135]

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

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

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

> SECTION 2. *Declaration of Policy.* — It is the policy of the State to promote the general welfare and safeguard the basic rights of every prisoner incarcerated in our national penitentiary. It also recognizes the responsibility of the State to strengthen government capability aimed towards the institutionalization of highly efficient and competent correctional services.
>
> Towards this end, the State shall provide for the modernization, professionalization and restructuring of the Bureau of Corrections (BuCor) by upgrading its facilities, increasing the number of its personnel, upgrading the level of qualifications of their personnel and standardizing their base pay, retirement and other benefits, making it at par with that of the Bureau of Jail Management and Penology (BJMP).

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

> SECTION 3. *Definition of Terms.* —
>
> (a) *Safekeeping*, which is the custodial component of the BuCor's present corrections system, shall refer to the act that

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135 Republic Act No. 9745 (2009), sec. 2.

136 Republic Act No. 10575 (2013). Bureau of Corrections Act of 2013.

137 Republic Act No. 10575 (2013), sec. 8 provides:
SECTION 8. *Supervision of the Bureau of Corrections.* — The Department of Justice (DOJ), having the BuCor as a line bureau and a constituent unit, shall maintain a relationship of administrative supervision with the latter as defined under Section 38 (2), Chapter 7, Book IV of Executive Order No. 292 (Administrative Code of 1987), except that the DOJ shall retain authority over the power to review, reverse, revise or modify the decisions of the BuCor in the exercise of its regulatory or quasi-judicial functions.

> ensures the public (including families of inmates and their victims) that national inmates are provided with their basic needs, completely incapacitated from further committing criminal acts, and have been totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the premises of the national penitentiary. This act also includes protection against illegal organized armed groups which have the capacity of launching an attack on any prison camp of the national penitentiary to rescue their convicted comrade or to forcibly amass firearms issued to prison guards.
>
> (b) *Reformation*, which is the rehabilitation component of the BuCor's present corrections system, shall refer to the acts which ensure the public (including families of inmates and their victims) that released national inmates are no longer harmful to the community by becoming reformed individuals prepared to live a normal and productive life upon reintegration to the mainstream society.

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

> SECTION 4. *The Mandates of the Bureau* of *Corrections.* — The BuCor shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years.
>
> (a) Safekeeping of National Inmates — The safekeeping of inmates shall include decent provision of quarters, food, water and clothing in compliance with established United Nations standards. The security of the inmates shall be undertaken by the Custodial Force consisting of Corrections Officers with a ranking system and salary grades similar to its counterpart in the BJMP.
>
> (b) Reformation of National Inmates — The reformation programs, which will be instituted by the BuCor for the inmates, shall be the following:
>
> (1) Moral and Spiritual Program;
> (2) Education and Training Program;
> (3) Work and Livelihood Program;
> (4) Sports and Recreation Program;
> (5) Health and Welfare Program; and
> (6) Behavior Modification Program, to include Therapeutic Community.

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

> SECTION 4. *Prison Accommodation Standards.* —
>
> a. All accommodations for the use of inmates shall meet requirements of sanitation and hygiene with emphasis on adequate ventilation, living space and lighting.
>
> b. Bathrooms and washing areas shall be provided in every prison facility.
>
> c. All areas regularly used by inmates shall be properly maintained and kept clean at all times.
>
> d. Beds and clothing shall be neatly made up in a uniform manner at all times. Beds and buildings occupied by inmates shall be thoroughly disinfected at least once a month.
>
> e. Cleanliness shall be maintained at all times in all dormitories or cells specially toilet and baths.
>
> f. As often as it is necessary, an inmate shall send his dirty clothes to the laundry.
>
> g. Every Sunday and holiday, if weather permits, inmates will expose their clothes, beds, bedding and so forth in the sunshine in an area designated for the purpose. Cleanliness of the premises of the dormitories and their surroundings shall be strictly enforced. Littering is prohibited.
>
> h. Inmates shall be served meals three (3) times a day. Breakfast shall be served not more than fourteen (14) hours after the previous day's dinner.

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

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[138] Bureau of Corrections Operating Manual (2000), Book I, Part III, ch. 1, secs 1–3 provide:
SECTION 1. *Rights of an Inmate.* — An inmate shall have the following basic rights:
a. to receive compensation for labor he performs;
b. to be credited with time allowances for good conduct and loyalty;
c. to send and receive mail matter;
d. to practice his religion or observe his faith;
e. to receive authorized visitors;
f. to ventilate his grievances through proper channels; and
g. to receive death benefits and pecuniary aid for injuries.
SECTION 2. *Privileges of an Inmate.* — The following privileges shall also be extended to an inmate:
a. Attend or participate in any entertainment or athletic activity within the prison reservation;
b. Read books and other reading materials in the library;
c. Smoke cigar and cigarettes, except in prohibited places;
d. Participate in civic, religious and other activities authorized by prison authorities; and
e. Receive gifts and prepared food from visitors subject to inspection.
SECTION 3. *Rights of a Detainee.* — A detainee may, aside from the rights and privileges enjoyed by a finally convicted inmate, wear civilian clothes and to grow his hair in his customary style.

> SECTION 3. *Protection of Inmate from Institutional Abuse.* — An inmate shall be treated with respect and fairness by prisons employees.
>
> He shall be protected against the following:
>
> a. the imposition of any cruel, unusual or degrading act as a form of disciplinary punishment.
>
> b. corporal punishment;
>
> c. the use of physical force by correctional officers, except in cases where the latter act in self-defense, to protect another person from imminent physical attack, or to prevent a riot or escape;
>
> d. deprivation of clothing, bed and bedding, light, ventilation, exercise, food or hygienic facilities; and
>
> e. forced labor.

On the other hand, the Bureau of Jail Management and Penology was created under Republic Act No. 6975, a line bureau of the Department of the Interior and Local Government.[139] Its primary function is to exercise control and supervision over all district, city, and municipal jails that detain "any fugitive from justice, or person detained awaiting investigation or trial and/or transfer to the national penitentiary, and/or violent mentally ill person . . . pending the transfer to a medical institution."[140]

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

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[139] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule I, sec. 1:
Section 1. MANDATE - The Bureau of Jail Management and Penology was created on January 2, 1991 pursuant to Republic Act 6975, replacing its forerunner, the Jail Management and Penology Service of the defunct Philippine Constabulary-Integrated National Police. The BJMP exercises administrative and operational jurisdiction over all district, city and municipal jails. It is a line bureau of the Department of the Interior and Local Government (DILG).

[140] Republic Act No. 6975 (1990), sec. 63 provides:
SECTION 63. Establishment of District, City or Municipal Jail. — There shall be established and maintained in every district, city and municipality a secured, clean adequately equipped and sanitary jail for the custody and safekeeping of city and municipal prisoners, any fugitive from justice, or person detained awaiting investigation or trial and/or transfer to the national penitentiary, and/or violent mentally ill person who endangers himself or the safety of others, duly certified as such by the proper medical or health officer, pending the transfer to a medical institution.
The municipal or city jail service shall preferably be headed by a graduate of a four (4) year course in psychology, psychiatry, sociology, nursing, social work or criminology who shall assist in the immediate rehabilitation of individuals or detention of prisoners. Great care must be exercised so that the human rights of this prisoners are respected and protected, and their spiritual and physical well-being are properly and promptly attended to.

