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

DIONISIO S. ALMONTE, represented by his wife GLORIA P. ALMONTE, IRENEO O. ATADERO, JR., represented by his daughter APRILLE JOY A. ATADERO, ALEXANDER RAMONITA K. BIRONDO, represented by his sister JEANETTE B. GODDARD, WINONA MARIE O. BIRONDO, represented by her sister-in-law JEANETTE B. GODDARD, REY CLARO CASAMBRE, represented by his daughter XANDRA LIZA C. BISENIO, FERDINAND T. CASTILLO, represented by his wife NONA ANDAYA-CASTILLO, FRANCISCO FERNANDEZ, Jr., represented by his son FRANCIS IB LAGTAPON, RENANTE GAMARA, represented by his son KRISANTO MIGUEL B. GAMARA, VICENTE P. LADLAD, represented by his wife FIDES M. LIM, EDIESEL R. LEGASPI, represented by his wife EVELYN C. LEGASPI, CLEOFE LAGTAPON, represented by her son FRANCIS IB LAGTAPON, GEANN PEREZ represented by her mother ERLINDA C. PEREZ, ADELBERTO A. SILVA, represented by his son FREDERICK CARLOS J. SILVA, ALBERTO L. VILLAMOR, represented by his son ALBERTO B. VILLAMOR, JR., VIRGINIA B. VILLAMOR, represented by her daughter JOCELYN V. PASCUAL, OSCAR BELLEZA, represented by his brother LEONARDO P. BELLEZA, NORBERTO A. MURILLO, represented by his daughter NALLY MURILLO, REINA MAE NASINO, represented by her aunt VERONICA VIDAL, DARIO TOMADA, represented by his wife AMELITA Y. TOMADA, EMMANUEL BACARRA, represented by his wife ROSALIA BACARRA, OLIVER B. ROSALES, represented by his daughter KALAYAAN ROSALES, LILIA BUCATCAT, represented by her grandchild LELIAN A. PECORO, *Petitioners* v. PEOPLE OF THE PHILIPPINES, EDUARDO AÑO, in his capacity as Secretary of the Interior and Local Government, MENARDO GUEVARRA, in his capacity as Secretary of Justice, J/DIRECTOR ALLAN SULLANO IRAL, in his capacity as the Chief of the Bureau of Jail Management and Penology, USEC. GERALD Q. BANTAG, in his capacity as the Director General of the Bureau of Corrections, J/CINSP. MICHELLE NG-BONTO, in her capacity as the Warden of the Metro Manila District Jail 4, J/CINSP. ELLEN B. BARRIOS, in her capacity as the Warden of the Taguig City Jail Female Dorm, J/SUPT. RANDEL H. LATOZA, in his capacity as the Warden of the Manila City Jail, J/SUPT. CATHERINE L. ABUEVA, in her capacity as the Warden of the Manila City Jail-Female Dorm, J/CSUPT. JHAERON L. LACABEN, in his capacity as the Correction Superintendent New Bilibid Prison-West, CTSUPT. VIRGINIA S. MANGAWIT, in her capacity as the Acting Superintendent of the Correctional Institution for Women, *Respondents.*

Promulgated:

July 28, 2020

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SEPARATE OPINION

PERLAS-BERNABE, *J.*:

I concur in the result. As I have proposed from the inception of this case, the instant petition should be treated as petitioners' respective applications for bail/recognizance, as well as their motions for suitable and practicable confinement arrangements, and consequently, be referred to the proper trial courts for the conduct of further proceedings. However, due to the collective decision of the membership to confine the *ponencia* to this unanimous disposition subject to separate opinions on some significant constitutional issues, I am impelled to submit this Separate Opinion to explain the reasons and justifications for my concurrence.

I. Prayer for Release on Bail/Recognizance.

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

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

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1 Petition, p. 57.

