

THE PRICE OF FREEDOM: COMPENSATION TO THE WRONGLY IMPRISONED

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I. INTRODUCTION

A. The Philippine Justice System

The Criminal Procedure and Civil Procedure of the Philippines are highly-influenced by the law of the United States on court proceedings. However, the civil law laws and criminal laws are derived from the Spanish Civil Code and Spanish Penal Code. The Philippines is a civil law country and not a common law country. Civil law, as a legal system, relies on legal code which establishes legal procedures, punishments, and what can and cannot be brought before a court. In a civil law system, a judge merely establishes the facts of a case and then rules on that case based on the procedures laid down by the legal code. As a result, precedent and judicial decisions have limited influence in a civil law system. Rather, lawmakers, scholars, and legal experts who help craft the legal code hold much more sway over how the legal system is ultimately administered. In contrast, under the Common law system, it is based more on precedent than on a codified set of laws and regulations. Judges have more leeway in a common law system. While common law systems do have laws that are created by legislators, it is up to judges to interpret those laws and apply them to [individual](#) cases. To do this, judges rely on the precedents set by previous courts.³

There are contrary views as to whether judicial decisions are merely secondary sources of laws in the Philippines, which are inferior to the Constitution and statutes enacted by the legislature, or whether it is considered as a primary source of laws because of Art. 8 of the New Civil Code. Nevertheless, it shall be taken into consideration that the Philippines conducts trials via Bench Trial and not Trial by Jury. Bench trial is where the judge personally finds the facts and applies the law to the given facts to decide a particular case. Hence, the guilt or innocence of the accused is determined by a judge who is learned in the law, taking into consideration the limitations and restrictions of the rules of procedure and evidence. In contrast, Trial by jury is usually done by common law countries, the jury is responsible for finding the facts of the case, while the judge determines the law. The jury is responsible for listening to a dispute, evaluating the evidence presented, deciding on the facts, and making a decision in accordance with the rules of law and their [jury instructions](#). Typically, the jury only judges the guilt or a verdict of not guilty, but the actual penalty is set by the judge.

³ Black's Law Dictionary Free Online Legal Dictionary, <http://thelawdictionary.org> (last accessed Oct. 31, 2016).

Each system has its own pros and cons. Take for instance, the Bench Trial, while the pros would be the judge, who is learned in the law cannot be swayed by his emotions during the presentation of testimonies and other evidence. He more likely evaluates the facts and the law applicable to the given case objectively bearing in mind the limitations of the rules on procedure. However, a judge can be legalistic in a sense that it would defeat justice. It is also probable that a judge may be corrupted by bribery or anything that would hamper his objective decision-making. On the other hand, the trial by jury largely appeals to emotions which a grandstanding lawyer can take advantage of. In a largely-celebrated case of OJ Simpson, the famous line was coined, “If it does not fit, you must acquit.” This was in reference to the glove that was found in the crime scene which did not fit the accused’s hands. The jury gasped when OJ was asked to put on the gloves.⁴ The pros would be that since they do not know the technical niceties of the law, they are mostly guided only by their emotions and conscience. Since in a jury, it is a group of people, the chance of influencing the entire jury to rule in a party’s favor is minimized because a person’s view and collective perception of things vary.

Given the framework of the Philippine criminal justice system, is it really efficient in finding the truth for justice to prevail? Or are there other variables which influence the orderly administration of justice which would acquit the guilty and imprison the innocent?

What is material in court proceedings is the legal truth and not the actual truth. Under the Constitution, an accused is presumed to be innocent until proven guilty.⁵ With the suspension of the death penalty by R.A. 9346 as of June 24, 2006, it strengthened the restorative justice versus the retributive justice system. That is in accordance with the current 1987 Constitution. Notwithstanding the actual facts would indicate the guilt of the accused, if the evidence does not conform to the facts, he will be acquitted. Nevertheless, if the actual facts say that the accused is innocent, but the evidence tells otherwise, he will be convicted. This is the loophole that we want to address in this article. It aims to acknowledge that no justice system is perfect in determining the guilt or innocence of the accused. The present law RA 7309 on compensating the persons who are unjustly imprisoned or detained seems to be outdated which needs amendment. The law includes both convicted and detained persons

⁴ Forensic Outreach Team, When Evidence Backfires: If it does not fit, you must acquit, <http://forensicoutreach.com/library/when-evidence-backfires-if-it-does-not-fit-you-must-acquit/> (last accessed Jan. 2, 2017).

⁵ CONST., art. 3, sec. 14.

with no qualification whether they were acquitted based on reasonable doubt or he was not the author of the crime at all.

Hence, who is considered innocent to be entitled of compensatory damages? Is it only the accused who is not the author of the crime or also the accused acquitted based on reasonable doubt? As such, this article aims to determine who is entitled to compensatory damages, where to source the funding, who should be held liable and somehow evaluate the price of freedom previously deprived of an innocent man who is imprisoned vis-à-vis the current law, pending bills in the Philippines and other foreign laws which are operative as guiding principles.

II. RIGHTS OF A PRISONER

A. International Law: Universal Declaration of Human Rights

Every person is entitled to fundamental rights regardless of nationality, race, place of residence, sex, culture, religion or language. Human rights are basic privileges and fundamental freedoms that are inherent to all human beings. These rights include civil and political rights (e.g. right to life, liberty, and property) as well as social, cultural and economic rights (e.g. right to food, right to work and right to receive an education). These rights are embodied and protected by several laws, treaties, international norms and principles adopted by every state, signed and ratified confirming these basic human rights.⁶

A basic source of human rights is founded in the Universal Declaration of Human Rights (UDHR). As a result of the experience during the Second World War, the United Nations (UN) has created a set of agreed and recognized universal rights which was placed into a single document, the UDHR, which was signed and adopted by the UN General Assembly on December 10, 1948.⁷ The UDHR expressly provides the basic civil, political, economic, and cultural rights and fundamental freedoms that all human beings should enjoy.⁸ Although the UDHR was signed by the member countries of the UN, it initially did not have the force and effect of a law and was merely a non-binding statement of principles. However, it does not mean that the UDHR is merely a piece of paper because

⁶ Bill Quigley & Sara Godchaux, Prisoner Human Rights Advocacy, 16 *Loyola Journal of Public Interest Law*, 359, 365 (2015).

⁷ History of the Document, <http://www.un.org/en/sections/universal-declaration/history-document/index.html> (last accessed Oct. 30, 2016).

⁸ Michael Perry, The Morality of Human Rights, 50 *San Diego L.REV.*, 775 (2013).

at present, most of its provisions are widely accepted that it has taken on the status of customary international law. The principles are now codified and made binding on states in several treaties and the UDHR has become the basis of international human rights treaties and declarations, domestic human rights bills and constitutional provisions.⁹ Although human rights are considered as a “soft law” due to its non-binding nature, they have become international norms that can be used against government abuses.

All human beings including prisoners are entitled to the protection of these rights accorded to them. Even if some rights and liberties are lost due to imprisonment, it does not make a person less of a human being hence such person cannot be denied of human rights or dignity.¹⁰ The UDHR, as a fundamental basis of human rights, states in Article 5 that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Furthermore, the 1976 International Covenant on Civil and Political Rights (ICCPR) provided rights for the protection of prisoners in which they shall be treated with humanity and with respect for the inherent dignity of the human person.¹¹

B. The 1987 Philippine Constitution

The Philippines, as a member state of the United Nations, has adopted the principles of international law by signing and ratifying the UDHR as well as the ICCPR. The Philippines is one of the forty-eight (48) countries that voted in favor of the adoption by the General Assembly of the UDHR while the ICCPR¹² was signed December 19, 1966 and ratified in October 23 1986 but only entered into force in January 23, 1987. These international principles are adopted and founded in the Constitution particularly in Article III of the Constitution which provides for the rights of an accused including those that are already detained or imprisoned.