[141] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule II, sec. 16.

CLASSIFICATION OF PRISONER	PRISON SENTENCE
Insular prisoner	three (3) years and one (1) day to reclusion perpetua or life imprisonment
Provincial prisoner	six (6) months and one (1) day to three (3) years;
City prisoner	one (1) day to three (3) years;
Municipal prisoner	(1) day to six (6) months.[142]

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

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

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142 Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule II, sec. 17.

143 Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule II, sec. 16.

144 Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule I, secs. 2, 3, 4, 5, 10, and 11 provide:

SECTION 2. *Vision.* — The BJMP envisions itself as a dynamic institution highly regarded for its sustained humane safekeeping and development of inmates.

SECTION 3. *Mission.* — The Bureau aims to enhance public safety by providing humane safekeeping and development of inmates in all district, city and municipal jails.

SECTION 4. *Powers.* — The BJMP exercises supervision and control over all district, city and municipal jails. As such, it shall ensure the establishment of secure, clean, adequately equipped sanitary facilities; and ensure the provision of quality services for the custody, safekeeping, rehabilitation and development of district, city and municipal inmates, any fugitive from justice, or person detained awaiting or undergoing investigation or trial and/or transfer to the National Penitentiary, and/or violent mentally ill person who endangers him/herself or the safety of others as certified by the proper medical or health officer, pending transfer to a mental institution.

SECTION 5. *Functions.* — In line with its mission, the Bureau endeavors to perform the following functions:

a. to enhance and upgrade organizational capability on a regular basis; thus, making all BJMP personnel updated on all advancements in law enforcement eventually resulting in greater crime solution efficiency and decreased inmate population;
b. to implement strong security measures for the control of inmates;
c. to provide for the basic needs of inmates;
d. to conduct activities for the rehabilitation and development of inmates; and
e. to improve jail facilities and conditions.

. . . .

SECTION 10. *Objectives.* — The broad objectives of the Bureau are the following:

a. To improve the living conditions of offenders in accordance with the accepted standards set by the United Nations;
b. To enhance the safekeeping, rehabilitation and development of offenders in preparation for their eventual reintegration into the mainstream of society upon their release; and
c. To professionalize jail services.

SECTION 11. *Principles.* — The following principles shall be observed in the implementation of the preceding sections:

a. Humane treatment of inmates;
b. Observance of professionalism in the performance of duties; and

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

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

The Manual expressly references the United Nations Standard Minimum Rules for the Treatment of Prisoners,[147] or the Nelson Mandela Rules, on the rule on segregation of prisoners and the treatment of prisoners

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c. Multi-sectoral approach in the safekeeping and development of inmates can be strengthened through active partnership with other members of the criminal justice system and global advocates of corrections.

145 Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule VIII, secs. 63 and 64 provide:

Section 63. RIGHTS OF INMATES – Although the purpose for committing a person to jail is to deprive him/her of liberty in order to protect society against crime, such person is still entitled to certain rights even while in detention. These rights are:

1. *The right to be treated as a human being, and not to be subjected to corporal punishment;*
2. The right to be informed of the regulations governing the detention center;
3. *The right to adequate food, space and ventilation, rest and recreation;*
4. *The right to avail himself/herself of medical, dental and other health services;*
5. The right to be visited anytime by his/her counsel, immediate family members, medical doctor or priest or religious minister chosen by him or by his immediate family or by his counsel;
6. The right to practice his/her religious beliefs and moral precepts;
7. The right to vote unless disqualified by law;
8. The right to separate detention facilities or cells particularly for women inmates; and
9. If a foreigner, the right to communicate with his/her embassy or consulate. (Emphasis supplied)

SECTION 64. *Privileges Allowed the Inmates.* — Detainees may enjoy the following privileges:

A. To wear their own clothes while in confinement;
B. To write letters, subject to reasonable censorship, provided that expenses for such correspondence shall be borne by them;
C. To receive visitors during visiting hours. However, visiting privileges may be denied in accordance with the rules and whenever public safety so requires;
D. To receive books, letters, magazines, newspapers and other periodicals that the jail authorities may allow;
E. To be treated by their own doctor and dentist at their own expense upon proper request from and approval by appropriate authorities;
F. To be treated in a government or private hospital, provided it is deemed necessary and allowed by the rules;
G. To request free legal aid, if available;
H. To sport hair in their customary style, provided it is decent and allowed by the jail rules;
I. To receive fruits and prepared food, subject to inspection and approval by jail officials;
J. To read books and other reading materials available in the library, if any;
K. To maintain cleanliness in their cells and brigades or jail premises and perform other work as may be necessary for hygienic and sanitary purposes;
L. To be entitled to Good Conduct Time Allowance (GCTA) as provided by law; and
M. To be utilized as jail aides as designated by the warden himself, with the CONSENT OF THE INMATE/INMATES or upon the recommendation of the personnel.

146 Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule I, sec. 10.

147 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175 (2015).

with special needs, which include senior citizens, infirm inmates with contagious diseases, pregnant women, and female inmates with infants. Rule IV, Section 34 provides the following guidelines:

> SECTION 34. Handling Inmates with Special Needs. — The following guidelines shall be observed in handling inmates with special needs:
>
> . . . .
>
> 11. Senior Citizen Inmates
>
> a. Senior citizen inmates should be segregated and close supervised to protect them from maltreatment and other forms of abuse by other inmates;
>
> b. Individual case management strategies should be developed and adopted to respond to the special needs of elderly inmates;
>
> c. Collaboration with other government agencies and community-based senior citizen organizations should be done to ensure that the services due the senior citizen inmates are provided; and
>
> d. Senior citizen inmates should be made to do tasks deemed fit and appropriate, their age, capability, and physical condition considered.
>
> 12. Infirm Inmates
>
> a. Inmates with contagious diseases must be segregated to prevent the spread of said contagious diseases;
>
> b. Infirm inmates should be referred to the jail physician or nurse for evaluation and management; and
>
> c. Infirm inmates must be closely monitored and provide with appropriate medication and utmost care.
>
> 13. Pregnant Inmates/Female Inmates with Infants
>
> a. Pregnant inmates must be referred to jail physician or nurse for pre-natal examination;
>
> b. They should be given tasks that are deemed fit and proper, their physical limitations, considered;
>
> c. During active labor, pregnant inmates should be transferred nearest government hospital;
>
> d. Treatment of mother and her infant/s shall be in accordance with the BJMP Policy (Refer to DIWD Manual); and
>
> e. Female inmates with infants shall be provided with ample privacy during breastfeeding activity.

III

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

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

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

> Article 10
>
> 1. All persons deprived of their liberty shall be treated with humanity and with respect for the *inherent dignity of the human person.*
>
> 2.
>
> (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
>
> (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
>
> 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status. (Emphasis supplied)

The inherent dignity of persons deprived of liberty as human beings, as with their humane treatment, is a "fundamental and universally applicable

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148 J. Leonen, Dissenting Opinion in *Ocampo v. Abando*, 726 Phil. 441, 486–487 (2014) [Per. Sereno, En Banc].

