THE STEPPING STONES TO SOLVE JAIL OVERCROWDING: Limitations in Legislation and Litigation

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"There is no humane punishment without a horizon.
No one can change their life if they don't see a horizon.
And so many times we are used to blocking the view of our inmates.
Take this image of the windows and the horizon
and ensure that in your countries the prisons always have a window and horizon.
even a life sentence – which for me is questionable – even a life sentence would have to have a horizon."
- Pope Francis[1]

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[1]Cindy Wooden, Concern for inmates, prison reform is obligatory act of mercy, pope says, (November 8, 2019), https://www.ncronline.org/news/justice/francis-chronicles/concern-inmates-prison-reform-obligatory-act-mercy-pope-says.

I. INTRODUCTION

The problem of jail congestion is often set aside and ignored in the Philippines. It is a longstanding issue that remains unaddressed by the government, with statistics showing congested jails since the 1990s. The Senate finance committee hearings reveal the lack of enthusiasm in even attempting to resolve the issue. On October 2020, jails chief Director Allan Iral pointed out that the allotments made by the Department of Budget Management (DBM) for the Bureau of Jail Management and Penology (BJMP) only corresponded to the creation of perimeter fences.[2] The meager allotment goes to show that despite the overwhelming congestion rate of about 400%, the plans to expand the correctional facilities in the Philippines remain as blueprints. This rate translates to six detainees sharing a space made only for one detainee.[3] A Commission on Audit (COA) report further reveals that the completion of forty nine (49) infrastructure projects with a total contract cost of P2,762,141,293.54 was delayed. This effectively hampered BJMP's objective of providing a functional and responsive jail facility to Persons Deprived of Liberty (PDL) pursuant to Section 63 of R.A. 6975.[4]

The issue of overcrowding, however, does not solely stem from the government's budgetary constraints. While the allotment of additional funds leads to the establishment of more spacious facilities, these efforts and resources will be for naught if the same is continuously occupied by an increasing number of detainees whose cases are still ongoing. With the clogged dockets of Philippine courts, there is a good chance that these detainees will stay behind bars for a relatively long time.[5] If there are no alternatives to confinement in jails, then the newly constructed facilities are bound to be crowded.

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[2] Rambo Talabong, No budget for new PH jails in 2021 despite over congestion, (October 1, 2020) https://www.rappler.com/nation/no-budget-for-new-ph-jails-in-2021-despite-over-congestion.

[3] Rambo Talabong, Jodesz Galivan, and Lian Buan, 'Takot na takot kami': While government stalls, coronavirus breaks into PH jails, (April 18. 2020), https://www.rappler.com/newsbreak/in-depth/while-government-stalls-coronavirus-breaks-into-philippine-jails.

[4]Commission on Audit, Annual Audit Report on the BJMP: Executive Summary, https://www.coa.gov.ph/phocadownloadpap/userupload/annual_audit_report/NGAs/2019/National-Government-Sector/Department-of-the-Interior-and-Local-Government/BJMP_ES2019.pdf, (last accessed June 20, 2021).

[5] Dr. Raymund Narag, A HUMANITARIAN CRISIS, A MONSTER IN OUR MIDST. State of the PH in 2018: Our jails are now world's most congested, (July 23, 2018), https://pcij.org/article/923/state-of-the-ph-in-2018-our-jails-are-now-worlds-most-congested.

Extreme congestion poses serious threats to the life and health of detainees due to sanitation issues as viruses—like COVID-19—and other contagious diseases spread easily. Hence, they should have a remedy under the law, when necessary, to obtain transfers or temporary release from confinement upon sufficient showing of such dangers.

The entitlement of detainees to basic human rights, such as humane and healthy living conditions, is anchored in the 1987 Constitution of the Philippines, Philippine Statutes and Regulations, and in International Law. However, the fact that the issue remains unresolved and that it worsens over time indicates that the relevant Constitutional and statutory provisions are not brought to life as intended by their makers. Since jail congestion involves the life and liberty of persons, society as a whole—both the public and the private sector—must treat it as a matter of great importance. It seems that society at large has yet to launch an aggressive campaign that advocates for a detainee's human rights.

The author submits that while the allotment of additional facilities is necessary to alleviate the congestion rates at present, the detainees should also have a recourse under the law to enforce their rights in case overcrowding poses a threat to their life and health. Additionally, coming up with alternatives to confinement might provide long-term solutions to jail overcrowding.

II. JAILS AND PRISONS: THEIR ORIGINS AT A GLANCE

Traces of history allow one to look back and establish a connection that transcends the past and the present. This is shown by looking at the history of correctional facilities such as jails and prisons. Even without academic research, one may envision jails dating thousands of years ago in the form of caves or dungeons. According to Johnston, a scholar who studied the history of corrections, one of the main purposes for detention was to hold people until there is a judgment that convicts them of the criminal act committed.[6] Similarly, the Old Testament of the Bible refers to imprisonment in Egypt, Assyria, as well as in Babylon. Slave systems also existed in Ancient Greek and Roman societies, which used jails for detention being a form of punishment.[7]

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[6] Johnston, Evolving Function, (January 7, 2009), as cited by SAGE Publications in Correctional History: Ancient Times to Colonial Times, (2019).

[7] Harris, 1973, as cited by SAGE Publications in Correction History: Ancient Times to Colonial Times, (2019).

The Medieval Ages brought forth the institutionalization of jails and prisons, which were introduced by monarchs and the Catholic Church. Before physical jails were established, incarceration was already a mode of penitence for members of the Church instead of drawing blood, since the latter was proscribed practice.[8] At times, the Church turned its charges over to secular authorities for appropriate punishment. During the Papal Inquisition, however, the rates of incarceration were higher than ever, since imprisonment was a way in which spiritual reform was achieved. As a result, this created a connection between prison facilities and rehabilitation. Hence, correctional facilities are also contemporarily known as "penitentiaries".[9]

In the 16th century, King Henry VIII found it necessary to pass certain laws to protect the "upright men" from a new brand of misfits, beggars, and vagabonds that flourished in England.[10] Two institutional developments were birthed: first were the jails or prisons chiefly used for the detention of those accused of crime pending their trials, and the second were workhouses which were not penal institutions but were used only to subdue vagrants and paupers.[11] During the enlightenment period, imprisonment with the end goal of rehabilitation was the primary consideration. There is a heightened focus on man's ability to reform himself and correct his views in life to avoid committing the criminal offense again. This trend continued until the early years of the 20th century.[12]

Notwithstanding these historical accounts, scholars such as Ralph Pugh in his study entitled *Imprisonment in Medieval England* argued that these philosophies advocating for rehabilitation inside correctional facilities are not reflected in actual practice. At best, the purposes for which imprisonment was imposed—namely: custodial, coercive, and penal—prove only useful in theory.[13] This argument holds true particularly in the Philippine context. The dangers that come with an overcrowded jail span from poor sanitation to major health risks. With the increasing number of detainees and the rise of infectious viruses and diseases such as COVID-19, being inside an overcrowded facility blurs the lines that delineate these purposes.