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

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

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

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

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

> [W]hether bail is a matter of right or of discretion, reasonable notice of hearing is required to be given to the prosecutor or fiscal or at least he must be asked for his recommendation because in fixing the amount of bail, the judge is required to take into account a number of factors such as the applicant's character and reputation, forfeiture of other bonds or whether he is a fugitive from justice.
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> When a person is charged with an offense punishable by death, *reclusion perpetua*[,] or life imprisonment, bail is a matter of discretion. Rule 114, Section 7 of the Rules of Court states: "No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment when the evidence of guilt is strong, shall be admitted to bail

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

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

6 Section 5 of RA 10389 reads:

> Section 5. *Release on Recognizance as a Matter of Right Guaranteed by the Constitution.* – The release on recognizance of any person in custody or detention for the commission of an offense is a matter of right when the offense is not punishable by death, *reclusion perpetua*, or life imprisonment: *Provided*, That the accused or any person on behalf of the accused files the application for such:
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> (a) Before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court; and
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> (b) Before conviction by the Regional Trial Court: *Provided, further*, That a person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law, or any modifying circumstance, shall be released on the person's recognizance.

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

8 344 Phil. 415 (1997).

> regardless of the stage of the criminal action." Consequently, when the accused is charged with an offense punishable by death, *reclusion perpetua*[,] or life imprisonment, the judge is mandated to conduct a hearing, whether summary or otherwise in the discretion of the court, not only to take into account the guidelines set forth in Section 9, Rule 114 of the Rules of Court, but primarily to determine the existence of strong evidence of guilt or lack of it, against the accused.[9] (Underscoring supplied)

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

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

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9 Id. at 423-424.

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

11 See Sections 6 to 8, RA 10389.

12 Petitioners are charged with the following crimes:

> (1) Dionisio S. Almonte – a) Kidnapping with Murder/Rebellion; b) violation of Presidential Decree No. (PD) 1866; and c) Arson/Robbery.
> (2) Ireneo O. Atadero, Jr. – violation of RA 9516.
> (3) Alexander Ramonita K. Birondo – a) violation of PD 1866/ RA 10591; b) Obstruction of Justice; c) Direct Assault.
> (4) Winona Marie O. Birondo – a) violation of RA 9516/ RA 10591; b) Obstruction of Justice; c) Direct Assault.
> (5) Rey Claro Casambre – a) Murder and Attempted Murder; b) violation of PD 1866; c) violation of RA 10591.
> (6) Ferdinand T. Castillo – a) Double Murder and Multiple Attempted Murder; b) violation of RA 10591.
> (7) Francisco O. Fernandez – a) violation of PD 1866; b) violation of Commission on Elections Resolution No. 10466; c) violation of RA 10591; d) violation of RA 9516; e) Murder; f) three (3) counts of Robbery.
> (8) Renante M. Gamara – a) Kidnapping with Murder; b) Murder and Frustrated Murder; c) violation of PD 1866; d) violation of RA 10591.
> (9) Vicente P. Ladlad – a) fifteen (15) counts of Murder; b) violation of PD 1866; c) violation of RA 9516/ RA 10591.
> (10) Ediesel R. Legaspi – a) violation of RA 9516/ RA 10591.
> (11) Adelberto A. Silva – a) fifteen (15) counts of Murder; b) Frustrated Murder; c) violation of RA 10591; d) violation of RA 9516.
> (12) Alberto L. Villamor – a) violation of PD 1866; b) violation of RA 9516/ RA 10591.
> (13) Virginia B. Villamor – a) violation of P.D. No. 1866; b) Swindling/*Estafa*; c) violation of RA 10591.
> (14) Cleofe Lagatapon – a) violation of PD 1866; b) violation of RA 9516/ RA 10591; c) Murder; d) Multiple Murder and Robbery; e) Robbery.
> (15) Ge-ann C. Perez – a) violation of RA 9516/ RA 10591; b) Murder; c) Robbery.
> (16) Emmanuel M. Bacarra – a) Murder; b) Multiple Frustrated Murder; c) Multiple Frustrated Murder; d) violation of RA 10591.
> (17) Oliver B. Rosales – a) violation of RA 10591; b) violation of RA 9516.
> (18) Norberto A. Murillo – fifteen (15) counts of Murder.
> (19) Reina Mae A. Nasino – violation of RA 9516/ RA 10591.
> (20) Dario B. Tomada – fifteen (15) counts of Murder.
> (21) Oscar Belleza – fifteen (15) counts of Murder.
> (22) Lilia Bucatcat – Arson (convicted). (see Separate Opinion of Associate Justice Edgardo L. Delos Santos, pp. 9-12).