149 United Nations Universal Declaration of Human Rights, UNGA Res 217 III(A) (1948), art. 5.

150 United Nations Universal Declaration of Human Rights, UNGA Res 217 III(A) (1948), art. 3.

151 International Covenant on Civil and Political Rights, A/RES/21/2200 (1966).
The Philippines is a signatory of the International Covenant on Civil and Political Rights. The Philippines signed it on December 19, 1966 and ratified it on October 23, 1986. *See UN Treaty Body Database,* UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, available at <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=E> (last visited on July 6, 2020).

rule."[152] It applies without any distinction, and does not depend on the available material resources of a state party.

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

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

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

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

> Principle 3
>
> There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

On May 13, 1977, the United Nations Economic and Social Council adopted the Standard Minimum Rules for the Treatment of Prisoners, which set the universally accepted minimum standards for prisoner treatment and

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[152] General Comment No. 21, Article 10 (Humane treatment of persons deprived of their liberty), HRI/GEN/1/Rev.9 (Vol. I) (1992), par. 4.

[153] A/RES/45/111 (1990).

[154] Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/30/3452 (1975).

[155] Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/30/3452 (1975), art. 3 provides:
Article 3. No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

[156] A/RES/43/173 (1988).

prison management.[157] These rules are "generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions."[158]

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

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

I disagree.

The peremptoriness of a norm is not a mere categorization of international law.[161] *Jus cogens*, or peremptory norms, are the "highest category of customary international law."[162] A prominent modern definition is that "(t)he rules of *jus cogens* [are] those rules which derive from principles that the legal conscience of [hu]mankind deem[s] absolutely essential to coexistence in the international community."[163]

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

> "The term '*jus cogens*' means the 'compelling law.'" Corollary, "a *jus cogens* norm holds the highest hierarchical position among all other customary norms and principles." As a result, *jus cogens* norms are deemed "peremptory and non-derogable." When applied to international crimes,

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157 Standard Minimum Rules for the Treatment of Prisoners, E/RES/2076(LXII) (1977), Preliminary Observations No. 1.

158 Standard Minimum Rules for the Treatment of Prisoners, E/RES/2076(LXII) (1977), Preliminary Observations No. 1.

159 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175 (2015).

160 J. Delos Santos, Separate Opinion, pp. 24–25.

161 Id. at 24.

162 Karen Parker, *Jus Cogens: Compelling the Law of Human Rights*, 12 HASTINGS INT'L & COMP. L. REV. 411, 414 (1989).

163 Id. at 415 *citing* U.N. Conference on the Law of Treaties, 1st and 2d Sess. Vienna Mar. 26 - May 24, 1968, U.N. Doe. A/CONF./39/11/Add. 2 (1971), and Statement of Mr. Eduardo Suarez (Mexico) at 294 during the 52nd meeting on May 4, 1968.

164 656 Phil. 246 (2011) [Per J. Velasco, En Banc].

> "*jus cogens* crimes have been deemed so fundamental to the existence of a just international legal order that states cannot derogate from them, even by agreement."
>
> These *jus cogens* crimes relate to the principle of universal jurisdiction, i.e., "any state may exercise jurisdiction over an individual who commits certain heinous and widely condemned offenses, even when no other recognized basis for jurisdiction exists." "The rationale behind this principle is that the crime committed is so egregious that it is considered to be committed against all members of the international community" and thus granting every State jurisdiction over the crime.[165] (Citations omitted)

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

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

> Some customary international laws have been affirmed and embodied in treaties and conventions. A treaty constitutes evidence of customary law if it is declaratory of customary law, or if it is intended to codify customary law. In such a case, even a State not party to the treaty would be bound thereby. A treaty which is merely a formal expression of customary international law is enforceable on all States because of their membership in the family of nations. For instance, the Vienna Convention on Consular Relations is binding even on non-party States because the provisions of the Convention are mostly codified rules of customary international law binding on all States even before their codification into the Vienna Convention. Another example is the Law of the Sea, which consists mostly of codified rules of customary international law, which have been universally observed even before the Law of the Sea was ratified by participating States.
>
> Corollarily, treaties may become the basis of customary international law. While States which are not parties to treaties or international agreements are not bound thereby, such agreements, if widely accepted for years by many States, may transform into customary international laws, in which case, they bind even non-signatory States.[167] (Citations omitted)

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[165] Id. at 303–304.

[166] *See* Karen Parker, *Jus Cogens: Compelling the Law of Human Rights*, 12 HASTINGS INT'L & COMP. L. REV. 411 (1989).

[167] J. Carpio, Dissenting Opinion in *Bayan Muna v. Romulo*, 656 Phil. 246, 326–327 (2011) [Per J. Velasco, En Banc].

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

To view a resolution adopted by the United Nations General Assembly as not being *jus cogens*, only being recommendatory, is limited. It fails to consider that a resolution of the United Nations General Assembly may be any of the following: (1) an articulation of a customary international norm; (2) a reiteration of existing treaty obligations; (3) a reflection of emerging international norms and standards, or commonly referred to as "soft law"; or (4) a binding source of obligation that is judicially enforceable once acceded to by a member state.

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

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

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

It is erroneous to dismiss the Nelson Mandela Rules just because the United Nations General Assembly resolutions are only recommendatory. The preambulatory clauses of Resolution No. 70/175,[170] which adopted the Nelson Mandela Rules, state that the precedent United Nations Minimum Standard on the Treatment of Prisoners has already attained the status of a "universally

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[168] 621 Phil. 536 (2009) [Per J. Brion, En Banc].
[169] Id. at 600–601.
[170] Adopted by the UN General Assembly on December 17, 2015.

acknowledged minimum standards for the detention of prisoners and that they have been of significant value and influence."[171]

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

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

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

> *Article 2*
>
> 1. *Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*
>
> 2. ***No exceptional circumstances whatsoever***, whether a state of war or a threat of war, internal political instability ***or any other public emergency, may be invoked as a justification of torture.***
>
> 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.
>
> . . . .
>
> *Article 11*
>
> Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture
>
> . . . .
>
> *Article 16*

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171 *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, A/RES/70/175 (2015).

172 *UN Treaty Body Database*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, available at <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=E> (last visited on July 6, 2020).

173 A/RES/39/46 (1984).

> 1. *Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1*, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
>
> 2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion. (Emphasis supplied)

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

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

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

> "Soft law" does not fall into any of the categories of international law set forth in Article 38, Chapter III of the 1946 Statute of the International Court of Justice. It is, however, an expression of non-binding norms, principles, and practices that influence state behavior. Certain declarations and resolutions of the UN General Assembly fall under this category. The most notable is the UN Declaration of Human Rights, which this Court has enforced in various cases, specifically, *Government of Hongkong Special Administrative Region v. Olalia*, *Mejoff v. Director of Prisons*, *Mijares v. Rañada and Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*
>
> The World Intellectual Property Organization (WIPO), a specialized agency attached to the UN with the mandate to promote and protect intellectual property worldwide, has resorted to soft law as a rapid means of norm creation, in order "to reflect and respond to the changing needs and demands of its constituents." Other international organizations which have

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174 A/RES/57/199 (2002). Acceded on April 17, 2012.

175 Jennifer Peirce, *Making the Mandela Rules: Evidence, Expertise, and Politics in the Development of Soft Law International Prison Standards*, 43 QUEEN'S L.J. 263 (2018).

176 561 Phil. 386 (2007) [Per J. Austria-Martinez, En Banc].

resorted to soft law include the International Labor Organization and the Food and Agriculture Organization (in the form of the *Codex Alimentarius*).