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[8] Gelter, Medieval Prisons: Between Myth and Reality, Hell and Purgatory, (2006).
[9] *Id.*
[10] Albis, A., Madrona, E., Mariño, A., & Respicio, L., A Study on the Effectivity of the Philippine Prison System. PHIL. L. J., 52, 60-88 (1997).
[11] *Id.*
[12] *Id.*
[13] Pugh, R. Imprisonment in Medieval England, (1968), as cited by Gelter, G., *supra* note 6.

III. DETAINEES IN FOCUS

The word "detain" came from the Latin word *detinere* which means "to hold" and from Old French *detenir* which means "to hold off" or "to keep back".[14] According to BJMP's Manual of Operations, there are three types of detainees: first, those who are undergoing investigation; second, those awaiting or undergoing trial; and third, those awaiting final judgment.[15] The BJMP is also responsible to take custody of persons, for whose crime the law imposes a penalty of imprisonment of at least three years.[16] Conversely, as regards persons for whose crime the law imposes a penalty of imprisonment of more than three years, it is the Bureau of Corrections (BuCor) that takes care of prison management and administration.[17] Thus, a person is only said to be a "prisoner" once he or she has already been convicted of the crime committed.

The distinction between these two terms, to the layman, may not always be pronounced. Consequently, persons who are detained without conviction may be unknowingly considered by the public as criminals. The stigma that arises out of a lack of awareness adds an extra level of difficulty in advocating for a more rehabilitative jail system. The public may prefer to keep detainees behind bars, without knowing that they are not convicted prisoners. If it is not a pressing issue to the public—or worse, the public does not view it as a legitimate issue—then the likelihood of jail congestion being addressed by key government bodies is not promising. Novel means and policies to remedy such problem might need public support and approval, since public perceptions become important in changing both public policy and public behavior.[18]

Making these distinctions also helps to put into perspective the injustice that detainees face daily. With overly congested and poorly sanitized jails, it may even be said that they are worse-off than convicted prisoners staying in the New Bilibid Prison and other penal farms since the congestion rate of the BuCor-maintained prisons is lower than BJMP-administered jails. One who awaits judgment should not feel that he is already serving his sentence.

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[14] Online Etymology Dictionary, https://www.etymonline.com/word/detain, (last accessed June 20, 2021).

[15] These three types will hereinafter be collectively referred to as "detainees".

[16] 16. Bureau of Jail Management and Penology (BJMP), BJMP Comprehensive Operations Manual, (2015),https://www.bjmp.gov.ph/images/files/Downloads/BJMP_OPERATIONAL_MANUAL_2015.pdf.

[17] *Id.*

[18] M. Granger Morgan, Public Perception, Understanding, and Values, National Academy of Engineering. (1997). The Industrial Green Game: Implications for Environmental Design and Management. Washington, DC: The National Academies Press. doi: 10.17226/4982.

Garrity, a scholar who studied prisons and the rehabilitation of prisoners said that for a long time in the earlier years, prisons bred crime. The concept of "prisonization" takes place during incarceration. It is a process of conforming to or espousing the prison culture by inmates as they become assimilated with the prison world. In this phenomenon, the symbols of identity of the inmates are taken away, and as such, they attach new meanings to their life. Unfortunately, the new meanings are taken from the culture of prisons. Consequently, prisons produce people who generally conform to the expectations of what it means to be a criminal and thus espousing, upon release, a behavior that is contradictory to anti-criminal norms. When offenders serve longer time in prison, therefore, the phenomenon of prisonization becomes more severe. In his analysis, Garrity concluded that studying the aforementioned phenomenon led him to conclude that the pains of punishment, like deprivations of liberty, goods and services, heterosexual relationships, autonomy, and security provide the energy for the society of captives as a system of action. In this sense, catering to at least some of these needs may minimize the effect of prisonization.[19]

While Garrity's analysis focuses more on convicted prisoners and not detainees, it is not far-fetched to say that a detainee awaiting judgment may have spent too long a time in jail that some effects of prisonization may arise. To iterate, that works to the injustice of the detainee who, after long years of waiting, may turn out to be innocent.

IV. JAILS

Jails are divided into provincial, district, city, and municipal jails managed by the provincial government and the BJMP. One of the key missions of the BJMP is to rehabilitate these detainees. Towards this end, there are four (4) major programs under the mandate of BJMP: first, the inmates' custody, security, and control program; second, the inmates' welfare and development program; third, the decongestion program; and lastly, good governance.[20] In its pre-reintegration manual, the BJMP further aims to enable the detainees to develop in religious, ecological, social, political, economic, cultural, and

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[19] P. G. Garrity, Prison as a Rehabilitation Agency In D. Cressey (Ed.), The Prison: Studies in Institutional Organization and Change (Holt, Rinehart, and Winston, Inc., 1961).

[20] Bureau of Jail Management and Penology (BJMP), Inmates Pre-reintegration Referral System Manual, (2013), https://www.ombudsman.gov.ph/UNDP4/wp-content/uploads/2013/07/Inmates-pre-reintegration.pdf

technological (RESPECT) dimensions, all for their transformation and renewal and their eventual release and reintegration. Following this, it is apparent that our jail systems ideally gear towards rehabilitation and reintegration to society over retribution or mere punishment.[21]

Erik Olin Wright, a scholar who analyzed the prison system in the United States of America, states that a rehabilitative model is more focused on treating the prisoner in a way that makes him more productive as a citizen. It means keeping him in prison without the hate, but with the hope of being able to cure oneself of the criminal behavior.[22] BJMP, however, was not allotted adequate resources to cope with its logistical needs at the time of need. The increasing number of inmates coupled with the limited facilities hinders the Jail Bureau from fully achieving its mandate. [23]

REGION	JAIL POPULATION	TOTAL IDEAL CAPACITY	VARIANCE	CONGESTION RATE
NCR	36,035	5,237	30,799	588%
CAR	1,214	423	791	187%
REGION I	4,364	1,085	3,279	302%
REGION II	2,771	656	2,115	323%
REGION III	10,035	1,548	8,487	548%
REGION IV-A	21,128	2,925	18,203	622%
REGION IV-B	1,627	504	1,123	223%
REGION V	2,882	785	2,097	267%
REGION VI	9,056	4,231	4,825	114%
REGION VII	19,751	2,665	17,086	641%

[21] *Id.*

[22] E. O. Wright & R. Barber, The politics of punishment: A critical analysis of prisons in America. (Harper & Row, 1973).