13 Namely, petitioner Lilia Bucatcat.

exists strong evidence of guilt against them, which would, in turn, determine their qualification or disqualification for the reliefs prayed for.

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

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

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

> On June 5, 2014, the Office of the Ombudsman charged Enrile and several others with plunder in the *Sandiganbayan* on the basis of their purported involvement in the diversion and misuse of appropriations under the Priority Development Assistance Fund (PDAF). On June 10, 2014 and June 16, 2014, Enrile respectively filed his Omnibus Motion and Supplemental Opposition, praying, among others, that he be allowed to post

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

[15] Supra note 3.

[16] See id. at 173.

[17] Id.

bail should probable cause be found against him. The motions were heard by the *Sandiganbayan* after the Prosecution filed its Consolidated Opposition.

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

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

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

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

> . . . **[I]t is only after the prosecution shall have presented its evidence and the Court shall have made a determination that the evidence of guilt is not strong against accused Enrile can he demand bail as a matter of right. Then and only then will the Court be duty-bound to fix the amount of his bail.**
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> **To be sure, no such determination has been made by the Court. In fact, accused Enrile has not filed an application for bail. Necessarily, no bail hearing can even commence. It is thus exceedingly premature for accused Enrile to ask the Court to fix his bail.**[18]
> (Emphases and underscoring supplied)

To my mind, the majority ruling in *Enrile*, which in turn, cited *De La Rama v. The People's Court*,[19] is an unusual judicial precedent which strays

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[18] Id. at 161-163.

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

> Considering the report of the Medical Director of the Quezon Institute to the effect that the petitioner "is actually suffering from minimal, early, unstable type of pulmonary tuberculosis, and chronic, granular pharyngitis," and that in said institute they "have seen many similar cases, latter progressing into advance stages when treatment and medicine are no longer of any avail;" taking into consideration that the petitioner's previous petition for bail was denied by the People's Court on the ground that the petitioner was suffering from quiescent and not

from the prescribed legal course on bail or recognizance. For a person charged with a capital offense, a bail hearing is necessary to determine whether or not the accused may nonetheless be released on account of the established finding that the evidence against him or her is not strong. This requirement finds force in none other than our Constitution. At any rate, the foregoing special considerations taken into account by the majority therein were not shown to attend in this case. Hence, petitioners cannot invoke the *Enrile* ruling to successfully obtain their desired relief.

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

(1) If a bail application had already been previously filed and consequently denied by the trial court, then the denial must stand on the ground that there is already a determination that the evidence of guilt against the accused-petitioner charged with a capital offense is strong and hence, need not be re-litigated further;

(2) If a bail application had already been previously filed but had yet to be resolved by the trial court, the bail hearings should just continue, taking into account the submissions in the present petition; or

(3) If no bail application was previously filed and bail hearings have yet to be conducted to determine whether or not the evidence of guilt against an accused-petitioner charged with a capital offense is strong, then the trial court must, with notice to the prosecutor, conduct the necessary proceedings to make such determination.

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active tuberculosis, and the implied purpose of the People's Court in sending the petitioner to the Quezon Institute for clinical examination and diagnosis of the actual condition of his lungs, was evidently to verify whether the petitioner is suffering from active tuberculosis, in order to act accordingly in deciding his petition for bail; and considering further that the said People's Court has adopted and applied the well-established doctrine cited in our above-quoted resolution in several cases, among them, the cases against Pio Duran (case No. 3324) and Benigno Aquino (case No. 3527), in which the said defendants were released on bail on the ground that they were ill and their continued confinement in New Bilibid Prison would be injurious to their health or endanger their life; it is evident and we consequently hold that the People's Court acted with grave abuse of discretion in refusing to release the petitioner on bail.

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

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

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

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

21 See Petition, p. 1.

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

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

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

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

the higher interests of substantial justice, as in this case. While this may not be the ordinary procedure, the circumstances so warrant the discretionary relaxation of our rules.