One of the state policies of the Philippines provides that “The State values the dignity of every human person and guarantees full respect for human rights.”¹³ A person even though detained or

⁹ Louis Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 *AM. U.L. Rev.*, 1 (1982).

¹⁰ Suzanne Bernard, *An Eye for an Eye: The Current Status of International Law on the Humane Treatment of Prisoners*, 25 *Rutgers L. J.*, 759, 760-61 (1994).

¹¹ International Covenant on Civil and Political Rights, Art. 10 (1), <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, (last accessed Oct. 30, 2016).

¹² International Covenant on Civil and Political Rights, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-4&chapter=4&clang=en#EndDec, (last accessed Oct. 30, 2016).

¹³ CONST., art. II, sec. 11.

imprisoned is not without any rights. The individual is still accorded with rights although his political and civil rights have become limited for he does not lose his inherent rights such as his right to dignity. Therefore, it is the duty of the state to promote the general welfare and protect the basic human rights of the prisoners incarcerated in our national penitentiary. The state must be able to provide medicine and health services, visitation and mail services, and free legal services to those detainees.

Moreover, the Constitution states that “Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted.”¹⁴ This provision is an adoption of the above-mentioned article in the UDHR. Since June 2006, the imposition of the capital punishment of death is prohibited due to Republic Act No. 9346 (R.A. 9346) which leaves *reclusion perpetua* and life imprisonment as the highest forms of punishment in the Philippines. Furthermore, the prisoner must not be subjected to any abuse by authorities in the government like corporal punishment through use of physical force or solitary confinement, and he must be protected by the state from such abuses as well as deprivation of his basic personal necessities.¹⁵

The Rules of Court is promulgated by the Supreme Court unlike in any other laws which are created by the legislative department. Section VIII of the Constitution mandated the Judiciary to promulgate rules on pleading, practice and procedure in all courts. The court is mandated to exercise supervision in all persons in custody for the purpose of eliminating unnecessary detention. The executive judges of the Regional Trial Courts shall conduct monthly personal inspections of provincial, city, and municipal jails and their prisoners within their respective jurisdictions. They shall ascertain the number of detainees, inquire on their proper accommodation and health and examine the condition of the jail facilities. They shall order the segregation of sexes and of minors from adults, ensure the observance of the right of detainees to confer privately with counsel, and strive to eliminate conditions inimical to the detainees.¹⁶

III. TORTS AND DAMAGES FOR UNLAWFUL DEPRIVATION OF FREEDOM

¹⁴ CONST., art. III, sec. 19, par. 1.

¹⁵ Rights of Detainees, <https://sites.google.com/site/humanrightspromotions/rights-of-detainees>, (last accessed Jan. 8, 2017).

¹⁶ RULES OF COURT, Rule 114, sec. 25

A. Foreign Laws on Damages to the Wrongly Imprisoned

The ICCPR provides in Article 14 paragraph 6 that “When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be *compensated* according to law, unless it is proved that the nondisclosure of the unknown fact in time is wholly or partly attributable to him.”¹⁷ Although the member states of the United Nations have signed and ratified the said international law, there are some member states which indicated their reservations in the adoption of it.

Wrongful convictions may happen due to several factors existing such as misidentification by the eyewitness, false confessions or admissions, invalid scientific testimony and misconduct by police officers and forensic investigators, inadequate defense, incentivized informants or simply because of an honest mistake or the desire to attain a guilty verdict from the court than seeking the truth.¹⁸ These wrongful convictions have caused not only the deprivation of the person’s liberty but also the sufferings he experienced from being behind the bars for an offense he did not commit. However, the effect on the person of his wrongful conviction is not confined within what he has experienced inside the prison but also after he has been set free. Although he has regained his political and civil rights, he is now left without money, housing, transportation, health services and a criminal record despite his innocence. Moreover, he has already suffered physically from being deprived of his liberty, emotionally due to the fact of his separation from his family and loved ones and psychologically because he went through a prolonged agony for an act or omission he did not do and has remained innocent. Hence, the punishment even after the imprisonment still remains.

Those wrongly convicted or imprisoned may be able to seek claims through three (3) different ways which are – tort claims, private bills or compensation statutes.¹⁹ The exonerees may file a law suit against the government in cases where they are also victims of government misconduct such as malicious prosecution. However, such claims do not often succeed since it must be proven that intentional misconduct has caused the wrongful conviction. If the claim was ruled in favor of the

¹⁷ Supra note 12.

¹⁸ <http://www.innocenceproject.org/#causes> (last accessed Jan. 3, 2017).

¹⁹ Evan Mandery, et al., Compensation Statutes and Post-exoneration Offending, 103 *Journal of Criminal Law and Criminology*, 553, 556 (2013).

petitioner, the award given may be higher than those provided in compensation statutes but then such lawsuits are costly and time-consuming.²⁰ On the other hand, private bill is similar to a petition to the state legislature to award compensation to the individual directly. Seeking a private bill to be passed is difficult since it entails lobbying and involves political connections and intentions in order to pass such bill. The most convenient way in order to claim compensations is through a statute which provides for the requirements of the exoneree and the amount he is entitled to. Moreover, each exoneree is treated in the same manner under the statute unless otherwise provided by the law. The compensation statute provides a standard in which the exoneree may expect and be able to receive claims.²¹

In the United States of America, the federal government, the District of Columbia and several states have compensation statutes for persons who were wrongly imprisoned. The compensation provided for by such states varies depending on their own set of laws. Some states provide for a shorter prescriptive period in order for the person wrongly imprisoned to file his claims. Other states also impose conditions in filing compensation claims such that only those who were exonerated through DNA evidence may be entitled like in the case of Montana and Missouri.²² However, there are still states in the US that do not have any laws regarding compensation for the wrongly imprisoned. In the case of the Federal Government, it provides up to \$50, 000 per year of wrongful imprisonment and \$100,000 per year on death row as provided in the Innocence Protection Act of 2004.²³

The State of Florida has enacted since July 1, 2008 the Victims of Wrongful Incarceration Compensation Act (the Act) which provides a process whereby a person may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation upon a final order vacating his or her sentence based upon exonerating evidence.²⁴ Furthermore, Chapter 961.06, Title XLVII of 2016 Florida Statute provides that a person who is found to be entitled to compensation is entitled to “(a) monetary compensation for wrongful

²⁰ Innocence Project, Making Up for Lost Time: What the Wrongfully Convicted Endure and How to Provide Fair Compensation, http://www.innocenceproject.org/wp-content/uploads/2016/06/innocence_project_compensation_report-6.pdf (last accessed Dec. 2, 2009).

²¹ Id.

²² Missouri Revised Statutes, Chapter 650, Secs. 650.057-058, <http://www.moga.mo.gov/mostatutes/stathtml/65000000581.HTML> (last accessed Jan. 8, 2017); Montana Code Annotated 2015, <http://leg.mt.gov/bills/mca/53/1/53-1-214.htm> (last accessed Jan. 8, 2017).

²³ Justice for All Act of 2004, <https://www.justice.gov/archive/olp/pdf/jfaa2004.pdf> (last accessed Jan. 8, 2017).

²⁴ Victims of Wrongful Incarceration Act Implementation and Claims, The Florida Senate, 1 (Sept. 2011), <https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-215cj.pdf>.

incarceration which shall be calculated at a rate of \$50,000 for each year of wrongful incarceration, prorated as necessary to account for a portion of a year; (b) a waiver of tuition and fees for up to 120 hours of instruction at any career center; (c) the amount of any fine, penalty or court costs imposed and paid by the wrongfully incarcerated person; (d) the amount of any reasonable attorney's fees and expenses incurred and paid by the wrongfully incarcerated person in connection with all criminal proceedings and appeals regarding the wrongful conviction; (e) immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration."²⁵

On the other hand, the State of Texas also provides for a compensation statute²⁶ for the wrongfully imprisoned wherein a claim may be filed with the comptroller's judiciary section by (a) the person who has served in whole or in part a sentence in prison; (b) the person who has received a full pardon on basis of innocence, has been granted relief in accordance with the writ of habeas corpus. Under Section 103.052 of the same law, if the person successfully meets the requirements provided, he shall be entitled to an amount equal to "(1) \$80,000 multiplied by the number of years served in prison, expressed as a fraction to reflect partial years; and (2) compensation for child support payments owed by the person on whose imprisonment the claim is based that became due and interest on child support arrearages that accrued during the time served in prison but were not paid." The compensation likewise includes \$25,000 for every year spent on parole or as a registered sex offender, and also an annuity. Moreover, the support services do not only include said child support payments but also payment for tuition fees consisting of up to 120 hours at a career center or public institution of higher learning, and reentry and reintegration services. Texas further gives necessary documentation and financial assistance to cover the living expenses of the wrongfully imprisoned as well as medical and dental services.²⁷ This state does not only cover compensation in money but also provides for the well-being of the person by giving him the necessary services that he will need once he is able to regain his liberty.

Meanwhile, the compensation provided for in Illinois has a higher value than that of the Federal Government and the states which have been previously discussed. The State of Illinois, under

²⁵ The 2016 Florida Statutes, http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0900-0999/0961/Sections/0961.06.html, (last accessed Jan. 3, 2017).

²⁶ Civil Practice and Remedies Code, <http://www.statutes.legis.state.tx.us/Docs/CP/htm/CP.103.htm>, (last accessed Jan. 4, 2017).

²⁷ Id.

the Court of Claims Act, provides that a person who was unjustly imprisoned is entitled to receive: not more than \$85,350 for those who served up to five (5) years; not more than \$170,000 for those who served between five (5) and 14 years; not more than \$199,150 for those who served more than 14 years; and provided further, the court shall fix attorney's fees which shall not exceed to 25% of the compensation award.²⁸ In addition, the Public Employment Office Act²⁹ included that persons unjustly imprisoned shall be provided by the appropriate department of the state with "job search and placement services, including assessment, resume assistance, interview preparation, occupational and labor market information, referral to employers with job openings to which the person is suited and referral to such job training and education program providers as may be appropriate and available through the partnering agencies with which the local office is affiliated."

The United Kingdom (UK) has legislated the Criminal Justice Act of 1988 which states in Section 133(1)³⁰ that "when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction or, if he is dead, to his personal representatives, unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted." If the requirements under the law were complied with, the claim shall be sent to an assessor for the determination of the amount of compensation to be awarded in connection with the normal civil damages. The assessor must take into consideration the seriousness of the offense of which the person was convicted and the severity of the punishment suffered as a result of the conviction, and the conduct of the investigation and prosecution of the offense. The total amount of compensation must not exceed the overall compensation limit which is £1 million in case the person has been detained for ten (10) years, and £500,000 in any other case. Moreover, it must also include the person's loss of earnings or his capacity to earn in respect of any one (1) year but must not exceed the earnings

²⁸ Court of Claims Act, 705 ILCS 505/8, Chapter 37, par. 439.8,

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1865&ChapterID=50>, (last accessed Jan. 4, 2017).

²⁹ Public Employment Office Act, 20 ILCS 1015/2 new, Sec. 2, <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=095-0970>, (last accessed Jan. 4, 2017).

³⁰ Criminal Justice Act 1988 c. 33, Part XI, Sec. 133(1), <http://www.legislation.gov.uk/ukpga/1988/33/section/133#commentary-c20673281>, (last accessed Jan. 4, 2017).

compensation limit which is an amount equal to 1.5 times the median annual gross earnings according to the latest figures published by the Office of National Statistics at the time of the assessment.³¹

In New Zealand, there is no legal right to compensation for wrongful imprisonment and conviction but its government has adopted a guided discretionary system of compensation by making an *ex gratia* payment under the Compensation and Ex Gratia Payments for Persons Wrongly Convicted and Imprisoned in Criminal Cases. It is available to those who are imprisoned following a wrongful conviction that is subsequently set aside and those who are, at a minimum, innocent on the balance of probabilities. The said law has provided for the guidelines whether, and how much, compensation should be paid. It is the Minister of Justice who assesses the claim and later referred to the Queen's Counsel. If the latter finds the claim meritorious by finding that the applicant is innocent on the balance of probabilities and that compensation should be paid, it shall recommend to the Minister of Justice the amount of compensation. The guidelines provide for different kinds of compensation such as payments for pecuniary losses following conviction, non-pecuniary losses, and a public apology.³² The guidelines provide that the compensation of NZ\$100,000 of pecuniary loss for each year served in jail shall be given to those who are entitled. Moreover, the compensation should be similar to the principles used for the compensation of tort of false imprisonment.

Although several states in the US have already enacted compensation statutes for the wrongly imprisoned, the same is not true for every citizen in their country since there are still those states which remain to have no compensation statute at all. Only those exonerated within such states are given the benefits under the law. Moreover, these statutes might not even be enough in compensating the lost opportunities of the exoneree as well as his supposed life outside the bars of the prison cell. Most states do not provide support services (*i.e.* job search, medical and dental services including psychological counseling) but only extend financial assistance to the wrongly imprisoned. Meanwhile, others merely continue to struggle with their lives even after they have been released from imprisonment for lack of any compensation statute in their countries or states that would support them for their life after being released. They are left with nothing to start with and no precise direction or path to take for them to recover.

³¹ Criminal Justice Act 2008 c. 4, Part 4, Sec. 61(7), <http://www.legislation.gov.uk/ukpga/2008/4/section/61#section-61-4>, (last accessed Jan. 4, 2017).

³² Compensation for Wrongful Conviction & Imprisonment, <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/miscarriages-of-justice/compensation-for-wrongful-conviction-and-imprisonment/> (last accessed Jan. 8, 2017).

B. Foreign Jurisprudence

As of this writing, there are 1,957 innocent criminal defendants that were exonerated in the US as listed in The National Registry of Exonerations since 1989.³³ These criminal defendants were exonerated due to different contributing factors such as mistaken witness identification, false confession, perjury or false accusation, false or misleading forensic evidence, official misconduct, inadequate legal defense or post-conviction DNA.

In August 23, 1974, James Bain was convicted of the crime of rape and kidnapping a nine-year old boy as well as committing robbery in Florida which was based heavily on the victim's identification of Bain. Thus, he was sentenced to life in prison. The victim testified that the suspect was around 17 to 18 years old and had a mustache and bushy sideburns, and his name was "Jim" or "Jimmy" so the victim's uncle thought of Jimmy Bain. As the victim was shown pictures of possible suspects, he chose the picture of Bain. The defense of Bain was that he went home from a party of his friend and watched television with his sister during the time the crime occurred.³⁴ The FBI performed a serology testing and presented that the rapist left semen on the victim's underwear but DNA testing was not yet available during that time. The FBI analyst, William Gavin, further testified that the semen was of group B and although Bain's blood group was AB, he had a weak A so he could not be excluded from having deposited the semen. On the other hand, defense expert Dr. Richard Jones testified that Bain's blood group was with a strong A and thus could not have been the one who deposited the semen.³⁵ Later, a 2001 statute for the compensation of those wrongfully incarcerated was passed making it possible for cases to be reopened for DNA testing hence, Bain took the opportunity and filed motions for DNA to be tested. After several tries, he was finally granted a post-conviction DNA testing which later resulted to the exclusion of Bain as the source of the DNA. In December 17, 2009 or after 35 years of imprisonment, his release order was signed. Bain was compensated with \$1.7 million from the State of Florida which was equivalent to \$50,000 for every year in prison.³⁶

³³ The National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx> (last accessed Jan. 8, 2017).

³⁴ Christina Sterbenz, Innocent Man Freed After 35 Years Has An Incredible Outlook On Life, Business Insider, 1 (Oct. 18, 2013), <http://www.businessinsider.com/james-bain-exonerated-after-35-years-in-prison-2013-10>.

³⁵ Innocence Project of Florida, James Bain, http://floridainnocence.org/content/?page_id=1697, (last accessed Jan. 4, 2017).

³⁶ Id.

Cornelius Dupree, an inmate who served sentence in prison for 30 years in Texas, was exonerated for a crime that he did not commit. The crime happened on November 23, 1979 when a man and a woman bought cigarettes at a liquor store. The woman while using a payphone noticed that two African-American men were approaching her. As they returned to the vehicle, her friend was held at gunpoint by one of the men and ordered the man to drive away. The two men robbed them and later asked the man to stop driving and get out of the car. The perpetrators took the woman in the park and sexually assaulted her. During the investigation, Dupree and Anthony Massingill were stopped by the police since they fit the description of the two men who were suspected of the crime. Dupree at that time was unarmed while Massingill was caught with a gun. Both suspects were arrested and photos were taken for an identification lineup. The victims identified their perpetrators the next day with the woman choosing the photos of Dupree and Massingill but the man failed to identify their perpetrator.³⁷ Evidence was collected by forensic analysts from the victim's rape kit examination. Later, the Southwest Institute of Forensic Sciences found the presence of semen but the ABO blood type found the victim's blood type and thus the analysts could not determine the perpetrators' blood types.³⁸ During the trial, the victims identified Dupree and Massingill as their perpetrators with the male victim explaining that his failure to previously identify the perpetrators was due to his slightly impaired vision. Moreover, it is also significant to note that the female victim misidentified the photo of Massingill as Dupree even though both of the suspects were present in the courtroom. However, both were convicted of aggravated robbery with Dupree sentenced to 75 years in prison while Massingill who was also convicted of separate 1979 rape-robbery was sentenced to three 10-year terms and a life sentence.³⁹

Dupree filed petitions for a writ of habeas corpus but was denied a new trial thrice and was never eligible for parole since he needs to admit his guilt and undergo a sex offender program which he refused to do so. In 2009, the District Attorney's Office agreed that a DNA testing be conducted since there were still samples left from Dupree's trial. It was discovered that the sperm cells on the samples were of two male profiles which were not Dupree or Massingill's. Hence, the report on the evidence conclusively excluded the defendants in the case. The DNA evidence established Dupree's innocence and was granted a writ of habeas corpus by the Texas Court of Criminal Appeals.⁴⁰ In 2011,

³⁷ Maurice Possley, Cornelius Dupree, Jr., *The National Registry of Exonerations*, 1 (Nov. 16, 2014), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3193>.

³⁸ Innocence Project, Cornelius Dupree, <http://www.innocenceproject.org/cases/cornelius-dupree/>, (last accessed Jan. 8, 2017).

³⁹ STERBENZ, *supra* note 34.

⁴⁰ INNOCENCE PROJECT OF FLORIDA, *supra* note 35.

Dupree's conviction was vacated and the charge was dismissed, and he was awarded \$2,472,000 state compensation as well as a monthly annuity of \$13,800 in accordance with the compensation statute of Texas. On the other hand, Massingill filed a petition for a writ of habeas corpus seeking to vacate his conviction in the same case with Dupree which was granted. However, he still remains in prison for the other crime in which he was convicted.⁴¹

Another case in the US was that of Lawrence McKinney who was convicted of the crime of rape and burglary charges in 1978 and he was sentenced to 115 years in prison. In 2009, he was exonerated and was cleared of charges for the crime of rape pursuant to the DNA evidence presented. McKinney served sentence for 31 years behind bars. However, the Tennessee Department of Corrections gave him merely \$75 as compensation and for him to be able to start his life. The reason for such a measly amount of money awarded to McKinney is that the Board of Parole was against the exoneration of McKinney because the board did not find clear and convincing evidence of his innocence. McKinney admitted to the burglary charge he was convicted of but not to the crime of rape. Since McKinney is not considered formally exonerated, he is not entitled to up to \$1 million in compensation from the State Board of Claims.⁴²

IV. *RECLUSION PERPETUA* AS CAPITAL PUNISHMENT

A. Is death a better escape?

Reclusion Perpetua and life imprisonment are often used interchangeably but they are different concepts. *Reclusion perpetua* entails an imprisonment of at least thirty years, after which the convict becomes eligible for pardon. It carries accessory penalties including civil interdiction. *Life imprisonment*, on the other hand, has no fixed duration and carries no accessory penalties.⁴³ Given the suspension of death penalty by R. A. 9346 as of June 24, 2006, heinous crimes that originally prescribed a penalty of death penalty now carries the penalty of *Reclusion Perpetua*.

⁴¹ STERBENZ, *supra* note 34.

⁴² Dakin Andone & Kayla Rodgers, Man gets \$75 after being wrongly imprisoned for 31 years, CNN, 1 (Dec. 21, 2016) <http://edition.cnn.com/2016/12/21/us/tennessee-inmate-wrongly-imprisoned/>

⁴³ Potenciano v. Reynoso, G.R. No. 140707 (2003).

Under the Philippine criminal system, one can be charged for separate penalties if it does not fall under complex, special complex or compound crimes. Hence, an accused may be charged, prosecuted and convicted of several offenses. Once convicted, he is to serve the sentence successively.

For example, “*A had a heated argument with B, they had an altercation and so A stabbed B resulting to the latter’s death. Thereafter, he noticed that B was wearing an expensive watch and so he took the watch from the lifeless B.*”

In this instance there are two crimes committed, Homicide and Theft because B was killed not because there was intent to gain. The intent to gain was a mere afterthought. Hence, A may be charged and convicted of the two crimes. The accused has to serve the penalty for each crime successively.⁴⁴ The judge shall impose the penalties per each count of the crime committed but without prejudice to the application by the Director of Prisons of the three-fold rule. The three-fold rule is when the accused has to serve more than three penalties, the service of sentence shall not exceed the maximum of the most-severe penalty, but in no case shall the total penalty exceed 40 years.⁴⁵

Executive judges of the Regional Trial Courts, or municipal trial judges or municipal circuit trial judges if specified by the Supreme Court, are mandated to conduct monthly personal inspections of provincial, city, and municipal jails and their prisoners within their respective jurisdictions. They shall ascertain the number of detainees, inquire on their proper accommodation and health and examine the condition of the jail facilities. They shall order the segregation of sexes and of minors from adults, ensure the observance of the right of detainees to confer privately with counsel, and strive to eliminate conditions inimical to the detainees.⁴⁶

Notwithstanding this mandate to the judges, the Philippine prisons are having challenges in terms of overcrowding, poor nutrition and poor sanitary facilities and problems with cost of making phone calls. In short, lack of proper funding. According to the official website of the Commission of Human Rights as of 1999:

“The Commission on Human Rights has conducted investigation and received reports on the inhuman condition of jails

⁴⁴ REV. PEN. CODE, art. 70.

⁴⁵ People v. Reyes, G.R. Nos. 101127-31 (1992)

⁴⁶ RULES OF COURT, Rule 114, sec. 25.

and prisons in many parts of the country. The report, as confirmed by the media, showed the deplorable conditions of the Manila City Jail as unfit for human habitation. The City Jail, which is supposed to accommodate one thousand (1,000) prisoners has now over three thousand four hundred (3,400) inmates. The lack of space force the inmates to ration the time for their hours of sleep. The dimly lit place stinks that no matter how hard the area is cleaned, the foul smell cannot be eradicated as the dirt is embedded in the cracks. The building itself is in the state of disrepair. Such conditions have contributed to the incidents of violence among inmates who have become short-tempered and emotionally unstable.”

“The Medical Division of the jail has stated that there are 27 inmates should be confined to a mental hospital. Convicted persons are mixed with persons still waiting for trial. The substandard and inadequate penal facilities generally exist throughout the country.”

A more recent data is presented below as of 2009. The BUCOR is the only primary institution in the corrections pillar that provides full custody and rehabilitation programs for the transformation of insular prisoners, those sentenced to more than three years to capital punishment. The mandate of the BUCOR is to rehabilitate national prisoners.

Among the functions of the BUCOR are the following: (1) safe-keep prisoners convicted by the courts to serve sentence in prisons; (2) keep prisoners from committing crimes while in BUCOR’ custody; (3) provide inmates’ basic needs as human beings; (4) ensure rehabilitation programs are made available to the inmates for their physical, intellectual, and spiritual development; and (5) develop livelihood programs to assist inmates earn a living and develop their skills while in prison.

The BUCOR maintained in its custody 35,793 inmates, 1 percent higher than the previous year. Congestion rate in all prison facilities decreased from 75 percent to 65 percent; with the New

Bilibid Prison as the most overcrowded facility with 120 percent congestion rate. Despite the decrease, however, congestion remains to be the number one problem of the Bureau.⁴⁷

**TABLE 5.27: BUREAU OF CORRECTIONS
COMPARATIVE TABLE OF POPULATION AND CONGESTION RATE**

Station	Capacity	Population		Congestion (%)		No. of Guard		Ratio GD:INM	
		First Semester							
		2010	2009	2010	2009	2010	2009	2010	2009
NBP	9,000	19,843	20,694	120	138	802	771	1:31	1:26
CIW	1,000	1,779	1,652	78	65	86	27	1:21	1:61
IPPF	4,000	3,788	3,191	-	-	124	123	1:31	1:25
DPPF	3,500	5,650	5,381	61	74	199	195	1:29	1:28
CIW (Mind)	200	219	209	9.5	-	-	-	-	-
SRPPF	1,550	1,283	1,299	-	-	87	83	1:15	1:15
SPPF	1,500	1,690	1,672	13	11	80	72	1:21	1:23
LRP	1,000	1,541	1,354	54	35	50	44	1:31	1:30
TOTAL	21,750	35,793	35,452	65	75	1428	1,315	1:25	1:26
Percent Change (%)		1		-10		9		-	

The table below shows the number of inmates admitted and released as of December 31, 2009.

**TABLE 5.28: BUREAU OF CORRECTIONS
INMATES STATISTICS AS TO ADMISSION AND RELEASES AS OF DECEMBER 31, 2009²⁶¹**

	No. of Inmates	Admission	Releases
NBP	21,034	3,780	2,138
CIW	1,726	331	164
IPPF	2,984	22	350
DPPF	5,685	905	524
CIW-Mindanao	222	0	0
SRPPF	1,303	126	124
SPPF	1,564	4	173
LRP	1,416	293	147
Total as of Dec. 2009	35,934	5,461	3,620
Total as of Dec. 2008	34,547	5,496	3,241
Percent Change (%)	4	-0.6	12

In the present time, the condition is not improving either. Given this sad condition of the Philippine Prisons, it seems that laws and guidelines are not lacking, rather, it is funding and implementation of these guidelines. As enunciated by the United Nations' UN Standard Minimum Rules for Treatment of Prisoners⁴⁸, while the guidelines are laudable, it seems it is not properly implemented in the Philippine context.

⁴⁷ Assessment of the Capacity of the Pillars of the Philippine Criminal Justice System: To Implement the Medium-Term Development Plan for the Criminal Justice System (2010-2016).

⁴⁸Standard Minimum Rules for the Treatment of Prisoners, http://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf (last accessed Nov. 30, 2016).

Hence, is it really a progress that we had suspended the death penalty for heinous crimes and in lieu thereof the imposition of *Reclusion Perpetua*? Given the challenges and lack of facilities of our penal institutions which are considered substandard and inhumane, what is the remedy of an accused wrongly imprisoned for a crime he did not commit. It is unthinkable for an innocent man to be imprisoned for many years in a substandard inhumane prison facilities. In line with this, how much really is the price of freedom considering the circumstances of Philippine prison, limited sources of funds, lack of technology for speedy investigation and other factors.

B. Philippine Republic Act 7309

The Republic Act 7309: An Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes (RA 7309) has not been amended nor repealed. It was enacted into a law in 1992. The salient features of this law are the persons entitled to claim, award ceiling and the prescriptive period to file the claim. Under Section 3 of RA 7309, the following may file claims for compensation:

(a) any person who was unjustly accused, convicted and imprisoned but subsequently released by virtue of a judgment of acquittal;

(b) any person who was unjustly detained and released without being charged;

(c) any victim of arbitrary or illegal detention by the authorities as defined in the Revised Penal Code under a final judgment of the court; and

(d) any person who is a victim of violent crimes. For purposes of this Act, violent crimes shall include rape and shall likewise refer to offenses committed with malice which resulted in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity. (*emphasis supplied*)

Letters a, b and c are relevant in the topic at hand as they cover persons who are unjustly imprisoned, whether convicted or as a detainee. It also includes persons who were arbitrarily detained by authorities as defined by the Revised Penal Code. The said Republic Act also provided compensation to the victims of the violent crimes and not merely to the accused.

The current amount ceiling is outdated. It is not in accord with the cost of living in the present time. Section 4 of RA 7309 gives the basis for the compensation which is computed at one thousand pesos (P1, 000) per month of unjust imprisonment or detention. Sadly, the amount ceiling is only up to ten thousand pesos (P10, 000) or the expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or other expenses directly related to the injury, **whichever is lower. This is without prejudice to the right of the claimant to seek other remedies under existing laws.**

It seems that there is no basis why only P1, 000 is awarded for every month of unjust imprisonment nor is there any basis for the P10, 000 cap. While it gives an alternative to reimburse other expenses, it seems that it is a futile provision given the provision states whichever is lower. The intent of the law which is to alleviate the suffering of persons unjustly imprisoned will be rendered nugatory.

There is also a prescriptive period for filing claims which is only for 6 months from release. Otherwise, the claim is deemed waived. The heirs may also file a claim in case of death or incapacity of the person entitled. The claim shall be in the following order: surviving spouse, children, natural parents, brother and/or sister.

The prescriptive period is too short to give ample time for the person entitled to file the claim. The prescriptive period to file a suit based upon an injury to the rights of a plaintiff or based on quasi-delict is 4 years.⁴⁹ While ignorance of the law is no excuse, for purposes of equity and justice as what the framers of the law intended RA 7309 to be, it would be better to give a longer period to file the claim given the many years the person suffered inside the prison for a crime he did not commit.

The funding is from the 1% earnings of the Philippine Amusement and Gaming Corporation and 1% of other proceeds, sales and dispositions and military camps in Metro Manila by the Bases Conversion and Development Authority. In addition, Royalty awards of any depiction of the accused's

⁴⁹ CIVIL CODE, art. 1146

story in any form of media. P5.00 is also set aside from the filing fee for any civil case for the Victim Compensation Fund.

The sources of funds as prescribed by law are too limited. This could be the reason why only a measly sum is given to the persons entitled to the claim and victims of violent crimes. The law did not include other sources of funds such as appropriation from the General Appropriations Fund. Although the law says that it is without prejudice to the right of the claimant to seek other remedies under existing laws. The relevant existing laws would be the law on Human Relations and Law on Damages under the New Civil Code. However, under these laws, there is no particular amount indicated that would give judges a guide in awarding such damages to such claimants due to unjust imprisonment. The next question is also who to hold liable for such damages? Is it the official, the plaintiff, the erring eye witness or the State?

C. Related Laws on Damages

R.A. 7309 states that the compensation that will be granted under such law is without prejudice to the right of the claimant to seek other remedies under existing laws. The claimant can further claim under law on Damages can be found under the New Civil Code. Law on Human Relations shall be read in relation to Law on Damages. The following are the kinds of damages: Actual or compensatory, Moral, Nominal, Temperate or Moderate, Liquidated or Exemplary or Corrective Damages. It seems that under Human Relations, Article 27, 29 and 32 of the New Civil Code are related to the responsibilities of law enforces in relation to the accused:

Article 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.

Article 27 deals with the omission of public officials in the exercise of their official duties. Hence, such omission may or may not be deliberate for it says refuses or neglects. As a defense, it may be argued that there is presumption of regularity of the exercise of the functions of public officials. The burden of proof lies on the person claiming damages to overturn such presumption.

Article 29. When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious. If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground.

Article 29 deals with an accused charged with a criminal offense who is subsequently acquitted. An accused may be acquitted based on reasonable doubt or may be based on not having authored the crime at all. In the former, the accused may still be held liable civilly, as to the latter, the extinguishment of the criminal liability carries with it the extinguishment of the civil liability. Now, on that premise, can it be argued that there should be a law specifically addressing the problem that those who are wrongly imprisoned should be compensated and indemnified for suffering from a wrong verdict, who is only entitled for such? Does it include only those who are acquitted based on not having authored the crime? Or does it also include those who are acquitted based on reasonable doubt? Under the present law and jurisprudence, there is no particular law addressing to this particular issue but what the Philippine law only have is the law on Human Relations in relation to Law on Damages. Article 29 deals with indemnification of the victim of the crime. It does not deal with indemnification of the accused who was acquitted.

Article 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

Xxxxxx

(18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and

Xxxxxx

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence. The indemnity shall include moral damages. Exemplary damages may also be adjudicated. The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

Article 32 also deals with the liability of law enforcers in the exercise of their official duties who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs the rights enshrined under the bill of rights of the Constitution. On the other hand, Article 34 deals with the liability of a police officer in case of unjustified refusal to render aid and protection. The law explicitly stated that such police officer is primarily liable, while the city or municipality will be subsidiarily liable. Article 34 is the only provision under Human Relations which expressly made the city or municipality liable for the acts of its officers.

The prisoner has the right to be free from any excessive fines, cruel and degrading punishment unless it is in accordance with statute. It is to be noted that before justice is attained with finality in the Philippines, the accused, if the crime is not bailable, should be incarcerated for the duration of the trial. The time spent in prison while court proceedings are on-going should be credited to the penalty imposed by the judge upon conviction.⁵⁰ The time to dispose of a case is sadly merely recommendatory and not mandatory. Hence, cases can go for years. The judges will rarely face administrative charges for failing to dispense justice in a speedy manner because of the presumption of good faith in the

⁵⁰ REV. PEN. CODE, art. 29.

regular performance of his duties. However, if the accused is incarcerated without final conviction and upon reading of the dispositive portion the judge adjudged the accused as not guilty, what would be the remedy of the accused who spent his younger years in jail with substandard facilities? Is it not also unfair that those complainants who sue for mere vengeance without any basis can go scot-free?

D. Pending bills

There were previous bills which sought to increase the compensation to the wrongly imprisoned from the measly sum of P10, 000 per RA 7309, House Bill 3811 by Rep. Rufus Rodriguez (2nd District, Cagayan de Oro City), House Bill 2938 by Rufus B. Rodriguez and Maximo B. Rodriguez Jr. and House Bill 1138 by Rep. Al Francis Bichara (2nd District, Albay). HB 3811 was proposed in 2014. The salient features of which are: entitlement to the payment of compensation in an amount not exceeding twice the amount of the claimant's income in the year prior to his incarceration or to P100, 000 for each year of incarceration, whichever is greater.⁵¹

House Bill 2938 aims to compensate a person wrongfully convicted of a crime in order to indemnify him or her for the loss, injury and damage brought about by such wrongful conviction. The bill was co-authored by Rep. Maximo Rodriguez, Jr. (Party List Representative, Abante Mindanao), the bill provides that any person convicted and subsequently imprisoned for one or more crimes, which he did not commit may, under certain conditions, bring an action for damages before any court of competent jurisdiction. Attorney's fees may also be awarded.⁵²

To be entitled for the compensation, the claimant must establish by clear and convincing evidence that he was convicted of a crime and subsequently sentenced to a term of imprisonment, and has served all or any part of his sentence; he did not commit the crime for which he was convicted; and he did not by his own conduct cause or bring about his conviction.⁵³ The bill provides for another disqualification in case a person serving a term of imprisonment for a crime other than the crime for which he was mistakenly convicted shall not be eligible to claim for damages. Also, a person served a sentence for the conviction of another crime concurrently for the crime he was mistakenly convicted.⁵⁴

⁵¹ Press and Public Affairs Bureau, Solon Seek Compensation of Persons Wrongfully Convicted of Crime, House of Representatives, 1 (April 26, 2014), <http://www.congress.gov.ph/press/details.php?pressid=7823>.

⁵² H.B. 2938, Sec. 4.

⁵³ Id., Sec. 1.

⁵⁴ Id., Sec. 5.

Another bill was also proposed in 2010 by Rep. Al Francis Bichara. Understandably due to lower cost of living, since it was proposed four years earlier than HB 3811, the compensation is much lower pegged at P60, 000 per year of detention to persons detained and were acquitted or found innocent by a final judgment of a court of competent jurisdiction. Moreover, if the detention is less than one year, the compensation is P5, 000 per month.⁵⁵ To qualify, the claimant shall be limited only to those declared innocent after trial of the case and not on mere desistance or failure to prosecute by the plaintiff. Further, the bill does not claim to compensate the sufferings, deprivations or trauma caused by erroneous detention, but through this it is hoped that the State will be able to rectify an injustice and redress a wrong.⁵⁶ The question is where to get the budget? There is no mention where to source the funds under HB 3811 and HB1138.⁵⁷

A US-based research named Innocence Project states that wrongful convictions are caused by the following: eyewitness error, government misconduct, junk science, snitch testimony, false confessions and others (*bearsay, questionable circumstantial evidence, etc.*)⁵⁸ *Out of 86 wrongful convictions, 46 of which are attributed to faulty eyewitness testimony. 32.5% of 46 and all of these witnesses had incentives to testify, ranging from full immunity to leniency in sentencing. In five cases, the witness received consideration and in four cases, the false testimony is motivated by grudge.*⁵⁹

Another bill which aims to identify potential weaknesses in the criminal justice system and the remedies that can strengthen it was proposed by the late Senator Miriam Defensor-Santiago, S.B. 2687 titled “*An Act Creating a Commission on Criminal Justice Reform.*” The bill seeks to create an entity to conduct independent and expert reviews of wrongful convictions and identify the causes of these wrongful convictions in the Philippine setting.⁶⁰

Unfortunately, these Philippine bills were not yet successfully passed into laws. At this point, the present law is RA7309 which only gives a maximum of P10, 000 as compensation to the wrongly imprisoned. Since, Philippines is a civil law country, judges are not allowed to legislate but are only

⁵⁵ H.B. 1138, Sec. 1.

⁵⁶ Id., explanatory note.

⁵⁷ Wrongfully Jailed Should be Compensated, <http://www.balita.ca/2012/02/16/wrongfully-jailed-should-be-compensated/> (last accessed Jan. 4, 2017).

⁵⁸ Death Penalty Information Center, Causes of Wrongful Convictions, <http://www.deathpenaltyinfo.org/causes-wrongful-convictions>, (last accessed Dec. 21, 2016).

⁵⁹ Rob Warden, How Mistaken and Perjured Eyewitness Identification Testimony Put 46 Innocent Americans on Death Row, <http://www.deathpenaltyinfo.org/files/pdf/StudyCWC2001.pdf> (last accessed Dec. 21, 2016).

⁶⁰ S. No. 2687.

expected to interpret the law. Hence, even judges, though they feel that more compensation should be out of equity, judges are not permitted to do so because when there is a law, courts are not allowed to apply equity.

E. Related Cases

In *Wilson v. Philippines*, a case was brought to the Human Rights Committee of the United Nations. In 1996, Albert Wilson was accused of rape, the complaint was filed by the biological father of the 12-year old girl. Wilson was the step-father of the alleged rape victim. Wilson denied all accusations and alleged that the natural father of the girl was fabricating stories in order to extort money from him. In 1998, the Regional Trial Court convicted Wilson of rape on the basis of the sole testimony of the girl, who admitted she was lying when she first made the allegation of attempted rape, and there were numerous inconsistencies in her trial testimony. While in the detention cell, he was extorted money and was maltreated. There were 200 inmates with two non-flushing toilets which also served as the communal shower. Food comprised unwashed rice and other inappropriate substances. Wilson was then placed on death row. **In 1999, the Solicitor General recommended for his acquittal because the evidence failed to prove his guilt beyond reasonable doubt.** The Bureau of Immigration demanded from Wilson to pay P22, 740 as fine as an overstaying tourist, this included his stay in the detention cell. The British Ambassador appealed to the Philippines but to no avail.

Upon his return to the United Kingdom, Wilson sought compensation pursuant to Philippine Republic Act 7309. The Act creates a Board of Claims under the Department of Justice for victims of unjust imprisonment or detention, compensation being calculable by month. Upon inquiry, he was informed on 21 February 2001 that on 1 January 2001, he had been awarded P14, 000, but that he would be required to claim it in person in the Philippines. On 12 March 2001, he wrote to the Board of Claims seeking reconsideration of quantum, on the basis that according to the legal scale 40 months in prison should result in a sum of P40, 000. On 23 April 2001, he was informed that the amount claimed was 'subject to availability of funds' and that the person liable for the author's misfortune was the complainant accusing him of rape. No further clarification on the discrepancy of the award was received.

In 2001, after applying for a tourist visa to visit his family, Wilson was informed that as a result of having overstayed his tourist visa and having been convicted of a crime involving moral turpitude, he had been placed on a Bureau of Immigration watchlist. Wilson also sought to lodge a civil suit for reparation, on the basis that the administrative remedy for compensation outlined above would not take into account the extent of physical and psychological suffering involved. He was not eligible for legal aid in the Philippines, and from outside the country was unable to secure pro-bono legal assistance.⁶¹

The Philippines was a signatory of the Optional Protocol of the UN. The Human Rights Committee ruled in favor of Wilson and held that the Philippines committed several human rights violations against him. Also, the State was ordered to give Wilson appropriate remedy and ordered to be compensated. It still remains though that Human Rights Law remained to be a soft law without teeth by virtue of immunity of states from suits.

From this case, Wilson was detained for 40 months and was merely asking for P40, 000 as compensation. Sadly, he paid the immigration fees and fines for overstaying for causes not attributable to him. It is to be noted that he was released in 1999 and he asked for compensation in 2001, given the prescriptive period of RA7 309, he can no longer claim because only 6 months is provided by law from date of release. The intent of the lawmakers is not really served by putting such limited prescriptive period.

In *People v. Webb*, it is a highly-publicized case against Hubert Jeffrey P. Webb and six others. *Webb et al.* were accused of raping Carmela Vizconde and killing the latter's mother and 7 year old sister in 1991. The Regional Trial Court and Court of Appeals convicted all the accused on the basis of the lone witness Jessica Alfaro who allegedly met all the accused when she bought *shabu* from Artemio Ventura who introduced them.

In 2010, as a result of its initial deliberation in this case, the Supreme Court issued a Resolution granting the request of Webb to submit for DNA analysis the semen specimen taken from Carmela's cadaver, which specimen was then believed still under the safekeeping of the NBI. Unfortunately, on April 27, 2010 the NBI informed the Court that it no longer has custody of the specimen, the same

⁶¹ Albert Wilson v. Philippines, Communication No. 868/1999, U.N. Doc. CCPR/C/79/D/868/1999 (2003).

having been turned over to the trial court. The trial record shows, however, that the specimen was not among the object evidence that the prosecution offered in evidence in the case. This outcome prompted accused Webb to file an urgent motion to acquit on the ground that the government's failure to preserve such vital evidence has resulted in the denial of his right to due process.

In the same year, the accused were all acquitted based on reasonable doubt by the Supreme Court. Supreme Court held that Alfaro was not a credible witness for being a stool pigeon of the NBI and the Court put weight on the certification by the United States. The U.S. Immigration certification and the computer print-out of Webb's arrival in and departure from that country were authenticated by no less than the Office of the U.S. Attorney General and the State Department. Still the Court of Appeals refused to accept these documents for the reason that Webb failed to present in court the immigration official who prepared the same. But this was unnecessary. Webb's passport is a document issued by the Philippine government, which under international practice, is the official record of travels of the citizen to whom it is issued. The entries in that passport are presumed true. After 15 years in prison, the accused in this case were released. The maximum amount that each one can get is only P10, 000 pursuant to the existing law without qualification if acquitted based on reasonable doubt or not being the author of the crime at all.

To compare the two cases, in *Wilson v. Philippines*, Wilson was convicted due to false testimony of the alleged rape victim who admitted that she was lying when she made the accusation. Hence, there was no crime committed at all. In the case of *Webb v. People*, a crime was committed but the identity of the assailant was not sufficiently established beyond reasonable doubt. What prompted the Court to grant the appeal was due to the missing DNA evidence that was not submitted by the NBI during the lower court's proceedings. This led to the subsequent acquittal of the accused.

Every person criminally liable for a felony is also civilly liable.⁶² In relation to Art. 100 of the Revised Penal Code, Article 29 of the New Civil Code states that, when the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence.

⁶² REV. PEN. CODE, art. 100.

Hence, civil liability may still stand against the accused even he was acquitted of the crime. The defendant may upon motion require the plaintiff to file a bond to answer for damages in case the complaint should be found malicious in case a separate civil case was instituted. If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground.⁶³

In *Wilson v. Philippines*, Wilson was not the author of the crime because there was no crime committed as can be inferred from the text of the decision. However, in *Webb v. People*, there was no mention if the accused was acquitted based on reasonable doubt but it may be inferred from the decision. The preservation of the integrity of the DNA evidence of the semen found on the victim's body was vital to the identity of the accused. Hence, the last sentence of Art. 29 of the new civil code applies that in the absence of any declaration, it may be inferred from the decision as well.

Who is entitled to claim for compensatory damages? Is it Wilson, Webb or both? It would be logical to only award compensatory damages at the outset without further need of protracted trial to the wrongly imprisoned when he was innocent of the crime and was acquitted not on the basis of failure to prove the crime based on reasonable doubt. Using Art. 29 as basis, if the accused was acquitted based on reasonable doubt, he may still be held liable for civil liability because the evidence needed is only preponderance of evidence. Hence, if such accused would claim compensatory damages for unjust imprisonment, there would be offsetting of civil liability between the accused and the State, which the authors believe requires a trial. A detainee is detained for purposes of public safety and interest, to deter possible flight and further commission of wrongful acts especially if the crime is non-bailable.

F. Loss of Earning Capacity Formula

Incarceration sometimes carries civil interdiction as an accessory penalty, in cases of *Reclusion Perpetua* and *Reclusion Temporal*⁶⁴, which requires deprivation of certain rights. During the time of his sentence, he is deprived of parental authority, or guardianship, either as to the person or property of any ward, marital authority, right to manage his property and right to dispose of such property by any

⁶³ CIVIL CODE, art. 29.

⁶⁴ REV. PEN. CODE, art. 41

act or conveyance *inter vivos*.⁶⁵ It also has an effect of losing earning capacity during the time he is detained. In several Supreme Court cases, the loss of earning capacity formula in case of death is computed as follows:

$$\text{Net Earning Capacity (x)} = \text{Life Expectancy} \times \text{Gross annual income} - \text{living expenses} \\ \text{(50\% of gross annual income)}$$

$$\text{where life expectancy} = \frac{2}{3} \times (80 - \text{age of deceased})^{66}$$

This is based on *American Expectancy Table of Mortality*. Courts use this formula in determining the damages to be awarded to the plaintiff heirs in case of death. At the present R.A. 7309, it was just an arbitrary amount of P10, 000, without taking into consideration the loss of earning capacity of the wrongly imprisoned. As a proposal, it would be more in accord with the intent of the law to give compensation to the wrongly imprisoned if a similar formula would be used.

$$\text{Net Earning Capacity (x)} = \text{Years of wrongful incarceration} \times \text{Gross annual} \\ \text{income} - \text{living expenses (50\% of gross annual income)}$$

$$\text{where years of wrongful incarceration} = \frac{2}{3} \times (\text{years of wrongful incarceration})$$

It is also to be noted that the duration could be not exact as to comprise of only years but it could be in excess of months but short of a year. As such, if the person is imprisoned for 2 years and 5 months, it should be converted into decimal form to compute the duration of the imprisonment. In this way, the court can consider the occupation, education attainment and state of health at the time he was wrongly imprisoned. Proof should be presented as to the person's previous income before he was wrongfully detained. However, this will also not be 100% accurate as it would not encompass the possibility of promotion in the workplace and increase in salary for the years he had lost. Further, government should give programs that will help former convicts to get back on their feet through counseling and job placement among others.

⁶⁵ REV. PEN. CODE, art. 34.

⁶⁶ *People v. Bangcado*, G.R. No. 132330 (2000).

V. CONCLUSION

The Philippines values the person's dignity as embodied in the 1987 Constitution and Philippines as a signatory of the UDHR. While it is commendable that there is an existing law which aims to compensate those who are wrongfully imprisoned, it is no doubt that the current R.A. 7309 law is outdated which needs to be amended in terms of the amount, prescriptive period, persons entitled, source of funds, and basis of compensation to be awarded. The P10, 000 cap will not alleviate the suffering of those wrongly imprisoned, taking into consideration lost opportunities and trauma suffered in substandard prison facilities. The pending bills proposed by the House of Representatives to increase the amount of compensation and the bill proposed by the late Senator Defensor-Santiago in creating a Commission on Criminal Justice Reform to investigate wrongful convictions and make use of modern technologies such as DNA evidence to determine the truth for justice to prevail are good bills when taken together. In relation to foreign laws and jurisprudence, these bills can be further improved to suit the needs of the Filipino people given the present justice system.

While judges are mandated to conduct monthly personal inspections to penal establishments, it seems that judges themselves are not in the position to alleviate the conditions of jails due to lack of funding and proper implementation. Their duty is merely recommendatory. Philippine justice system is not perfect. Not even the US justice system is perfect as evidenced by research projects showing number of persons wrongly imprisoned. Hence, there is a need for such a Commission to check if those who are imprisoned are indeed guilty of the crime. As Sir William Blackstone coined, "It is better to free ten guilty persons than one innocent suffer." It is also one of the rights of the accused under the Bill of Rights of the Philippine Constitution that the accused is presumed innocent until proven guilty.⁶⁷

In Florida law, the source of compensation is from the General Revenue Fund which is to be appropriated for that purpose.⁶⁸ Similarly, the courts of Illinois sourced its funds from the General Revenue fund and giving judges discretion on the amount giving only the limit to the amount to be awarded both to those people who were given pardon and those who are innocent of the crime.

⁶⁷ CONST. art. III sec. 14, par. 2.

⁶⁸ The 2016 Florida Statutes, http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0900-0999%2F0961%2FSections%2F0961.07.html, (last accessed Jan. 10, 2017).

Further, it made reference to increase such award every year in relation to the Consumer Price Index.⁶⁹ Tennessee has a board of claims where the board can investigate the validity of claims against the state including the claims of those wrongfully imprisoned if they are formally exonerated from the crime.⁷⁰ In the case of McKinney, the board of parole voted against a favorable recommendation for exoneration of the governor because of doubt on his innocence and that the evidence failed to establish clear and convincing evidence. Hence, McKinney only received \$75 for 31 years in prison.

In sum as a recommendation to legislators, those entitled to the claim for compensation are those who are innocent of the crime committed and those who are absolutely pardoned by the President, because pardon entirely wipes out the crime. Claims must be proven by clear and convincing evidence similar to other civil cases if the accused was acquitted based on reasonable doubt or when the decision is silent but from the text of the decision it may be inferred.⁷¹ The six-month prescriptive period to file claims under R.A. 7309 is too short as it defeats the intent of the legislature which is to give equitable relief to the victim of wrongful imprisonment. Such period may not be sufficient for the person to file for his claims considering that he is adjusting and regaining his life back again from the prison. A four-year prescriptive period similar to the prescriptive period in claiming damages not based on contract is deemed proper.⁷² It would give the necessary time for the person to settle all his claims from the time he was wrongly imprisoned. In creating a Commission of Criminal Justice Reform, which investigates wrongful convictions may be in partnership with the Board of Claims under the Department of Justice in granting such awards to rightful claimants. Funding shall come from the General Appropriations Act every year as proposed by the President to be approved by Congress, similar to the laws of states in the US which sourced the funds from the General Revenue Fund.

It would not be advisable to get the budget from the department of the official who caused the wrongful conviction as the budget allocated for the department will not be used in accordance with its purpose which would be detrimental to the public, except, if it was specifically required by law such as Article 34 of the New Civil Code. For example, if it was the fault of Manila Police, the compensation shall come from the Department of Interior Local Government and Local Government

⁶⁹ Illinois Compiled Statutes, <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1865&ChapterID=50> (last accessed Jan. 10, 2017).

⁷⁰ <http://law.justia.com/codes/tennessee/2010/title-9/chapter-8/part-1/9-8-108>, (last accessed Jan. 10, 2017).

⁷¹ CIVIL CODE, Art. 29.

⁷² CIVIL CODE, art. 1146.

Unit or if it is the fault of the judge, it shall be shouldered by the Supreme Court. A better view is for the State to acknowledge that the justice system is imperfect. Hence, a definite appropriation from the General Appropriations Act shall be allocated for meritorious compensation claims which are not only from 1% of the net income of PAGCOR, 1% of the proceeds and sales of military camps in Metro Manila by the Bases Conversion and Development Authority and media royalties as prescribed in R.A. 7309. Such allocation may be given under the Department of Justice (DOJ) which enforces policies and programs for those detainees as well as convicted persons.

There should be a continuing fund and the amount should increase in relation to the Consumer Price Index. An arbitrary amount as determined by the law like P100, 000 for every year as proposed in HB 3811 is not the best option because it does not evaluate loss of earning opportunities in relation to the income of the accused prior to imprisonment, educational attainment, inflation and other factors. The Loss of Earning Capacity formula in case of death based on the American Expectancy Table of Mortality would be helpful in determining a more accurate quantification of the freedom of the person, as it takes into consideration the person's income, educational attainment and health.

Moreover, compensation should not only come in the form of money but the government should also provide services similar to those offered in the US (*e.g.* psychological counseling, medical and dental services, job placement). An individual who was exonerated for a crime he did not commit should no longer suffer after he gets out of prison because he has suffered already enough by serving the punishment which he does not deserve. The punishment and suffering must no longer continue beyond the prison bars rather the state must be able to extend aid and assistance for the full development of the person wrongly imprisoned since it is its duty to promote the welfare of its people and protect their rights. However, it should also be balanced with the current capacity of the State to give such compensation in relation to the available funds that can be allocated for the concerned individuals. This proposition is of course without prejudice to other remedies under existing laws available to the claimant such as the law on damages, human relations, administrative remedies against public officials and criminal and civil suits against the plaintiff who made the false accusation.

Although an amendment of the law may still be far from being passed, it is important to keep in mind that a person's right to life must not only be exercised by merely existing rather it is by living one's life in a manner he wishes to do so. It is with an individual's right to liberty that he may be able to fully exercise his right to life. While the price of freedom cannot be definitely calculated and may also vary depending on the social status of each person, a better law that would provide definite amount or guidelines to award the amount to the wrongly imprisoned coupled with the creation of the Commission of Criminal Justice Reform will give justice to the sufferings of the wrongly imprisoned to somewhat restore the person's dignity as embodied in the Constitution⁷³ and the UDHR.⁷⁴

⁷³ CONST., art. II, sec. 11.

⁷⁴ United Nations Treaty Collection, International Covenant on Civil and Political Rights, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=en#EndDec, (last accessed Oct. 30, 2016).