[23]Commission on Audit, Annual Audit Report of the Bureau of Jail Management and Penology, https://www.coa.gov.ph/index.php/national-governmentagencies/2018/category/7502-department-of-the-interior-and-local-government> 55, as cited in *Almonte et al. v. People*, G.R. No. 252117, July 28, 2020, *EN BANC. Separate Opinion by* LEONEN, J.

REGION VIII	2,804	551	2,253	409%
REGION IX	5,709	766	4,943	645%
REGION X	4,633	950	3,683	387%
REGION XI	6,253	1,069	5,184	485%
REGION XII	5,064	910	4,154	457%
REGION XIII	2,845	860	1,985	231%
ARMM	143	103	40	39%
TOTAL	136,314	25,268	111,046	439.48%

Providing an early solution to jail congestion, at its onset, was not a priority. As an unfortunate consequence, there have been consistently high congestion rates in Philippine jails throughout the years.

ANNUAL CONGESTION RATE IN BJMP JAILS[24]	
YEAR	**CONGESTION RATE**
1990 – 2003	No data available
2004	242%
2005	251%
2006	223%
2007	263%
2008	201%
2009	334%
2010	387%
2011	264%
2012	279%
2013	293%
2014	348%
2015	411%
2016	511%
2017	612%
2018	439%

[24] Bureau of Jail Management and Penology, Annual Congestion Rate in BJMP Jails, (2020), https://www.foi.gov.ph/requests?agency=BJMP

2019	427%
2020	443%

It is difficult to imagine how overcrowded jails can facilitate the kind of recovery envisioned. Reports indicate that problems such as poor sanitation, inadequate ventilation, poor access to natural lighting, and a lack of potable water threaten the life and health of inmates.[25] These are simply the effects of overcrowding, all of which will continue to persist if no measure is taken to solve it, at least little by little. The already daunting mission of rehabilitation becomes more so when there is no space for the inmates to improve. With this, reintegration cannot be considered even as a remote possibility. It appears that a rehabilitative jail and prison system in the Philippines, as things stand, is nothing but a theory, and an idealistic one at that.

V. CAUSES OF OVERCROWDING

The Commission on Human Rights published a report that enumerates some factors which cause jail overcrowding. The causes are: first, the government does not provide sufficient budgetary allocation for the construction of additional detention facilities; second, there are not enough courts to hear the cases and thus trial of criminal cases takes years while the accused is under incarceration; third, only a few local government units have established youth detention homes for children in conflict with the law; fourth, the process for the parole or executive clemency of convicted prisoners is a tedious one; and fifth, the government does not have a strong crime prevention program.[26]

The current figures also result from the War on Drugs policy that President Rodrigo Duterte launched. [27] In his regime, the Philippines has treated drug use and abuse as a criminal, rather than a medical issue.[28] With that said, before the rehabilitation begins, these so-called drug offenders are incarcerated in Philippine jails. Again, it is difficult to rehabilitate anyone in such a harsh

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[25] United States Department of Justice, Philippines 2018 Human Rights Report, (2018).
[26] Commission on Human Rights, The causes and human rights Implications of over-incarceration and overcrowding in detention facilities in the Philippines, https://www.ohchr.org/Documents/Issues/RuleOfLaw/OverIncarceration/CHR_Philippines.pdf, (last accessed June 24, 2021).
[27]Morales, N. J., Jails, justice system at breaking point as Philippine drugs war intensifies, https://www.reuters.com/article/us-philippines-justice-idUSKCN1BB39F, (2017).
[28] N. Simbulan, L Estacio, C. Dioquino-Maligaso, T. Herbosa, M. Withers, The Manila Declaration on the Drug Problem in the Philippines, 85 Ann Glob Health 1, 26 (2019).

environment. Chances are that the physical, mental, and emotional well-being of a person may worsen in the facility.

Related to this point is the dearth of legislation that provides alternatives to imprisonment. Achieving restorative justice in the Philippines necessarily requires some sort of a leap of faith that effective rehabilitation, and not simply imprisonment, will mitigate the overcrowding problem. An American judge named Frederick Norton went so far as to say that "the entire judicial system in the Philippines seems to be a system stuck in the dark ages" when he talked about the case of an Irish Psychiatric nurse named Eanna O'cochlain who was sentenced to 12 years in prison by a judge in Laoag after having caught possessing 2 cigarettes or 0.38 grams of cannabis.[29] This case of Eanna O'Cochlain reached the Philippine Supreme Court. Her conviction by the Regional Trial Court (RTC) was affirmed.[30] Drug offenders in the country face the same fate of up to life-long imprisonment because of the punitive nature of the sentencing practices of the Philippine criminal justice system.

VI. LEGAL ISSUES

A. Litigation and Overcrowding

As earlier stated, there is no need to resort to common law principles to derive a possible basis in enforcing a detainee's human rights. The legal foundations are already laid down, waiting to be brought to life. No less than the Constitution requires the State to protect and promote the right of the people to health and to value the dignity of every person. Sections 11 and 15 of Article 2 of the 1987 Constitution state:

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

There is no doubt that all persons are entitled to these rights—even detainees and prisoners. As it seems, however, their fate in Philippine society rests at the mercy of the government since they allot the resources to relevant agencies such as the BJMP, which then attempts to meet its logistical needs by creating new facilities for the inmates. Further, while there are bills filed in

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[29] F. T. Cullen & P. Gendreau, Assessing correctional rehabilitation: Policy, practice, and prospects. 3 CRIMINAL JUSTICE 299-370 (2015).
[30] *People v. O'Cochlain*. G.R. No. 229071, December 10, 2018.

Congress that attempt to address the issue of overcrowding, they never seem to gain much traction. It is submitted that lawyers—being advocates—must take a more active role and engage in litigation for the welfare of detainees and convicted prisoners, especially in cases where there is a threat to their right to life.

In foreign jurisdictions such as the United States (U.S.), litigation is used as a tool to ensure the health and well-being of inmates. Lawyers anchor their arguments and judges base their rulings on the provisions of their Constitution, in hopes of advancing the said advocacy. There are already decided cases by the U.S. Supreme Court to the effect that crowded prison conditions, in certain conditions, may render the prison system liable for violating the Constitution. They have this so-called "totality of conditions" theory, where an entire prison system can violate the Eighth Amendment rights of each prisoner confined in it.[31] The first sentence of Section 19 (1) of Article 3 of the 1987 Constitution is similar to the Eighth Amendment to the U.S. Constitution. On the one hand, the 1987 Constitution states:

> Section 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

On the other hand, the U.S. Constitution states:

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

Although originally intended to cover only punishments that are not provided for by law, American jurisprudence eventually leaned into a more liberal approach in interpreting the Eighth Amendment. In *Weems v. United States*[32] as cited in *Trop v. Dulles*[33], the U.S. Supreme Court held that, "… that the words of the Amendment are not precise, and that their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."