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

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

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

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

There is no quibbling that courts are duty-bound to recognize a person's right to life, and grant permissible reliefs despite, and to reiterate, the silence, obscurity or insufficiency of our laws. This command is founded on none other than the fundamental law, particularly in our Bill of Rights enshrined in the Constitution. **A person's right to life – whether accused of a crime or not – is inalienable and does not take a back seat nor become dormant**

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23 CIVIL CODE, Article 9.
24 CIVIL CODE, Article 10.

just because of the lack of necessary legislation to address our subhuman prison conditions. When the right to life is at stake, the Bill of Rights operates; making a fair and just ruling to preserve the right to life is not entirely dependent on some unpassed legislation that directs the structural improvement of our jails or allocates budget to improve our penal institutions. It must be borne in mind that Section 4 (a) of RA 10575[25] expressly states that:

> Section 4. *The Mandates of the Bureau of Corrections.* – x x x
>
> (a) Safekeeping of National Inmates – The safekeeping of inmates shall include decent provision of quarters, food, water and clothing **in compliance with established United Nations standards**. The security of the inmates shall be undertaken by the Custodial Force consisting of Corrections Officers with a ranking system and salary grades similar to its counterpart in the [Bureau of Jail Management and Penology (BJMP)]. (Emphasis supplied)

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

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

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

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

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

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

The Nelson Mandela Rules pertinently provide:

1. PRISONER'S INHERENT DIGNITY AND VALUE AS HUMAN BEINGS[27]
   - Treat all prisoners with the respect due to their inherent dignity and value as human beings.
   - Prohibit and protect prisoners from torture and other forms of ill-treatment.
   - Ensure the safety and security of prisoners, staff, service providers and visitors at all times.

2. VULNERABLE GROUPS OF PRISONERS[28]
   - Take account of the individual needs of prisoners, in particular the most vulnerable categories.
   - Protect and promote the rights of prisoners with special needs.
   - Ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis, and are treated in line with their health conditions.

3. MEDICAL AND HEALTH SERVICES[29]
   - Ensuring the same standards of health care that are available in the community and providing access to necessary health-care services to prisoners free of charge without discrimination.
   - Evaluating, promoting, protecting and improving the physical and mental health of prisoners, including prisoners with special healthcare needs.

   x x x x[30]

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

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

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

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

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

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

31 561 Phil. 386 (2007).

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

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

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

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

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

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

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

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

MR. MAAMBONG: Where would the words be?

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

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

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

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

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

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

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

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

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

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

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

FR. BERNAS: ***Yes***.[34] (Emphases and underscoring supplied)

However, nowhere is it shown that the Framers intended to completely insulate the matter of subhuman jail conditions from judicial relief when a substantial relation to a person's right to life is convincingly made. **In my opinion, the right to life permutates to the prohibition against any form of cruel and unusual punishment against one's person. When serious and critical threats to one's life are adequately proven by virtue of one's conditions while incarcerated, the Court must fill in the void in the law and grant permissible reliefs.** Under extraordinary circumstances, temporary transfers or other confinement arrangements, when so proven to be practicable and warranted, may be therefore decreed by our courts if only to save the life of an accused, who is, after all, still accorded the presumption of innocence. Indeed, an accused cannot just be left to perish and die in jail in the midst of a devastating global pandemic, without any recourse whatsoever. At the risk of belaboring the point, the lack of laws addressing the subhuman conditions of our prison system does not mean that our courts are rendered powerless to grant permissible reliefs, especially to those who have yet to be finally convicted of the crimes they were charged with. **The Court's duty to protect our Bill of Rights is constant – respecting the right to life is constant.** To deny relief on the excuse that it is Congress' responsibility to institutionally improve our prison systems is tantamount to judicial abdication of this perpetual tenet.