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

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

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

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

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

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

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

. . . .

SECTION 5. Operations of the Bureau of Corrections. — (a) The BuCor shall operate with a directorial structure. It shall undertake reception of inmates through its Directorate for Reception and Diagnostics (DRD), formerly Reception and Diagnostic Center (RDC), provide basic needs and

[177] Id. at 406–407.

> security through its Security and Operations Directorates, administer reformation programs through its Reformation Directorates, and prepare inmates for reintegration to mainstream society through its Directorate for External Relations (DER), formerly External Relations Division (ERD).
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> . . . .
>
> (c) Aside from those borne of the provisions under Rule 8, Part I, Rules of General Application of the ***United Nations Standard Minimum Rules for the Treatment of Prisoners*** and that of the existing regulation of the BuCor on security classification (i.e., maximum, medium and minimum security risk), inmates shall also be internally classified by the DRD and segregated according to crimes committed based on the related penal codes such as Crimes Against Persons, Crimes Against Properties, Crimes Against Chastity, so on and so forth, as well as by other related Special Laws, Custom and Immigration Laws. (Emphasis supplied)

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

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

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

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

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178 J. Delos Santos, Separate Opinion, p. 34 states:
"However, for the Philippines which has been reportedly afflicted with persisting issues of overcrowding, the instance of 'temporary overcrowding' is colloquially 'the stuff of dreams.'"

179 Id. at 29–30.

180 Id. at 27–28.

181 Id. at 30–31.

182 Id. at 31.

183 Id. at 31–32.

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

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

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving *rights which are legally demandable and enforceable*, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

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

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

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

> I do not agree, however, in making distinctions between self-executing and non-self-executing provisions.
>
> A self-executing provision of the Constitution is one "complete in itself and becomes operative without the aid of supplementary or enabling legislation." It "supplies [a] sufficient rule by means of which the right it grants may be enjoyed or protected." "[I]f the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action," the provision is self-executing.
>
> On the other hand, if the provision "lays down a general principle," or an enabling legislation is needed to implement the provision, it is not self-executing.

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[184] RULES OF COURT, Rule 2, sec. 2.

> To my mind, the distinction creates false second-order constitutional provisions. It gives the impression that only self-executing provisions are imperative.
>
> All constitutional provisions, even those providing general standards, must be followed. Statements of general principles and policies in the Constitution are frameworks within which branches of the government are to operate. The key is to examine if the provision contains a prestation and to which branch of the government it is directed. If addressed either to the legislature or the executive, the obligation is not for this Court to fulfill.
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> . . . .
>
> There are no second-order provisions in the Constitution. We create this category when we classify the provisions as "self-executing" and "non-self executing." Rather, the value of each provision is implicit in their normative content.[185] (Citations omitted)

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

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

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

I also agree with Justice Lazaro-Javier's position that budgetary restrictions, while it may be a factor in implementation, do not determine the

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185 J. Leonen, Concurring Opinion in *Knights of Rizal v. DMCI Homes, Inc.*, 809 Phil. 453, 591–592 (2017) [Per J. Carpio, En Banc].

186 J. Delos Santos, Separate Opinion, p. 32.

187 J. Lazaro-Javier, Separate Opinion, p. 26.

existence and enforceability of a right.[188] As she aptly points, this Court should not be restricted by the State's budget concerns in determining the existence and enforcement of a right.[189]

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

These principles are affirmed by the 1987 Constitution as a State policy.[192] Thus, persons deprived of liberty must be treated with humanity and with respect for their inherent dignity. Furthermore, "provisions on the right to life, prohibition from torture, inhuman and degrading treatment, and slavery remain free from any derogation whatsoever, having acquired a *jus cogens* character."[193]

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

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

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188 Id. at 27.

189 Id. at 29–30.

190 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175 (2015).

191 International Covenant on Civil and Political Rights, A/RES/21/2200 (1966), art. 10.

192 CONST., art. II, sec. 11.

193 J. Leonen, Dissenting Opinion in *Ocampo v. Abando*, 726 Phil. 441, 488 (2014) [Per. Sereno, En Banc] *citing* INGRID DETTER, THE LAW OF WAR 162 (2nd ed., 2000) citing International Covenant on Civil and Political Rights, A/RES/21/2200 (1966), art. 6, 7, and 8.

IV

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

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

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

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

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

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

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

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194 J. Perlas-Bernabe, Separate Opinion, pp. 5 and 7.
195 CONST., art. VIII, sec. 1.
196 J. Delos Santos, Separate Opinion, p. 54.
197 Id. at 98.

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

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

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

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

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

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

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198 795 Phil. 529 (2016) [Per J. Leonen, En Banc].
199 Id. at 572.
200 G.R. No. L-21064, February 18, 1970, 31 SCRA 413 [Per J.Fernando, Second Division].

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

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

> The due process clauses in the American and Philippine Constitutions are not only worded in exactly identical language and terminology, but more importantly, they are alike in what their respective Supreme Courts have expounded as the spirit with which the provisions are informed and impressed, the elasticity in their interpretation, their dynamic and resilient character which make them capable of meeting every modern problem, and their having been designed from earliest time to the present to meet the exigencies of an undefined and expanding future. The requirements of due process are interpreted in both the United States and the Philippines as not denying to the law the capacity for progress and improvement. Toward this effect and in order to avoid the confines of a legal straitjacket, the courts instead prefer to have the meaning of the due process clause "gradually ascertained by the process of inclusion and exclusion in the course of the decisions of cases as they arise" (Twining vs. New Jersey, 211 U.S. 78). Capsulized, it refers to "the embodiment of the sporting idea of fair play" (Ermita-Malate Hotel and Motel Owner's Association vs. City Mayor of Manila, 20 SCRA 849 [1967]). It relates to certain immutable principles of justice which inhere in the very idea of free government (Holden vs. Hardy, 169 U.S. 366).[203]

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

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

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201 Id. at 426–427.
202 379 Phil. 165 (2000) [Per J. Melo, En Banc].
203 Id. at 202.
204 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].

> [T]he preservation of liberty is such a major preoccupation of our political system that, not satisfied with guaranteeing its enjoyment in the very first paragraph of section (1) of the Bill of Rights, the framers of our Constitution devoted paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (18), and (21) of said section (1) to the protection of several aspects of freedom.
>
> While the extent of the constitutional protection of life and liberty is dynamic, evolving, and expanding with contemporaneous realities, the mechanism for preserving life and liberty is immutable: any intrusion into it must be with due process of law and must not run afoul of the equal protection of the laws.[205] (Citations omitted)

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

> Interestingly, both COMELEC and petitioners appeal to what they (respectively) construe to be plainly evident from Section 5.2(a)'s text: on the part of COMELEC, that the use of the words "paid for" evinces no distinction between direct purchasers and those who purchase via subscription schemes; and, on the part of petitioners, that Section 5.2(a)'s desistance from actually using the word "subscriber" means that subscribers are beyond its contemplation. The variance in the parties' positions, considering that they are both banking on what they claim to be the Fair Election Act's plain meaning, is the best evidence of an extant ambiguity.
>
> Second, statutory construction cannot lend itself to pedantic rigor that foments absurdity. The dangers of inordinate insistence on literal interpretation are commonsensical and need not be belabored. These dangers are by no means endemic to legal interpretation. Even in everyday conversations, misplaced literal interpretations are fodder for humor. A fixation on technical rules of grammar is no less innocuous. A pompously doctrinaire approach to text can stifle, rather than facilitate, the legislative wisdom that unbridled textualism purports to bolster.
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> Third, the assumption that there is, in all cases, a universal plain language is erroneous. In reality, universality and uniformity in meaning is a rarity. A contrary belief wrongly assumes that language is static.
>
> ***The more appropriate and more effective approach is, thus, holistic rather than parochial: to consider context and the interplay of the historical, the contemporary, and even the envisioned.*** *Judicial interpretation entails the convergence of social realities and social ideals. The latter are meant to be effected by the legal apparatus, chief of which is the bedrock of the prevailing legal order: the Constitution. Indeed, the word in the vernacular that describes the Constitution — saligan — demonstrates this imperative of constitutional primacy.*

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[205] Id. at 1144–1146.

[206] 757 Phil. 483 (2015) [Per J. Leonen, En Banc].

> Thus, we refuse to read Section 5.2(a) of the Fair Election Act in isolation. Here, we consider not an abstruse provision but a stipulation that is part of the whole, *i.e.*, the statute of which it is a part, that is aimed at realizing the ideal of fair elections. We consider not a cloistered provision but a norm that should have a present authoritative effect to achieve the ideals of those who currently read, depend on, and demand fealty from the Constitution.[207] (Emphasis supplied, citations omitted)

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

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

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

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

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

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason

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207 Id. at 520–522.
208 J. Delos Santos, Separate Opinion, p. 53.
209 *David v. Senate Electoral Tribunal,* 795 Phil. 529 (2016) [Per J. Leonen, En Banc].
210 Id. at 576.
211 272 Phil. 147 (1991) [Per J. Fernan, En Banc].

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

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

V

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

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

> 1. The fundamental issue, to repeat, is the availability of the writ of *habeas corpus* under the circumstances disclosed. Its latitudinarian scope to assure that illegality of restraint and detention be avoided is one of the truisms of the law. It is not known as the writ of liberty for nothing. The writ imposes on judges the grave responsibility of ascertaining whether there is any legal justification for a deprivation of physical freedom. Unless there be such a showing, the confinement must thereby cease. If there be a valid sentence it cannot, even for a moment, be extended beyond the period provided for by law. Any deviation from the legal norms call for the termination of the imprisonment.
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> . . . .
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> 2. Where, however, the detention complained of finds its origin in what has been judicially ordained, the range of inquiry in a *habeas corpus* proceeding is considerably narrowed. For if "the person alleged to be restrained of his liberty is in the custody of an officer under process issued

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212 Id. at 169–170.
213 147 Phil. 362 (1971) [Per J. Fernando, First Division].
214 147 Phil. 362 (1971) [Per J. Fernando, First Division].

by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order," the writ does not lie. That principle dates back to 1902, when this Court announced that *habeas corpus* was unavailing where the person detained was in the custody of an officer under process issued by a court or magistrate. That is understandable, as during the time the Philippines was under American rule, there was necessarily an adherence to authoritative doctrines of constitutional law there followed.

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

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

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

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

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

> had been duly considered as having paid their penalty to society, and freed. Such a deplorable result is to be avoided.[215] (Citations omitted)

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

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

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

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215 Id. at 365–371.

216 J. Perlas-Bernabe, Separate Opinion, p. 14.

217 429 U.S. 97 (1976). In *Estelle*, a prisoner was injured while unloading a bale of cotton from a truck. He filed a civil action for deprivation of rights against the Director of the Department of Corrections, the warden of the prison, and its medical doctors, alleging that the inadequate medical treatment subjected him to cruel and inhuman punishment.

The U.S. Supreme Court recognized the government's responsibility to provide medical care for its prisoners. Failure to do so may constitute a cause of action for cruel and inhuman punishment. First, however, the prisoner must allege "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs," which constitutes "unnecessary and wanton infliction of pain" and in worst cases, "physical torture or a lingering death." Moreover, this deliberate indifference to a prisoner's serious medical needs must be of such nature that offends the contemporary standards of decency as expressed in prison regulations. This means that not every accident or medical malpractice is sufficient. There must be a deliberate disregard of a prisoner's serious medical condition, delay, or complete denial of access to treatment, or intentional interference to a prescribed treatment.

218 509 U.S. 25 (1993). In *Helling*, the deliberate indifference test was dissected into its subjective and objective components. The prisoner filed a civil action for damages and injunction against various prison officials. Roomed with another prisoner who daily smoked five packs of cigarettes sold by the prison store, he raised health damage that constituted cruel and unusual punishment.

The U.S. Supreme Court held that the conditions of confinement are included in the scope of the right against cruel and unusual punishment. The reason is that in depriving liberty, the State renders prisoners unable to care for themselves. In a series of cases, the Court had categorically held that the protection against cruel and unusual punishment extends to "sufficiently imminent dangers" such that a "remedy for unsafe conditions need not await a tragic event."

While the Court affirmed that a cause of action exists under cruel and unusual punishment, the case was remanded to the trial courts to prove the objective and subjective components of such right. The objective factor consists of the prisoner's exposure to a grave risk that is not tolerated in the modern society. Moreover, the prisoner's exposure is of the nature that violates contemporary standards of decency. On the other hand, the subjective factor pertains to prison management showing deliberate indifference of the detention officers to the risks and exposure of the prisoner.

219 *Ejercito v. Commission on Elections*, 748 Phil. 205 (2014) [Per J. Peralta, En Banc] citing *Republic of the Philippines v. Manila Electric Company*, 449 Phil. 118 (2003) [J. Puno, Third Division] and *Central Bank Employees Assoc., Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004) [J. Puno, En Banc].

220 505 Phil. 298 (2005) [Per J. Carpio, En Banc] citing *Fisher v. Winter*, 564 F Supp. 281 (1983).

inhuman punishment, right to life, and right to health of persons deprived of liberty.

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

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

> Petitioners further argue that the bars separating the detainees from their visitors and the boarding of the iron grills in their cells with plywood amount to unusual and excessive punishment. This argument fails to impress us. *Bell v. Wolfish* pointed out that while a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law, detention inevitably interferes with a detainee's desire to live comfortably. ***The fact that the restrictions inherent in detention intrude into the detainees' desire to live comfortably does not convert those restrictions into punishment. It is when the restrictions are arbitrary and purposeless that courts will infer intent to punish. Courts will also infer intent to punish even if the restriction seems to be related rationally to the alternative purpose if the restriction appears excessive in relation to that purpose***. Jail officials are thus not required to use the least restrictive security measure. They must only refrain from implementing a restriction that appears excessive to the purpose it serves.
>
> We quote *Bell v. Wolfish*:
>
> > One further point requires discussion. The petitioners assert, and respondents concede, that the "essential objective of pretrial confinement is to insure the detainees' presence at trial." While this interest undoubtedly justifies the original decision to confine an individual in some manner, we do not accept respondents' argument that the Government's interest in ensuring a detainee's presence at trial is the only objective that may justify restraints and conditions once the decision is lawfully made to confine a person. "If the government could confine or otherwise infringe the liberty of detainees only to the extent necessary to ensure their presence at trial, house arrest would in the end be the only constitutionally justified form of detention." The Government also has legitimate interests that stem from its need to manage the facility in which the individual is detained. These legitimate operational concerns may require administrative measures that go beyond those that are, strictly speaking, necessary to ensure that the detainee shows up at trial. For example, the Government must be able to take steps to maintain security and order at the institution and make certain no weapons or illicit drugs reach detainees.

> Restraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment, even if they are discomforting and are restrictions that the detainee would not have experienced had he been released while awaiting trial. We need not here attempt to detail the precise extent of the legitimate governmental interests that may justify conditions or restrictions of pretrial detention. It is enough simply to recognize that in addition to ensuring the detainees' presence at trial, the effective management of the detention facility once the individual is confined is a valid objective that may justify imposition of conditions and restrictions of pretrial detention and dispel any inference that such restrictions are intended as punishment.

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

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

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

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

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

> We accord respect to the finding of the Court of Appeals that the conditions in the ISAFP Detention Center are not inhuman, degrading and cruel. Each detainee, except for Capt. Nicanor Faeldon and Capt. Gerardo Gambala, is confined in separate cells, unlike ordinary cramped detention cells. The detainees are treated well and given regular meals. The Court of Appeals noted that the cells are relatively clean and livable compared to the conditions now prevailing in the city and provincial jails, which are congested with detainees. The Court of Appeals found the assailed measures to be reasonable considering that the ISAFP Detention Center is a high-risk detention facility. Apart from the soldiers, a suspected New People's Army ("NPA") member and two suspected Abu Sayyaf members are detained in the ISAFP Detention Center.[221] (Emphasis supplied, citations omitted)

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

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

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

> The ruling in this case, however, does not foreclose the right of detainees and convicted prisoners from petitioning the courts for the redress of grievances. Regulations and conditions in detention and prison facilities that violate the Constitutional rights of the detainees and prisoners will be reviewed by the courts on a case-by-case basis. The courts could afford injunctive relief or damages to the detainees and prisoners subjected to arbitrary and inhumane conditions. However, *habeas corpus* is not the proper mode to question conditions of confinement. The writ of habeas

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221 Id. at 313–317.
222 441 U.S. 520 (1979).
223 J. Caguioa, Separate Opinion, p. 23.

> corpus will only lie if what is challenged is the fact or duration of confinement. (Citations omitted)[224]

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

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

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

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

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

VI

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

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224 *Alejano v. Cabuay*, 505 Phil. 298, 323 (2005) [Per J. Carpio, En Banc].
225 J. Caguioa, Separate Opinion, pp. 19–20.
226 Id. at 23.

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

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

> SECTION 1. *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, *the official acts of the legislative, executive and judicial departments of the Philippines*, the laws of nature, the measure of time, and the geographical divisions.
>
> SECTION 2. *Judicial notice, when discretionary.* — A court may take judicial notice of matters which are *of public knowledge,* or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.
>
> SECTION 3. Judicial *notice, when hearing necessary.* — During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.
>
> After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case. (Emphasis supplied)

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

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

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227 306 Phil. 519 (1994) [Per Curiam, En Banc].

228 Id. at 537–538.

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

VI (A)

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

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

Prison Facilities	PDL Population	Capacity	Occupancy Rate	Congestion Rate
New Bilibid Prison	29,173	6,435	453%	353%
CIW-Mandaluyong	3,422	1,008	340%	240%
Iwahig Prison & Penal Farm	2,783	675	412%	312%
Davao Prison & Penal Farm	6,607	1,354	488%	388%
CIW-Mindanao	579	102	567%	467%
San Ramon Prison & Penal Farm	2,329	733	318%	218%
Sablayan Prison & Penal Farm	2,646	994	266%	166%
Leyte Regional Prison	2,045	679	301%	201%[229]

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

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229 *Bureau of Corrections Statistic on Prison Congestion as of January 2020,* BUREAU OF CORRECTIONS, available at <http://www.bucor.gov.ph/inmate-profile/Congestion-04062020.pdf> (last accessed on July 6, 2020).

230 BJMP Manual Habitat, Water, Sanitation and Kitchen in Jails (2012), p. 7.

231 Id. at 5.

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

Office/RO	Jail Population	Total Ideal Capacity	Variance	Congestion Rate
NCR	36,035	5,237	30,799	588%
CAR	1,214	423	791	187%
R.O. I	4,364	1,085	3,279	302%
R.O. II	2,771	656	2,115	323%
R.O. III	10,035	1,548	8,487	548%
R.O. IV-A	21,128	2,925	18,203	622%
R.O. IVB	1,627	504	1,123	223%
R.O. V	2,882	785	2,097	267%
R.O. VI	9,056	4,231	4,825	114%
R.O. VII	19,751	2,665	17,086	641%
R.O. VIII	2,804	551	2,253	409%
R.O. IX	5,709	766	4,943	645%
R.O. X	4,633	950	3,683	387%
R.O. XI	6,253	1,069	5,184	485%
R.O. XII	5,064	910	4,154	457%
R.O. XIII	2,845	860	1,985	231%
ARMM	143	103	40	39%
Total	**136,314**	**25,268**	**111,046**	**439.48%**

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

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

> We recommended that Management:
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> (a) continue its efforts in making representations with concerned government agencies in addressing the congestion problems in all jail facilities;
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> (b) prioritize acquisition of lots and construction programs and projects aimed at improving the jail facilities;

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232 *Commission on Audit Annual Audit Report of the Bureau of Jail Management and Penology*, COMMISSION ON AUDIT, available at <https://www.coa.gov.ph/index.php/national-government-agencies/2018/category/7502-department-of-the-interior-and-local-government> 55 (last accessed on July 6, 2020).

233 Id. at 55.

234 Id.

> (c) require the Regional Bids and Awards Committee to ensure timely completion of all procurement activities pertaining to the construction and/or improvement of all jail facilities in order to decongest overcrowded jails; and
>
> (d) enhance and intensify the GCTA process and give more emphasis on the Recognizance Act for detainees early release without necessarily completing their sentence which could significantly reduce jail population and congestion.[235]

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

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

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

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235 Id.

236 *Highest to Lowest – Prison Population Total*, WORLD PRISON BRIEF, available at <https://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All> (last accessed on July 6, 2020). The World Prison Brief is a unique database that provides free access to information about prison systems throughout the world, compiled by the Institute for Crime and Justice Policy Research based in the School of Law of Birkbeck, University of London.

237 List of issues prepared by the Committee prior to the submission of the third periodic report of the Philippines, CAT/C/PHL/Q/3 (2012).

238 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Committee Against Torture, Concluding observations on the third periodic report of the Philippines, Part C, Recommendation No. 27, available at <https://www.refworld.org/publisher,CAT,,PHL,57a99b194,0.html> (last accessed on July 6, 2020).

VI (B)

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

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

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

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

COVID-19 is highly contagious.[244] Some get infected but do not develop any symptoms or feel unwell; some only experience mild symptoms.

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239 Timeline of WHO's response to COVID-19, WORLD HEALTH ORGANIZATION, <https://www.who.int/news-room/detail/29-06-2020-covidtimeline> (last accessed on July 6, 2020).

240 *Timeline: How the new coronavirus spread*, AL JAZEERA, April 23, 2020, available at <https://www.aljazeera.com/news/2020/01/timeline-china-coronavirus-spread-200126061554884.html> (last accessed on July 6, 2020).

241 Carol H. Yan MD, Farhoud Faraji MD PhD, Divya P. Prajapati BS, Christine E. Boone MD PhD, and Adam S DeConde MD (2020), *Association of chemosensory dysfunction and Covid-19 in patients presenting with influenze-like symptoms*, 10 ALLERGY RHINOLOGY 806 (2020), available at <https://onlinelibrary.wiley.com/doi/full/10.1002/alr.22579> (last accessed on July 6, 2020).

242 World Health Organization, *Q&A on coronaviruses* (COVID-19), WORLD HEALTH ORGANIZATION, available at <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last accessed on July 6, 2020).

243 World Health Organization, *Q&A on coronaviruses* (COVID-19), WORLD HEALTH ORGANIZATION, available at <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last accessed on July 6, 2020).

244 Steven Sanche, Yen Ting Lin, Chonggang Xu, Ethan Romero-Severson, Nick Hengartner, and Ruian Ke, *High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome Coronavirus 2*, 26 EMERGING INFECTIOUS DISEASES JOURNAL (2020), available at <https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article> (last accessed on July 6, 2020).
Mapping the Coronavirus Outbreak Across the World, BLOOMBERG, available at <https://www.bloomberg.com/graphics/2020-coronavirus-cases-world-map/> (last accessed on July 6, 2020).

However, even those with zero to very mild symptoms can transmit the virus if they carry it.[245] In fact, COVID-19 has since spread worldwide, prompting the World Health Organization to declare it a pandemic—the first one caused by a coronavirus.[246]

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

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

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

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

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[245] World Health Organization, *Q&A on coronaviruses* (COVID-19), WORLD HEALTH ORGANIZATION, available at <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last accessed on July 6, 2020).

[246] WHO, Director-General's opening remarks at the media briefing on COVID-19, March 11, 2020, available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last accessed on July 6, 2020). *See also Transcript of virtual press conference with Gregory Hartl, WHO Spokesperson for Epidemic and Pandemic Diseases, and Dr Keiji Fukuda, Assistant Director-General ad Interim for Health Security and Environment*, WORLD HEALTH ORGANIZATION, available at <https://www.who.int/mediacentre/influenzaAH1N1_presstranscript_20090526.pdf> (last accessed on July 6, 2020).

[247] *Transmission of SARS-CoV-2: implications for infection prevention precautions: Scientific Brief*, available at <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions> (last accessed on July 26, 2020).

[248] Id. *See also* COMMUNICATING: PROTECT VULNERABLE & HIGH RISK GROUPS, WORLD HEALTH ORGANIZATION, available at <https://www.who.int/westernpacific/emergencies/covid-19/information/high-risk-groups> (last accessed on July 6, 2020).

[249] Ali Rismanbaf, *Potential Treatments for COVID-19; a Narrative Literature Review*, 8 ARCHIVES OF ACADEMIC EMERGENCY MEDICINE 1 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7085862/pdf/aaem-8-e29.pdf> (last accessed on July 6, 2020). *See also* Feng He, Yu Deng, and Weina Li, *Coronavirus disease 2019: What we know?*, 92 JOURNAL OF MEDICAL VIROLOGY 719 (2020), available at <https://onlinelibrary.wiley.com/doi/epdf/10.1002/jmv.25766> (last accessed on July 6, 2020).

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

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

Several levels of community quarantine measures—general, enhanced, to extreme enhanced along with their modified versions—were imposed all over the country, depending on each locality's situation. Notably, work was suspended in the executive branch, and the other branches were encouraged

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250 Kristine Sabillo, *Philippines confirms first case of new coronavirus*, ABS-CBN NEWS, January 30, 2020, available at <https://news.abs-cbn.com/news/01/30/20/philippines-confirms-first-case-of-new-coronavirus> (last accessed on July 6, 2020).
Claire Jiao and Derek Wallbank, *Coronavirus Death in Philippines Is First Fatality Outside China*, BLOOMBERG, February 2, 2020, available at <https://www.bloomberg.com/news/articles/2020-02-02/first-person-outside-of-china-dies-from-virus-in-philippines> (last accessed on July 6, 2020).
Coronavirus: First death outside China reported in Philippines, BBC, February 2, 2020, available at <https://www.bbc.com/news/world-asia-51345855> (last accessed on July 6, 2020).

251 *Covid-19 Interim Guidelines,* DEPARTMENT OF HEALTH, available at <https://www.doh.gov.ph/2019-nCov/interim-guidelines> (last accessed on July 6, 2020).

252 *COVID Advisory No. 7*, DEPARTMENT OF HEALTH, February 7, 2020, available at <https://www.doh.gov.ph/sites/default/files/health-update/COVID-19-Advisory-No7.pdf> (last accessed on July 6, 2020).

253 Erwin Colcol, *Duterte orders temporary travel ban on tourists from mainland China, Hong Kong, Macau*, GMA NEWS ONLINE, February 2, 2020, available at <https://www.gmanetwork.com/news/news/nation/724475/duterte-orders-temporary-travel-ban-on-tourists-from-mainland-china-hong-kong-macau/story/> (last accessed on July 6, 2020).

254 DOH Backs 11th IATF Resolutions; Reports 12 New Covid-19 Cases in PH, DEPARTMENT OF HEALTH, March 13, 2020, available at <https://www.doh.gov.ph/doh-press-release/doh-back-11th-iatf-resolutions-reports-12-new-covid-19-cases-in-ph> (last accessed on July 6, 2020).

255 Proclamation No. 929 (2020).

256 *See* Republic Act No. 11469 (2020).
See IMPLEMENTING RULES AND REGULATIONS FOR SECTION 4(AA) OF REPUBLIC ACT NO. 11469, available at <https://www.officialgazette.gov.ph/downloads/2020/03mar/20200401-IRR-RA-11469-RRD.pdf> (last accessed on July 6, 2020).
Joint Memorandum Circular No. 01 (2020), Special Guidelines on the Provision of Social Amelioration Measures by the Department of Social Welfare and Development, Department of Labor and Employment, Department of Trade and Industry, Department of Agriculture, Department of Finance, Department of Budget and Management, and Department of the Interior and Local Government to the Most Affected Residents of the Areas Under Enhanced Community Quarantine, available at <https://www.COVID-19.gov.ph/wp-content/uploads/2020/04/DSDW-JOINT-MEMO-CIRC.pdf> (last accessed on July 6, 2020).
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Joint Memorandum Circular No. 01 (2020), Emergency Procurement by the Government During a State of Public Health Emergency Arising from the Coronavirus Disease 2019 (COVID-19), available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/COA-GPPB-JOIN-MEMO-CIRC.pdf> (last accessed on July 6, 2020).

to follow suit. Private enterprises made flexible work arrangements. Land, domestic air, and domestic sea travel to and from Metro Manila were suspended.[257] Local governments started imposing curfews, implementing quarantine passes, providing support to health workers, and distributing relief goods.[258]

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257 Inter-Agency Task Force for the Management of Emerging Infectious Diseases Resolution No. 12, March 13, 2020, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/03/IATF-RESO-12.pdf> (last accessed on July 6, 2020). *See also* Resolution No. 12 (2020) available at <https://www.doh.gov.ph/sites/default/files/health-update/IATF-RESO-12.pdf> (last accessed on July 6, 2020).

258 Evolution of LGU involvement: DILG Memorandum Circular 2020-018, January 31, 2020, Guides to Action Against Coronavirus, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/03/DILG-MEMO-CIR-2020-018.pdf> (last accessed on July 6, 2020).
DILG Memorandum Circular 2020-061, March 21, 2020, Ensuring that the Food Relief Operations to be Distributed to Muslim Communities are Halal Compliant During the Period of Enhanced Community Quarantine, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/03/DILG-MC-No-2020-061.pdf> (last accessed on July 6, 2020).
DILG Memorandum Circular 2020-062, March 21, 2020, Suppletory LGU Guidelines on the Implementation of Enhanced Community Quarantine in Luzon, and State of Public Health Emergency in other parts of the Country due to the COVID-19 Threat, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/03/DILG-MC-No-2020-062.pdf> (last accessed on July 6, 2020).
DILG Memorandum Circular 2020-063, March 27, 2020, Interim Guidelines on the Management of Human Remains for Patient Under Investigation (PUI) and Confirmed Coronavirus Disease 2019 (COVID-19) Cases, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/DILG-Memorandum-Circular-No.-2020-063.pdf> (last accessed on July 6, 2020).
DILG Memorandum Circular 2020-064, March 29, 2020, Provincial/City/Municipal Special Care Facilities and Isolation Units Amid the COVID-19 Pandemic, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/DILG-Memorandum-Circular-No.-2020-064.pdf> (last accessed on July 6, 2020).
DILG Memorandum Circular 2020-065, March 30, 2020, Guidelines for Local Government Units in the Provision of Social Amelioration Measures by the National Government to the Most Affected Residents of the Areas Under Enhanced Community Quarantine, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/DILG-Memorandum-Circular-No.-2020-065.pdf> (last accessed on July 6, 2020).
DILG Memorandum Circular 2020-066, March 31, 2020, Guidelines on Providing Proper Welfare of Persons with Disabilities During the Enhanced Community Quarantine Due to the Corona Virus 2019 (COVID-19) Pandemic, <https://www.covid19.gov.ph/wp-content/uploads/2020/04/DILG-Memorandum-Circular-No.-2020-066.pdf> (last accessed on July 6, 2020).
DILG Memorandum Circular 2020-067, April 2, 2020, Additional Guidelines on Quarantine and Isolation Measures Relative to the COVID-19 Situation, available at <https://www.COVID-19.gov.ph/wp-content/uploads/2020/04/DILG-Memorandum-Circular-No.-2020-067.pdf> last accessed on July 6, 2020).
DILG Memorandum Circular 2020-071, April 9, 2020, Mandatory Wearing of Face Masks or Other Protective Equipment in Public Areas, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/dilg-memocircular-202049_cfaebca293.pdf> (last accessed on July 6, 2020).
DILG Memorandum Circular 2020-072, April 11, 2020, Temporary Shelter/Accommodation for the Safety and Protection Against Discrimination of Health Workers in Provincial/City Hospitals and Other Public Health Facilities Catering to COVID-19 Patients, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/dilg-memocircular-2020412_d09896ea9c.pdf> (last accessed on July 6, 2020).
DILG Memorandum Circular 2020-073, April 13, 2020, Guidelines for the Conduct of the Expanded Testing Procedures for COVID-19, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/dilg-memocircular-2020414_6237b314e6.pdf> (last accessed on July 6, 2020).
DILG Memorandum Circular 2020-074, April 14, 2020, Realignment and Augmentation of SK Budgets to Provide Funds for Programs, Projects, and Activities (PPAs) Related to Coronavirus Disease 2019 (COVID-19), available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/dilg-memocircular-2020414_a10aee3325.pdf> (last accessed on July 6, 2020).
DILG Memorandum Circular 2020-075, April 23, 2020, Establishment of DILG Overseas Filipino Workers' (OFW) Desk and Designation of DILG-OFW Desk Officer at the Region, Province, Highly Urbanized City (HUC) and Independent Component City (ICC), available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/dilg-memocircular-2020423_4de6b7f780.pdf> (last accessed on July 6, 2020).

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

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

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

Clearly, the nature of COVID-19 and the jail congestion in this country are matters that all courts may take judicial notice of. The fact of overcrowding in jails and the transmissibility of COVID-19 no longer need further proof. However, even if this Court takes judicial notice of these circumstances, there are several facts that must first be determined in relation to the confinement of petitioners or any other person deprived of liberty seeking release.

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

Courts cannot grant a blanket release without determining these facts. Petitioners must establish the basis for their temporary release. To be released based on a violation of their constitutional rights, petitioners must still show the circumstances of their own detention and prove they are deprived of the

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259 Memorandum from the Executive Secretary, April 7, 2020, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/20200407-Memorandum.pdf> (last accessed on July 6, 2020).

260 *9 inmates in Quezon City jail, 9 BJMP personnel contract COVID-19*, CNN PHILIPPINES, April 17, 2020, available at <https://www.cnnphilippines.com/news/2020/4/17/coronavirus-positive-quezon-city-jail.html> (last accessed on July 6, 2020).
517 prisoners contract COVID-19 in jails, May 25. 2020, available at <https://cnnphilippines.com/news/2020/5/25/prisoners-COVID-19-jails-Philippines.html?fbclid=IwAR3pviour2EQ9GlpF_YCAt3QYQr-Dbk1J2jBgKtpheUyAR01Wx_3kdDgDgo> (last accessed on July 6, 2020).

261 Comment, pp. 31–32.

262 Reply, p. 7.

basic and minimum standards of imprisonment. They should establish the individual conditions of their confinement which are not organic or consistent with the punishment imposed on them. They must invoke which constitutional rights are violated. They must show they have made a clear demand on the relevant government agencies, and that the latter intentionally or persistently refused or negligently failed to act on their concerns. They must ultimately show that the responsible government instrumentality has been compliant or negligent with constitutional, international, and local provisions and standards protecting their rights.

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

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

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

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

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263 J. Lazaro-Javier, Separate Opinion, p. 13.
264 Id. at 14.
265 Id. at 14–15.
266 Id. at 15.
267 Id. at 16.
268 Id. at 100.

VII

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

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

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

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

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

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269 C.J. Peralta, Separate Opinion, pp. 3–4.

270 595 Phil. 305 (2008) [Per J. Velasco, En Banc].

271 A.M. No. 09-6-8-SC (2010), sec. 2.

272 A.M. No. 09-6-8-SC (2010), Rule 7, sec. 1 provides:
Section 1. Nature of the Writ. — The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

273 *Abogado v. Department of Environment and Natural Resources*, G.R. No. 246209, September 3, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65756> [Per J. Leonen, En Banc].

mandamus,[274] a "distinct procedure than that of ordinary civil actions for the enforcement/violation of environmental laws."[275]

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

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

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

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

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

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274 A.M. No. 09-6-8-SC (2010), Rule 8, sec. 1 provides:
Section 1. Petition for Continuing Mandamus. — When any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping.

275 *Dolot v. Paje*, 716 Phil. 458, 471 (2013) [Per J. Reyes, *En Banc*].

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

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

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

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

MARVIC M.V.F. LEONEN
Associate Justice