Decisions of the U.S. Supreme Court further evolved, and while these decisions do not state in any sense that detainees or convicted prisoners are entitled to a specific amount of space in a jail or prison cell, the totality of circumstances test was applied, and the main variable considered by the Court in arriving at a decision is essentially the welfare of the inmate or prisoner. In

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31 *Hutto v. Finney,* 437 U.S. 678, 687 (1978).
32 *Weems v. United States*, 217 U.S. 34 (1910).
33 *Trop v. Dulles*, 356 U.S. 86 (1958).

Bell v. Wolfish[34], pretrial detainees brought a class action to the Federal District Court, challenging the constitutionality of the conditions in which they are confined. They allege, among others, that "double bunking" in a room that is originally intended for single occupancy violates their Eighth Amendment rights. The Court ruled that the claims are without merit and held that:

> In evaluating the constitutionality of conditions or restrictions of pretrial detention that implicate only the protection against deprivation of liberty without due process of law, **the proper inquiry is whether those conditions or restrictions amount to punishment of the detainee. Absent a showing of an expressed intent to punish, if a particular condition or restriction is reasonably related to a legitimate nonpunitive governmental objective, it does not, without more, amount to "punishment," but, conversely, if a condition or restriction is arbitrary or purposeless, a court may permissibly infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees qua detainees.** In addition to ensuring the detainees' presence at trial, the effective management of the detention facility once the individual is confined is a valid objective that may justify imposition of conditions and restrictions of pretrial detention and dispel any inference that such conditions and restrictions are intended as punishment (emphasis supplied).

In *Rhodes v. Chapman*[35], respondents Chapman *et al.* were housed in the same cell in an Ohio maximum-security prison. They brought a class action in the Federal District Court against the state officials of Ohio. They alleged that "double celling" is a violation of their Eighth Amendment rights against cruel and unusual punishment. The Federal District Court ruled in favor of Chapman *et al.*, basing its decision on the fact of overcrowding as well as on studies that recommend a prescribed amount of space that an inmate should enjoy as living quarters. The Supreme Court, however, reversed the decision. It ratiocinated:

> Conditions of confinement, as constituting the punishment at issue, must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment. **But conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional.** To the extent such conditions are restrictive and even harsh, they are part of the penalty that criminals pay for their offenses against society (emphasis supplied). xxx

The Court further held that the basis used by the Federal District Courts is to be weighed by the legislature and prison administration and not by a court. Without any showing that double celling either inflicts unnecessary or wanton

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[34] *Bell v. Wolfish*, 441 U.S. 520 (1979).
[35] *Rhodes v. Chapman*, 452 U.S. 337 (1981).

pain or is grossly disproportionate to the severity of the crime warranting imprisonment, double celling cannot be considered as cruel and unusual punishment.

In the case of *Brown v. Plata*[36], however, the Court upheld the ruling of the Ninth Circuit Court of Appeals which ordered California to reduce its prison population to 137.5 percent of capacity, requiring an estimated population reduction of 46,000 inmates. Justice Kennedy, delivering the opinion of the Court, held that after years of litigation, it became apparent that a remedy for the constitutional violations would not be effective absent a reduction in the prison system population. It was further held that:

> Overcrowding has overtaken the limited resources of prison staff; imposed demands well beyond the capacity of medical and mental health facilities; and created unsanitary and unsafe conditions that make progress in the provision of care difficult or impossible to achieve. **The overcrowding is the "primary cause of the violation of a Federal right," specifically the severe and unlawful mistreatment of prisoners through the grossly inadequate provision of medical and mental health care**. (Emphasis supplied)
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> This Court now holds that the PLRA does authorize the relief afforded in this case and that the court-mandated population limit is necessary to remedy the violation of prisoners' constitutional rights. The order of the three-judge court, subject to the right of the State to seek its modification in appropriate circumstances, must be affirmed.

In 1996, the Prison Litigation Reform Act (PLRA) was signed into law by then U.S. President Bill Clinton. The PLRA was intended to limit the power of the courts to issue injunctive relief, which would either be mandatory or prohibitory in nature, to improve prison conditions. In *Brown,* the Court allowed the release of prisoners which was sanctioned under the PLRA, provided that some conditions are met. First, a release order cannot be obtained unless the court has previously tried a less restrictive remedy that failed, and the defendant prison officials are given a reasonable amount of time to effect compliance with the court order. Second, the relief will not be granted unless there is a finding that overcrowding is the primary cause of the violation of a federal right and no other relief will remedy the violation. To be concise, the fulfillment of certain conditions allows the court to grant direct relief to alleviate the dangers of prison overcrowding.

The discussion above focuses on overcrowding as a form of excessive and inhumane punishment provided that certain conditions concur. The author emphasizes that the rulings of the U.S. Supreme Court on the matter specifically apply to convicted prisoners. As noted in *Bell,* conditions which

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[36] *Brown v. Plata*, 563 U.S. 493 (2011).

could be interpreted as overcrowding i.e., "double-bunking" are not intended as punishment. This is because the case involved pretrial detainees to whom punishment cannot, without a conviction, be inflicted. In such case, only those restrictions which are arbitrary and purposeless—and are intended as punishment—may be deemed as a violation of a pretrial detainee's constitutional rights.

Bell was cited by the Philippine Supreme Court in the case of *Alejano v. Cabuay*[37]. In this case, the petitioners filed a petition for the issuance of a writ of *Habeas Corpus* with the Supreme Court to address their complaints against regulations and conditions in the facility wherein they were detained. The Court denied the petition, reasoning that the remedy of *Habeas Corpus* covers an inquiry of the cause of a person's detention, that is, to determine whether the deprivation of liberty was legal or illegal. Further, the Court ruled that their confinement in the facility did not constitute punishment, according to the standards set by *Bell:*

> An action constitutes a punishment when: (1) that action causes the inmate to suffer some harm or "disability"; and (2) the purpose of the action is to punish the inmate. xxx Punishment also requires that the harm or disability be significantly greater than, or be independent of, the inherent discomforts of confinement.
>
> In the present case, we cannot infer punishment from the separation of the detainees from their visitors by iron bars, which is merely a limitation on contact visits. The iron bars separating the detainees from their visitors prevent direct physical contact but still allow the detainees to have visual, verbal, non-verbal, and limited physical contact with their visitors. The arrangement is not unduly restrictive. It is not even a strict non-contact visitation regulation like in *Block v. Rutherford*. The limitation on the detainees' physical contact with visitors is a reasonable, non-punitive response to valid security concerns.

Interestingly, the U.S. Supreme Court ruled in *Brown* that overcrowding itself may be the cause of a prisoner's violation of a federal right when the mistreatment results from grossly inadequate facilities for the prisoner's well-being. In that case, the conditions are so inadequate that the standard set in *Rhodes* and similar cases—that "restrictive" and "harsh" conditions of prisons are part and parcel of criminal punishment—could not even apply.

In *Brown,* the prisons in California are designed to house about 86,000 inmates. The U.S. Supreme Court ruled that overcrowding itself—not even arbitrary and purposeless restrictions by the prison administration—violates human rights since the facility housed about *twice* its maximum capacity.

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[37] *Alejano v. Cabuay,* G.R. No. 160792, August 25, 2005.

The congestion rate in the New Bilibid Prison in Muntinlupa City, Philippines, is averaged at 353%.[38] This figure is meager compared to the congestion rates in jails as indicated earlier, and the latter is already an average of the congestion rates across all jails in the Philippines. The Cebu City Jail has a congestion rate of 1,200%, having only a capacity of 523 prisoners but is currently holding 6,604 inmates as of April 2020. It is submitted that if a congestion rate of 200% is already actionable as a violation of a *convicted prisoner's* human rights, then the same rate must, with more reason, be actionable as a violation of a *detainee's* human rights.

B. Treaties, Philippine Laws, and Jurisprudence Addressing Overcrowding

i. The Nelson Mandela Rules, The BuCor Act of 2013, and The BJMP Manual

Being a signatory to the United Nations (UN), the Philippines voluntarily adheres to respect, uphold, and implement international treaty obligations and agreed development goals. A relevant example is the Philippines' adherence to the United Nations Standard Minimum Rules for Treatment of Prisoners (UNSMRTP). The United Nations General Assembly adopted the UNSMRTP or the *Nelson Mandela Rules* in order to set forth what is generally accepted as being good principles and practices in the treatment of prisoners and prison management.[39] The standards for the treatment of prisoners are expressly incorporated in Republic Act No. 10575 or the Bureau of Corrections (BuCor) Act of 2013 (BuCor Act)[40] and its implementing rules. Sec. 4 of R.A. 10575 states the mandates of the BuCor:

> Section 4. The Mandates of the Bureau of Corrections. The BuCor shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years.
>
> (a) Safekeeping of National Inmates – **The safekeeping of inmates shall include decent provision of quarters, food, water and clothing in compliance with established United Nations standards. The** security of the inmates shall be undertaken by the Custodial Force

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[38]Bureau of Corrections, Bureau of Corrections Statistic on Prison Congestion as of January 2020, http://www.bucor.gov.ph/inmate-profile/Congestion04062020.pdf, (last accessed on July 6, 2020), as cited in *Almonte v. People*, G.R. No. 252117, July 28, 2020, *EN BANC. Separate Opinion by* LEONEN, J.

[39]United Nations Office on Drugs and Crime, The United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf, (last accessed June 24, 2021).

[40] An Act Strengthening the Bureau of Corrections (BuCor) and Providing Funds Therefor. Hereinafter referred to as "BuCor Act"

> consisting of Corrections Officers with a ranking system and salary grades similar to its counterpart in the BJMP (emphasis supplied).

Furthermore, the Revised Implement Rules and Regulations of R.A. 10575, in its declaration of policy, states that:

> 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 by promoting and ensuring their reformation and social reintegration, **creating an environment conducive to rehabilitation and compliant with the United Nations Standard Minimum Rules for Treatment of Prisoners (UNSMRTP).** It also recognizes the responsibility of the State to strengthen government capability aimed towards the institutionalization of highly efficient and competent correctional services. (Emphasis supplied)

While the BuCor manages and administers its prisons for those who have already been convicted of a crime and the BJMP manages and administers its jails for detainees who, as a general rule, have not been convicted yet and are only undergoing investigation, it is submitted that compliance with the provisions of the UNSMRTP should also be applicable—if not more strictly applied—to BJMP. Detainees who are not yet convicted of any crime, under the UNSMRTP, are referred to as "untried prisoners." They are defined under Rule 111 of the UNSMRTP as "persons arrested or imprisoned because of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced." A reading of the UNSMRTP will reveal that the prescribed treatment of these untried prisoners is remarkably different from those who are convicted prisoners. The pertinent provisions are as follows:

> Rule 11 – The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention, and the necessities of their treatment; thus:
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> (b) Untried prisoners shall be kept separate from convicted prisoners;
>
> x x x
>
> Rule 111 – Unconvicted prisoners are presumed to be innocent and shall be treated as such.
>
> Rule 112
>
> 1. Untried prisoners shall be kept separate from convicted prisoners.
> 2. Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.
>
> Rule 113 – Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

Aside from their living arrangements, different treatment is also afforded to detainees in terms of the procurement of food, wherein they may purchase food, at their own expense, even outside the detention facility either through the jail administration or through their family and friends.[41] A detainee is also allowed to wear his own clothing if so suitable and sanitary.[42] He may also wear a prison dress, but the same should be different from the ones used by convicted prisoners.[43] In terms of productivity, a detainee may be offered the opportunity to work with remuneration.[44] He may also be allowed to procure means of occupation such as books and writing material, as long as the same is compatible with the interests of the administration of justice and the security and good order of the institution.[45]

From the immediately preceding discussions, it can be inferred that the ideal situation contemplated by the UNSMRTP is for there to be a clear distinction between untried and convicted prisoners. The rules attempt to make this distinction more pronounced and tangible by treating them differently. Unfortunately, however, the visible difference in treatment inside detention and correctional facilities is not reflected in the realities of Philippine prisons and jails.

The BJMP Manual on Habitat, Water, Sanitation, Kitchen, and Health in Jails (BJMP Manual) enumerates the technical standards of the facilities that are intended to promote and maintain the well-being of each inmate. This BJMP Manual includes a prescription that each prisoner should have 4.7 square meters of space. This standard was adopted by the BuCor Act, referring to such manual. It states, among others:

> All facilities shall be in conformity with Philippine building, architectural, structural, electrical, plumbing, fire safety, flood code/standard and must be accessible to Persons With Disability (PWD) pursuant to Batas Pambansa Blg. 344 or Accessibility Law. **Initially, the following specifications are in conformity with the BJMP Manual on Habitat, Water, Sanitation and Kitchen in Jails (revised edition 2012). However, after five (5) years upon the publication of BuCor Manual on Habitat, Water, Sanitation and Kitchen in Corrections, such specifications shall be revised accordingly** (emphasis supplied).
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> x x x
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> Cell Capacity:
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> - Ideal habitable floor area per inmate = 4.7 square meters

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41 UNSMRTP, rule 114
42 UNSMRTP, rule 115.
43 *Id.*
44 UNSMRTP, rule 116.
45 UNSMRTP, rule 117.

- Maximum number of inmates per cell = 10
- Maximum number of bunks beds = 5 units two level
- Wash area (for utensils, hand washing) = 1 unit
- Water closet (toilet bowl) = 1 unit
- Bath area = 1 unit

To paint a more vivid picture, the IRR of the National Building Code provides that the size of an average automobile (car) parking slot must be computed at 2.50 meters by 5.00 meters for perpendicular or diagonal parking.[46] This is equivalent to 12.5 square meters. If the ideal habitable floor area per inmate is 4.7 square meters, then an inmate would have to share a parking slot with one or two other inmates. Having two inmates in one parking slot space complies with the ideal standard, but adding one more inmate (who, collectively, should have an allowance of 14.1 square meters) already violates the ideal floor area. They will have to share 4.17 square meters each. It seems that to have space equivalent to one parking slot is already a luxury in Philippine jails and prisons—and in terms of treatment as to the facilities wherein they are confined, at least in law, detained and convicted prisoners in the Philippines are treated in the same way. Once more, reality proves to be crueler, since jails managed by the BJMP are more crowded than the prisons managed by BuCor. In fine, the conditions in which an untried prisoner is detained are harsher than that of a convicted prisoner.

ii. Almonte et al. v. People

The overcrowding problem in Philippine jails and prisons *vis-à-vis* the rights of detainees and prisoners to be free from cruel and excessive punishment has been recently recognized and discussed at great length by the Honorable Justices of the Supreme Court in the case of *Almonte et al. v. People.*[47] Here, the petitioners allege that they are prisoners and are among the elderly, sick, and pregnant population of inmates exposed to the danger of contracting COVID-19 where social distancing and self-isolation measures are purportedly impossible. As such, they are invoking the Supreme Court's power to exercise "equity jurisdiction" and are seeking "temporary liberty on humanitarian grounds" either on recognizance or on bail, in addition to other motions praying for alternative confinement arrangements. The Supreme Court held that these matters necessarily involve questions of fact. Petitioners, who were charged with offenses punishable by *reclusion perpetua,* are not entitled to bail as

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[46] Sec. 707, Rule VII, Implementing Rules and Regulations of the National Building Code of the Philippines (P.D. 096).

[47] *In the Matter of Urgent Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the Covid-19 Pandemic, Dionisio S. Almonte, et al. v. People of the Philippines, et al.,* G.R. No. 252117, July 28, 2020

a matter of right. Therefore, a summary hearing by a trial court must be made to weigh the evidence as to their guilt. Since the reception of evidence is also necessary to resolve the motions for other confinement arrangements, the Supreme Court held that a hearing on the matter should also be conducted by the said trial court. Hence, it was unanimously ruled that the petition be treated as the petitioners' application for bail or recognizance, and their motions for other practicable and suitable confinement arrangements relative to the alleged serious threats to their health and lives must also be threshed out in trial.

The Honorable Justices of the Supreme Court, in their separate opinions, met the contentions of the petitioners, one of which was that the latter should be released on humanitarian grounds in consonance with their rights under International Law which includes the International Covenant on Civil and Political Rights, the Convention Against Torture, the UN Standard Minimum Rules for the Treatment of Prisoners ("Nelson Mandela Rules") in connection with the Bureau of Corrections Act (R.A. No. 10575), the UN Principles for Older Persons, and all other worldwide calls by UN officials as well as the responses of other countries favorable to inmates. The Honorable Justices have opposing views as to whether the said treaties and laws may be used to enforce the legal rights of prisoners and detainees to humane conditions of confinement.

Associate Justice Delos Santos opined that the Nelson Mandela Rules in connection with the Bureau of Corrections Act is not judicially enforceable. He argued that the policies made by the UN General Assembly are merely recommendatory:

> A contrary rule of interpretation which will make every resolution of the UN General Assembly, like the Nelson Mandela Rules, automatically binding and part of the law of the land would undermine and unduly restrict the sovereignty of the Republic of the Philippines. It stifles the Republic's prerogative to interpret international laws thru the lenses of its own legal system or tradition. Therefore, the Nelson Mandela Rules needs to be transformed into a domestic law thru an enabling act of Congress in a clear and unequivocal manner to have a legally binding force.

He further states that the Nelson Mandela Rules were impliedly referenced in the R.A. 10575 (the BuCor Act of 2013), and that the reference was generic and silent as to the manner of its implementation. It neither defines a right clearly nor imposes any specific liability for non-compliance. Further, the Revised IRR of the BuCor Act provides that the implementation thereof will be made in staggered phases, considering the financial position of the national government, which at present, cannot possibly cope up with the standards of the Nelson Mandela Rules which even contemplates prisoners detained in

"individual cells or rooms" for "each prisoner" to occupy "by himself or herself," hence:

> xxx the proper branches of government constitutionally-empowered to raise the needed funding and to remedy the situation regarding the accommodation and sanitation problems affecting correctional and other detention facilities are the political branches — the Legislative and the Executive — not the Judiciary. In sum, the very reason for denying the instant petition is to avoid violating the separation of powers enshrined in the Constitution — not because this Court is or should be insensitive to the plight of the petitioners.

Senior Associate Justice Perlas-Bernabe argued otherwise. She stated that the Court may already recognize the effects of subhuman prison conditions and grant proper reliefs based on the circumstances of the case since the UN standards referred to in the BuCor Act of 2013 pertain to the Nelson Mandela Rules issued by the UN General Assembly:

> 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:
>
> > "Soft law" x x x is 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 x x x.

Associate Justice Leonen, contrary to Justice Delos Santos, submits that the principles and fundamental rights which serve as the basis of the Nelson Mandela Rules and its precedent—the United Nations Minimum Standard on the Treatment of Prisoners—cannot be disregarded as non-binding norms since these have attained a *jus cogens* status. This means that they are in the "highest category of customary international law." Moreover, these Rules have been adhered to and transformed into local legislation and incorporated in our penal institutions, thus:

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

> First, the Nelson Mandela Rules articulates customary international norms on the treatment of prisoners. These are based on one's fundamental dignity, x x x
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> xxx xxx xxx
>
> Second, a resolution of the United Nations General Assembly may reiterate an existing treaty obligation, as in the preambulatory clause of Resolution No. 70/175 x x x The Philippines also acceded to the Optional Protocol to the Convention against Torture. Among its objectives is to establish regular visits of detention places and prisons from international and domestic bodies to prevent torture and other cruel, inhuman, or degrading punishment or treatment. x x x
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> xxx xxx xxx
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> Third, the Nelson Mandela Rules reflects emerging international norms and standards, or commonly referred to as "soft law." It partakes of "new soft law standards" that function as a "significant normative reference for national legislators, courts, correctional administrators, and advocates on a range of prison conditions issues." x x x
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> xxx xxx xxx
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> Finally, the Nelson Mandela Rules could not be ignored, precisely because the Philippines adopted these standards through its express adherence to the established standards of the United Nations under Republic Act No. 10575, or the Bureau of Corrections Act of 2013. x x x

He also adds that the main consideration need not be the Nelson Mandela Rules as written, but the founding principles of international law—fundamental human rights, the dignity, and worth of the human person, without distinction of any kind—on which these Rules were based and are affirmed by the 1987 Constitution as a State policy. Hence, Justice Leonen recommended that in the trial courts, petitioners may pray for their provisional release by: (a) applying for bail or recognizance; or (b) filing an action for a violation of their constitutional rights.

Justice Delos Santos argues that absent any positive law enacted by Congress that provides any relief to detainees or prisoners who are suffering inside facilities with abysmal conditions, the Court may not rule in favor of a petitioner who seeks to liberate a detainee from an overcrowded facility. This supposition is based on Sec. 19(2) of the 1987 Constitution, which states that:

> The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions **shall be dealt with by law** (emphasis supplied).

This second paragraph cannot be found in the Eighth Amendment of the U.S Constitution. Hence, in the U.S. cases earlier cited, if only the totality of

conditions test was satisfied, then the Court, even without an express provision of law, would have taken the detainee or prisoner out of the facility due to poor prison conditions that constituted a violation of his Eighth Amendment right. This possibility is completely ruled out in the Philippine jurisdiction—absent a Supreme Court decision to the contrary—by virtue of Sec. 19(2) of the 1987 Constitution, which requires the legislature to act on the use of substandard or inadequate penal facilities under subhuman conditions.

Justice Perlas-Bernabe, on the contrary, maintains that Sec. 19(2) does not leave the protection of the right against cruel and unusual punishment to the legislature. She states that the intent of the Framers of the Constitution was for the legislature to set a standard of what is considered as "substandard prison conditions" and not to take it completely outside of the judiciary's powers to afford relief when its relation to a person's right to light is sufficiently established.

Moreover, the lack of legislation that addresses budget constraints impeding the improvement of detention and penal facilities does not render the courts powerless to grant permissible reliefs which are grounded on the Bill of Rights of the Constitution:

> x x x 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.**
>
> xxx xxx xxx
>
> 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** (emphases supplied).

Justice Perlas-Bernabe recommended that the standard outlined in *Helling v. McKinney*—the "deliberate indifference" standard—should be used in adjudging the petitioners' prayer for their release through "other non-custodial measures". This standard is based on two main factors—(1) the objective factor, which should involve a determination of whether or not the inmate is

exposed to a risk that seriously and critically threatens his or her right to life while incarcerated, and (2) 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. The objective factor involves not only a scientific or statistical inquiry as to the seriousness of the potential harm and the likelihood of exposure to such harm, but also a showing that the risk of which he or she complains of is not one that today's society chooses to tolerate.

Justice Leonen argues that the provisions of the BuCor Act of 2013 may be the subject of a judicial action—one that enforces a law based on a cause of action. Sec. 4 of the said Act expressly indicates a right (to be kept safely within prison facilities), and the petitioners, in this case, are asserting a violation of that right. The same section provides the parameters by which the right may be enjoyed. Therefore, a cause of action exists, and judicial action is warranted. In determining the standards to be met in resolving such action, he refers to the *Alejano* case, which, as earlier mentioned, cites *Bell v. Wolfish.*

He also agreed with Associate Justice Lazaro-Javier that by using the terms of statutory construction, general terms do not preclude the court from interpreting what constitutes compliance under a law. Moreover, the enforceability of a right is not dependent on the budgetary constraints of the government. According to Justice Lazaro-Javier:

> To begin with, primary and subordinate legislations would almost always be couched in general terms that understandably would lack details. Such terms as "reasonable," "equitable," "circumstances" and others are so common among public and private legal instruments, but it does not mean that these otherwise binding documents would not be judicially enforceable.
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> xxx xxx xxx
>
> x x x such ambiguous terms are meant to be questions of fact whose resolution must be grounded in the specific facts and circumstances established by evidence or supporting allegations. Their ambiguity is clarified by the process of receiving evidence or submissions, and in the end, a court is able to define what "reasonable" and "equitable" concretely signify.
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> xxx xxx xxx
>
> x x x I will of course be the first to concede that in the "implementation" of a statutory program, budget becomes a critical factor. But this weighing does not happen at the initial stage where the existence of a right and its enforceability are being determined. Budget could be a factor in fashioning the appropriate remedy or relief, and assessing the

> reasonableness of the compliance with the remedy or relief, but this occurs only after a right has been determined to exist and to be enforceable.

The author submits that the above discussions by the Honorable Justices of the Supreme Court provide for an important stepping stone in solving the problem of overcrowding in Philippine jails and prisons. In their separate opinions, there is a consensus that congested jails and prisons are a longstanding problem in the Philippines, and that it is only very recently, bolstered by the pandemic, that the release of detainees and prisoners on bail, recognizance, and parole have begun. There is also an acknowledgment that no detailed and clear legislation has been passed to address these issues, which ultimately affect the life and health of detainees and prisoners. More importantly, there is an acknowledgment that upon fulfillment of certain conditions, an action may be filed for a violation of constitutional rights due to the abysmal state of jail and prison facilities, and thus, the court may grant relief relative thereto. These considerations may encourage law students and lawyers alike to advocate for the welfare of detainees and convicted prisoners, especially pretrial detainees and detainees awaiting final judgment, who are presumed innocent and therefore do not deserve to be confined in a facility where they would be exposed to an environment that is tantamount to punishment.

VII. ALTERNATIVES TO CONFINEMENT

Republic Act No. 11362, or the Community Service Act[48], is a welcome development that aims to achieve restorative justice and prison decongestion. Community service consists of any actual physical activity which inculcates civic consciousness and is intended towards the improvement of a public work or promotion of public service.[49] Amending Art. 88 of the Revised Penal Code, the court in its discretion may now require that the penalties of *arresto menor* and *arresto mayor* be served by the defendant by rendering community service in the place where the crime was committed in lieu of jail service. In exercising the discretion to allow service of penalty through community service, the following factors may be taken into consideration by the court: (a) the gravity

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[48] An Act Authorizing the Court to Require Community Service in lieu of Imprisonment for the Penalties of *Arresto Menor* and *Arresto Mayor*, Amending for the Purpose Chapter 5, Title 3, Book I of Act No. 3815, as Amended, Otherwise known as "The Revised Penal Code". Hereinafter referred to as "the Community Service Act".; A.M. No. 20-06-14-SC, Guidelines in the Imposition of Community Service in Lieu of Imprisonment.

[49] R.A. No. 11362, sec. 1

of the offense; (b)the circumstances of the case; (c) the welfare of the society; and (d) the reasonable probability that the accused shall not violate the law while rendering the service.[50] This is an option made available to the accused after the promulgation of judgment or order wherein said penalty is imposable for the crime or offense committed.[51] A habitual delinquent cannot avail of this option.[52]

The terms thereof, as well as the number of hours to be worked and the period to complete such service shall be determined by the court.[53] It can only be availed of once by the accused, and the period shall not exceed the maximum sentence imposed by law but shall not be less than one-third (1/3) thereof.[54] Further, the period within which the accused underwent preventive imprisonment shall be deducted from the period of community service, if applicable.[55]

The court shall also inform the accused that upon failure to comply with the terms of the community service order is a cause for his re-arrest to serve the full term of the penalty. The commission of another offense is also a ground for his re-arrest.[56] If the court denies the application for community service and the period to appeal has not yet lapsed, the accused may still choose to appeal the said judgment or apply for probation.[57]

The Community Service Act embodies the principles of rehabilitative and reintegrative justice. Small-time offenders are given a second chance: they will be free from confinement while doing work that allows them to be productive citizens of society. Hence it allows for the decongestion of prisons by allowing the offender to serve his sentence without confinement and attempts to prevent future incarceration by reminding the offender of his purpose in society through meaningful work.

This Act, however, focuses more on decongesting prisons than decongesting jails, since it applies to offenders who are already found guilty of an offense for which the law provides a penalty of *arresto menor* or *arresto mayor*. If there are alternatives to incarceration in the case of convicted prisoners, then with more reason should there be alternatives to confinement in case of pretrial detainees. For pretrial detainees, posting bail is an option but is not considered by many due to poverty. Furthermore, many detainees are facing drug-related

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[50] A.M. No. 20-06-14-SC (7)
[51] A.M. No. 20-06-14-SC (1)
[52] A.M. No. 20-06-14-SC (12)
[53] R.A. No. 11362, sec. 1
[54] A.M. No. 20-06-14-SC (7)
[55] *Id.*
[56] A.M. No. 20-06-14-SC (10)
[57] A.M. No. 20-06-14-SC (13)

offenses, which are non-bailable. In *Almonte,* Justice Perlas-Bernabe, pointed out that the main thrust of preventive imprisonment is to protect society from potential convicts and their propensity to commit further crimes and not to punish. She cites the case of *U.S. v. Salerno*:

> 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
>
> xxx xxx xxx
>
> 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[58]

It is submitted that coming up with alternatives to confinement, much like the Community Service Act, will serve the same purposes stated above. The author notes that these initiatives will require further funding from the government on top of expanding detention and prison facilities. However, when public health emergencies turn into global pandemics, investing in the life of its citizens, without distinction, should be its main concern. Since a community service law applicable to pretrial detainees would also be in line with a rehabilitative and reintegrative criminal justice system, the same option should also be made available to them in lieu of detention in Philippine jails.

Foreign jurisdictions, particularly the Netherlands, use electronic monitoring (EM) mechanisms to lower prison population, which it has successfully done.[59] While this can be considered as an unchartered territory in the Philippines, the author believes that technology must be used to the advantage of the government and for the welfare of the detainees, much like how technology became the solution for hearings and other court-related functions during the pandemic. The Dutch, realizing that creating more prison cells is more expensive than thinking of alternatives, came out with a master plan which aimed to reduce expenditures of the Prison Service up to 340 million euros in 2018.[60] While it may not be a fair comparison to pit the budget of the Dutch government against the Philippine government, the fact that they

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[58] *United States v. Salerno*, 481 U.S. 739 (1987)

[59] . Boone M, van der Kooij M, Rap S, The highly reintegrative approach of electronic monitoring in the Netherlands. 9 EUROPEAN JOURNAL OF PROBATION 46-61 (2017).

[60] Dienst Justitiële Inrichtingen (DJI), Gevangeniswezen in getal 2010–2014. Den Haag: Ministerie van Veiligheid en Justitie., as cited in Boone, van der Kooji, and Rap, *id.*

had to cut such amounts only indicates that they allot a considerable amount of funds to manage their correctional facilities.

The Dutch Prison System utilizes this mechanism in both the pre-trial stages and as a part of the service of a convict's sentence. The imposition of EM as an alternative is left to the discretion of judges to prevent arbitrariness. In the pre-trial phase, releasing suspects with EM allows the accused to continue their work or education. The same counts when the accused is caring for children or parents. Essentially, the main objective is to prevent re-offending by giving the accused a structured lifestyle. The officer responsible for such monitoring also helps in steering the accused to proper behavior. Curfews may also be imposed, hence, "the day and night rhythm of the participant normalizes and the temptations provided by criminal friends are minimalized."

Lastly, the philosophy behind drug-related offenses, particularly that of drug use, should be geared towards rehabilitation. There must be an express recognition that drug use and/or addiction is primarily a health issue, and thus, it should not be outrightly viewed in light of criminalization and punishment. In this manner, the knee-jerk reaction of law enforcement authorities and the public would not be to incarcerate the drug user but to rehabilitate him in designated centers in place of incarceration.

VIII. CONCLUSION

At the heart of the overcrowding issue is the lack of a tangible remedy that protects detainees and convicted prisoners from the inhumane experience inside correctional facilities. In this situation, the one that suffers the most injustice is the pretrial detainee who the government and society fail to protect, and who, despite the presumption of his innocence, has no choice but to endure the dreadful and deplorable conditions inside the jail.

Pictures taken by media outlets have, more than once, depicted to the public how detainees are situated inside the jails: there is little to no space for an individual detainee to sleep. In fact, they are almost stacked on top of each other like Jenga pieces. A relative of one detainee said that they are crammed like sardines. These pitiful comparisons speak volumes about a detainee's everyday life in jail. Pretrial detainees, whose guilt are not yet determined, should be able to live their lives with specific restrictions to achieve the same purposes as preventive imprisonment or bail, and in case of the latter, minus

the steep costs thereof. Without a sufficient provision for basic needs and if their living conditions are abysmal, the detainees will continue to be treated as a sub-class of humanity. These conditions will continue to worsen if both short-term and long-term solutions are not brought to the fore. *Eheu fugaces labuntur anni.* As the days, months, and years, dwindle to a precious few, these detainees—whose conviction is not yet certain—would have already experienced punishment before judgment day.