At this juncture, it is relevant to point out that the main thrust of preventive imprisonment is not to punish – as there is yet no penalty – but rather, to protect society from potential convicts and their propensity to commit further crimes. Preventive imprisonment also ensures that the court having jurisdiction over the case may properly conduct the necessary

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

proceedings and effectuate its decision. In *United States v. Salerno*,[35] the Supreme Court of the United States (SCOTUS) touched upon this basic premise that pretrial detention does not serve as a punishment for dangerous individuals:

> Although a court could detain an arrestee who threatened to flee before trial, such detention would be permissible because it would serve the basic objective of a criminal system – bringing the accused to trial. x x x
>
> x x x x
>
> We conclude that the detention imposed by the Act falls on the regulatory side of the dichotomy. **The legislative history of the Bail Reform Act clearly indicates that Congress did not formulate the pretrial detention provisions as punishment for dangerous individuals.** x x x **Congress instead perceived pretrial detention as a potential solution to a pressing societal problem**. x x x There is no doubt that **preventing danger to the community is a legitimate regulatory goal**. x x x[36] (Emphases supplied, citations omitted)

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

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

> **We therefore conclude that <u>deliberate indifference to serious medical needs of prisoners</u> constitutes the "unnecessary and wanton infliction of pain," x x x proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their**

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35 481 US 739 (1987)

36 Id.

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

38 429 US 97 (1976).

> **response to the prisoner's needs** x x x **or by prison guards in intentionally denying or delaying access to medical care** x x x **or intentionally interfering with the treatment once prescribed.** x x x **Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983.**
>
> x x x x
>
> x x x **[I]n the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute "an unnecessary and wanton infliction of pain" or to be** x x x **"repugnant to the conscience of mankind."** Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. **In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend "evolving standards of decency" in violation of the Eighth Amendment.** x x x (Emphases and underscoring supplied, citations omitted)

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

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

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

40 Id.

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

prisoner must show that the risk of which he or she complains of is not one that today's society chooses to tolerate.[42]

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

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

Nonetheless, it must be highlighted that in the same way that the Court is unequipped to make a factual determination on whether or not the evidence of guilt against any of the petitioners is strong, it is equally unequipped to make a factual determination of whether or not the State has breached the "deliberate indifference" standard with respect to the confinement conditions of each petitioner. **The jail conditions of each petitioner vis-à-vis their own medical status are distinct from one another and cannot be sweepingly assumed without the benefit of a dedicated proceeding for the purpose.** Hence, the Court cannot just yet grant petitioners any form of temporary release outside the traditional modes of bail or recognizance, without the benefit of a full-blown hearing therefor. As earlier intimated, the petition must therefore be referred to the respective trial courts in order for them to ascertain the peculiarities of each petitioner's situation and assess the same in

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42 See *Helling*, supra note 39.
43 *Wilson v. Seiter*, supra note 39.
44 *Wellman v. Faulkner*, supra note 39; emphasis supplied.
45 Petition, p. 57.

accordance with the parameters stated above. Once it is determined that there exists a "deliberate indifference" on the part of the State, these courts may then accord the accused confinement arrangements that are logistically practicable under the given situation (*e.g.*, transfers to other detention facilities, directive to minimize capacity in the accused's jail, isolation, etc.), taking into account not only the side of the accused but also the submissions of the State, in particular, the prison officials in charge of the custody of the accused. This is clearly warranted, considering the averments of respondents that the BuCor and the BJMP have implemented various health policies, protocols, and measures to ensure that they will be able to take care of their inmates should the latter catch COVID-19, and that the Court, through Office of the Court Administrator Circular No. 91-2020[46] in relation to A.M. No. 12-11-2-SC,[47] has already provided guidelines towards decongesting penal facilities and humanizing conditions of PDLs pending hearing of their cases.[48] Notably, the accused may choose to assail the ruling of the trial courts on this score, as well as on their respective bail applications should they be dissatisfied, although the same must be coursed through the proper proceeding in accordance with our rules of procedure.

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

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

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

WHEREFORE, I vote to: (*a*) **TREAT** the petition as petitioners Dionisio S. Almonte, *et al.*'s respective applications for bail and motions for other confinement arrangements as discussed in this Opinion; (*b*) **REFER** the

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

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

48 See Comment, p. 32.

49 Petition, p. 57.

bail applications and motions to the trial courts for further proceedings in accordance with the parameters herein stated; and (*c*) **DENY** the prayer for the creation of a Prisoner Release Committee.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice