ARTICULATING THE RIGHT TO THE PRESUMPTION OF INNOCENCE AS A CONSTITUTIONAL IMPERATIVE FOR CRITICAL CARCERAL REFORMS*

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ABSTRACT

The Duterte administration's increased emphasis on street-level law enforcement strategies in its so-called "War on Drugs" aggravates a criminal justice system already burdened by an inordinate number of illegal drugs-based detention and incarceration. The administrative, operational, and institutional stress caused by these intensified prosecutions has, in many ways, led to the deterioration of detention conditions and standards in many facilities; thus, raising important questions as to the protection and preservation of human rights and civil liberties that a person does not *in toto* shed upon his or her charge and detention. The depravity of detention conditions has been widely documented by official and independent reports. This Note challenges the constitutionality of this practice based on a human rights analysis. In particular, construing the constitutional presumption of innocence together with the reformulated "inhumane treatment" clause militates against the lack of adequate practical differentiation to detainees, making their conditions

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tantamount to punishment. By looking into the deliberations that led to pertinent Bill of Rights provisions, as well as parallel or related developments in American constitutional law and international human rights law, this Note comprehensively articulates the legal bases for critical carceral reforms that reestablish respect for human dignity and recognize the inherent inviolability of the human person.

"Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."

—Martin Luther King, Jr.[1]

INTRODUCTION

"The war on drugs will be unrelenting."[2]

By the time President Rodrigo Roa Duterte uttered these words in last year's State of the Nation Address—to much fanfare in Batasan Hills—more than 7,016 Filipinos had already been killed in his administration's anti-illegal drugs campaign; more than 43,593 related police operations had been conducted; and more than 7,069,095 households had been visited for police-led inspections.[3] There were more than 1,179,462 "surrenderers," including 79,349 self-confessed "pushers."[4]

These numbers keep on rising. After all, the President, himself, said that he will "not stop until those who deal with [illegal drugs] understand that they have to stop because the alternative is either jail or hell."[5] Until all of the Philippines has been purged of illegal drugs, or at least until the end of his term, he is intent on extending his drug war.[6] That possibility is

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[1] Martin Luther King, Jr., Letter from a Birmingham Jail (Apr. 16, 1963).

[2] Rodrigo Roa Duterte, State of the Nation Address delivered at the Batasang Pambansa Complex, Quezon City (July 23, 2017).

[3] Michael Bueza, *IN NUMBERS: The Philippines' 'war on drugs',* RAPPLER, Apr. 23, 2017, *available at* https://www.rappler.com/newsbreak/iq/145814-numbers-statistics-philippines-war-drugs.

[4] *Id.*

[5] Duterte, *supra* note 2.

[6] Trisha Macas, *Duterte to extend drug war until end of term,* GMA NEWS ONLINE, Jan. 30, 2017, *available at* http://www.gmanetwork.com/news/news/nation/597560/duterte-to-extend-drug-war-until-end-of-term/story/.

apparent considering that the Philippine Drug Enforcement Agency (PDEA) has, so far, declared only 4,295 out of 42,036 barangays drug-free.[7]

These controversial declarations, followed through by aggressive executive actions,[8] encapsulate the President's long-time position on the issue of illegal drug trade and use in the country—one that he did not hide during his campaign in the 2016 national elections[9] and one which he continues to espouse.

In his crusade, more than a dozen local chief executives have already been stripped of their power of operational supervision and control over the police due to alleged drug links[10] and the Philippine National Police (PNP) has rolled out a notorious two-pronged approach to addressing the so-called "drug problem."[11] This consolidated drug policy, characterized as a "war against the poor" by local and international media,[12] capitalizes on the

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[7] Alexis Romero, *Duterte bringing PNP back to drug war*, PHIL. STAR, Nov. 4, 2017, *available at* http://www.philstar.com/headlines/2017/11/24/1761879/duterte-bringing-pnp-back-drug-war.

[8] *See* Exec. Order No. 15 (2017). This creates an Inter-Agency Committee on Anti-Illegal Drugs (ICAD) and Anti-Illegal Drug Task Force; Presidential Memorandum dated Oct. 10 2017, on the implementation of Republic Act 9165; *and* Memo. Order No. 17 (2017), directing the Philippine National Police and Other Law Enforcement Agencies to resume providing active support to the Philippine Drug Enforcement Agency in the conduct of anti-illegal drug operations.

[9] Pia Ranada, *Duterte bares details of 3-to-6-month anti-crime plan*, RAPPLER, May 23, 2016, *available at* https://www.rappler.com/nation/politics/elections/2016/129520-rodrigo-duterte-anti-crime-plan.

[10] *See* Amita Legaspi, *Napolcom strips governor, 18 mayors of police power*, GMA NEWS ONLINE, Nov. 9, 2017, *available at* http://www.gmanetwork.com/news/news/nation/632492/napolcom-strips-governor-18-mayors-of-police-power/story/; *and* Amita Legaspi, *5 Southern Tagalog mayors stripped of police control over drug links*, GMA NEWS ONLINE, Nov. 7, 2017, *available at* http://www.gmanetwork.com/news/news/nation/632255/5-southern-tagalog-mayors-stripped-of-police-control-over-drug-links/story/.

[11] The main component of the Philippines's "war on drugs" is Project Tokhang ("knock and plead"), where PNP agents and authorities do street-level campaigns. Together with Project HVT ("High Value Targets"), which targets drug syndicates and so-called "narcopoliticians," this plan of action constitutes the PNP's flagship drug control strategy, Campaign Plan: "Double Barrel". *See* National Police Commission Command Memo. Circ. No. 2016-16, PNP Anti-Illegal Drugs Campaign Plan—Project: Double Barrel.

[12] *See* Daniel Berehulak, *'They Are Slaughtering Us Like Animals'*, N.Y. TIMES, Dec. 7, 2016, *available at* https://www.nytimes.com/interactive/2016/12/07/world/asia/rodrigo-duterte-philippines-drugs-killings.html; *and* Matt Wells, *War on drugs, war against the poor*, RAPPLER, Feb. 5, 2017, *available at* https://www.rappler.com/thought-leaders/160492-war-on-drugs-war-against-poor; *Most Filipinos believe drug war kills poor people only, survey shows*, REUTERS, Oct. 2, 2017, *available at* https://www.reuters.com/article/us-philippines-drugs/most-filipinos-believe-drug-war-kills-poor-people-only-survey-shows-idUSKCN1C71HH.

PNP's intensified anti-crime operations in typically crime-prone, low-income neighborhoods.[13]

As the numbers show, the results of this "tough, punitive and militaristic drug policy"[14] have been controversial and polarizing. While the government lauds the enforcement efforts as having made great progress in decreasing criminality,[15] several national and local politicians, leaders of the Catholic Church in the country, members of civil society groups, and the academe have disputed these statistics and have been consistently vocal in their condemnation.[16] Their cynicism and opposition have been fueled by the reports of thousands of documented extrajudicial killings,[17] the palpable lack of prosecution of suspicious homicides,[18] and the government's call to abolish its independent national human rights body.[19]

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[13] Manuel Mogato, *Philippine war on drugs and crime intensifies, at least 60 killed in three days*, REUTERS, Aug. 17, 2017, *available at* https://af.reuters.com/article/worldNews/idAFKCN1AX0BX.

[14] Sudirman Nasir, *Behind Jowoki and Duterte's "war on drugs"*, ASIA & PACIFIC POL'Y SOC'Y FORUM, Sept. 21, 2016, *available at* https://www.policyforum.net/behind-jokowi-dutertes-war-drugs/.

[15] *See* Jaymee T. Gamil, *PNP chief: We're winning drug war*, PHIL. DAILY INQUIRER, July 19, 2017, *available at* http://newsinfo.inquirer.net/915076/pnp-chief-were-winning-drug-war. *See also* League of Provinces of the Philippines Res'n No. 2017-010. Expressing Full Trust and Confidence in the Leadership and Integrity of PNP Director-General Ronald M. "Bato" Dela Rosa and Supporting his Anti-Drug and Anti-Crime Campaign and Initiatives. "[T]he campaign against drugs led by Director-General Bato has recorded unprecedented success in less than six (6) months."

[16] Scott Neuman, *Church Leaders In Philippines Condemn Blood War On Drugs*, NPR, Aug. 20, 2017, *available at* https://www.npr.org/sections/thetwo-way/2017/08/20/544855446/church-leaders-in-philippines-condemn-bloody-war-on-drugs; *and* Reuters, *'Tipping point': The Philippines is starting to recoil from Rodrigo Duterte's bloody drug war*, BUSINESS INSIDER, Feb. 9, 2017, *available at* http://www.businessinsider.com/r-increasing-opposition-in-philippines-to-war-on-drugs-un-official-2017-2.

[17] *See, e.g., Philippines: Police Deceit in 'Drug War' Killings*, HUMAN RIGHTS WATCH, Mar. 2, 2017, *available at* https://www.hrw.org/news/2017/03/02/philippines-police-deceit-drug-war-killings; *and* Philim Kine, *Philippines' Duterte Signals Resumption of Murderous 'Drug War'*, HUMAN RIGHTS WATCH, Nov. 22, 2017, *available at* https://www.hrw.org/news/2017/11/22/philippines-duterte-signals-resumption-murderous-drug-war.

[18] *See, e.g.,* Audrey Morallo, *39 countries worry about killings, climate of impunity in Philippines*, PHIL. STAR, Sept. 29, 2017, *available at* http://www.philstar.com/ headlines/2017/09/29/1743809/39-countries-worry-about-killings-climate-impunity-philippines; *and* R.G. Cruz, *Philippines has worst impunity in the world: study*, ABS-CBN NEWS, Sept. 22, 2017, *available at* http://news.abs-cbn.com/news/09/22/17/ philippines-has-worst-impunity-in-the-world-study.

[19] *See, e.g.,* Nestor Corrales, *Duterte threatens to abolish CHR*, PHIL. DAILY INQUIRER, July 15, 2017, *available at* http://newsinfo.inquirer.net/917250/duterte-threatens-to-abolish-chr; *and* Trisha Macas, *Duterte to CHR: You are better abolished*, GMA NEWS ONLINE, July 25, 2017, *available at* http://www.gmanetwork.com/news/news/nation/619330/duterte-to-chr-you-are-better-abolished/story/.

With no signs of abatement despite these controversies, and with the growing concern of human rights violations perpetrated by State agents in pursuit of this prosecutorial drug control platform, the need for policy review and reform towards a less "bloody" alternative has been raised in a variety of forums.[20]

Recently, for instance, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Professor Agnes Callamard, speaking in a private capacity in a Manila conference, chastised "[b]adly thought out, ill-conceived drug policies" that "fail to address substantially drug dependency, drug-related criminality, and the drug trade."[21] In a veiled reference to the government's handling of its drug control policy, she said that this approach

> add[s] to, escalate[s] and/or compound[s] problems such as killings, extra-judicial or by criminal gangs, the breakdown of the rule of law, criminal activities by vigilantes, torture, maltreatment and sexual violence, prolonged pre-trial detention, mandatory sentencing and disproportionately long sentences for drug possession, detention in drug and rehabilitation centers without trial or a proper evaluation of drug dependency, and non-consensual experiment treatment.[22]

The common theme of this and other reformist advocacies, thus, centers on repudiating the legitimacy of the "War on Drugs" and highlighting the need for a public health-centered, human rights-based, and human development-oriented mechanism that puts into perspective the multiple predisposing, reinforcing, and enabling factors that create and aggravate this problem.

But with the public and political discourse largely, if not exclusively, focusing on extrajudicial killings,[23] a significant number of Filipinos had been *left out* of the debate: those arrested and jailed under this one-sided war.

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[20] *See HIGHLIGHTS: Drug Issues, Different Perspectives – A Policy Forum*, RAPPLER, May 7, 2017, *available at* https://www.rappler.com/nation/168924-free-legal-assistance-group-drug-issues-different-perspectives-policy-forum. *See also* Jose Luis Martin C. Gascon, *The Imperative of a Public Health Approach in Upholding Dignity and Humanity Amidst the Philippines' "War on Drugs"*, 90 PHIL. L.J. 753 (2017).

[21] Agnes S. Callamard, *A Call for Commitment to Drug Policy Reform in the Philippines Under a Human Rights Framework*, 90 PHIL. L.J. 761, 763 (2017).

[22] *Id.* at 764. (Citations omitted.)

[23] Nationwide Social Weather Station surveys, for example, have focused on the issue of extrajudicial killings. *See* Social Weather Stations, *June 23-26, 2017 Social Weather*

Since the "War on Drugs" began, more than 53,025 so-called "drug personalities" have been arrested in the first seven-month period alone.[24] For the first year of this campaign, former PDEA Director General Isidro Lapeña reported that there were 86,984 drug suspects who have been arrested. Touting this as an unprecedented "success," he added that in the previous administration, only 18,766 suspects were arrested in the same period.[25]

This public acceptance to massive detention and incarceration was only disrupted when more than a dozen detainees were found in a "secret jail" in one police precinct in Manila last April 2017.[26] The discovery resulted to calls for urgent investigation and, giving in to the subsequent public outrage, the dismissal of the police chief.[27] But after that, the human rights rhetoric and collective outrage have faded, if only to validate the injustice to those still languishing in jails all over the country.

This Note aims to find their voice and forward the debate on unconstitutional detention conditions not just in the "War on Drugs," but also for all applicable scenarios. In so doing, it aims to *reclaim* the intent behind the right to the presumption of innocence—a right which for so long has been read in a manner that overlooks the facet of pretrial detention and its conditions.

Survey: 90% say it is important that drug suspects be captured alive, Oct. 5, 2017, *available at* https://www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20171005100742; *and SWS: 78% of Filipinos fear becoming victims of EJK*, CNN PHIL., Dec. 19, 2016, *available at* http://cnnphilippines.com/news/2016/12/19/sws-78-percent-fear-EJK.html.

[24] From July 1, 2016 to January 31, 2017. *See* Bueza, *supra* note 3.

[25] Dharel Placido, *PDEA: Year 1 of Duterte drug war a success*, ABS-CBN NEWS, July 1, 2017, *available at* http://news.abs-cbn.com/news/06/30/17/pdea-year-1-of-duterte-drug-war-a-success.

[26] *See, e.g.*, Rey Galupo, *'Hidden cell' found in Manila Police District station*, PHIL. STAR, Apr. 28, 2017, *available at* http://www.philstar.com/metro/2017/04/28/1694550/hidden-cell-found-manila-police-district-station; *and* Raya Capulong, *Higit 10 tao, ikinulong sa 'secret jail' sa Manila Police District*, ABS-CBN NEWS, Apr. 29, 2017, *available at* http://news.abs-cbn.com/news/04/27/17/higit-10-tao-ikinulong-sa-secret-jail-sa-manila-police-district.

[27] *MPD station chief temporarily relieved over 'secret jail'*, ABS-CBN NEWS, Apr. 28, 2017, *available at* http://news.abs-cbn.com/news/04/28/17/mpd-station-chief-temporarily-relieved-over-secret-jail; *and* Third Anne Peralta-Malonzo, *'Secret jail' for drug suspects found; police station chief relieved*, SUNSTAR, Apr. 28, 2017, *available at* http://www.sunstar.com.ph/manila/local-news/2017/04/28/secret-jail-drug-suspects-found-police-station-chief-relieved-538999.

In particular, this Note argues that reading the right to the presumption of innocence[28] in Section 14(2), Article III of the 1987 Constitution, together with the reformulated Inhumane Treatment Clause[29] of the extant charter, militates against the lack of adequate practical differentiation to pretrial detainees, as to make their conditions punitive in nature. It echoes an obvious, but long-tolerated, violation of a fundamental human right directly tied to the sacrosanct guaranty of due process.

In Part I, this Note expounds on the rights of criminal offenders, especially as regards the right to the presumption of innocence in Philippine constitutional law. By analyzing its history and the debates in the 1986 Constitutional Commission that led to pertinent provisions on these rights, as well as their interpretation and application by the Supreme Court, this Note reveals unarticulated principles that should modify the contemporary treatment or construction of this and related prisoner's rights.

Part II compares this right with those under Anglo-American constitutional tradition and draws from foreign jurisprudence to define the right to the presumption of innocence as applied to pretrial detainees.

Part III scrutinizes the Philippine legal transplantation of American case law on the subject and proposes an analysis based on an updated review of jurisprudence.

In Part IV, this Note looks into developments in international human rights law to flesh out the country's international legal obligations based on pertinent treaties and general principles of international law. It covers and analyzes General Comments of various treaty-based bodies, Views of the United Nations Human Rights Committee (UN HRC), decisions by various international human rights tribunals, and "soft law" instruments to further contextualize the rights of pretrial detainees and prisoners.

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[28] For the historical, philosophical foundations, or contemporary debates surrounding this right, *see* RICHARD L. LIPPKE, TAMING THE PRESUMPTION OF INNOCENCE (2016); *and* ANDREW STRUMER, THE PRESUMPTION OF INNOCENCE: EVIDENTIAL AND HUMAN RIGHTS PERSPECTIVES (2010). For an account of the controversies involving the presumption of innocence, see the second issue of 8 CRIM. L. & PHILO. (2014).

[29] CONST. art. II, § 19(2). "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."

This Note concludes by giving an overview of how the country fares against these legal bases. It paints how detention conditions in the Philippines violate the right to the presumption of innocence.

Ultimately, by situating contemporary jurisprudence and policy against the grain of the Constitution with its "reclaimed" construction of fundamental human rights, this Note calls for the reexamination and rebuke of a status quo that continues to inflict harm, suffering, and injustice to who the late Nobel Peace Prize laureate Nelson Mandela called, the "lowest"[30] of the Filipino people.

I. REREADING THE RIGHT TO THE PRESUMPTION OF INNOCENCE

A. Contemporary Treatment and Construction

The interpretation and application of the right to the presumption of innocence in Section 14(2), Article III of the 1987 Constitution, have been limited to reading it as a form of procedural guarantee, rather than a source of substantive rights,[31] or as the normative foundation of the evidentiary standard in criminal prosecutions.[32]

In the 2012 case of *People v. Maraorao*,[33] for instance, the Supreme Court noted that this right is "fleshed out *by procedural rules* which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt."[34] Court decisions have

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[30] *See* United Nations Office on Drugs and Crime (UN ODC), *The Nelson Mandela Rules*, *available at* http://www.un.org/en/events/mandeladay/pdfs/16-00403_Mandela_rules_infographic.pdf (last visited Feb. 22, 2018). "It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but it's lowest ones."

[31] *See* People v. Wagas, G.R. No. 157943, 705 SCRA 17, 20, Sept. 4, 2013. "The Bill of Rights guarantees the right of an accused to be presumed innocent until the contrary is proved. In order to overcome the presumption of innocence, the Prosecution is required to adduce against him nothing less than proof beyond reasonable doubt."

[32] *See* People v. Andaya, G.R. No. 183700, 738 SCRA 105, 119, Oct. 13, 2014. "The criminal accusation against a person must be substantiated by proof beyond reasonable doubt. The Court should steadfastly safeguard his right to be presumed innocent. Although his innocence could be doubted, for his reputation in his community might not be lily-white or lustrous, he should not fear a conviction for any crime, least of all one as grave as drug pushing, unless the evidence against him was clear, competent and beyond reasonable doubt. Otherwise, the presumption of innocence in his favor would be rendered empty."

[33] G.R. No. 174369, 674 SCRA 151, June 20, 2012.

[34] *Id.* at 160. (Emphasis supplied.)

also underplayed this right, invoking it, almost parenthetically, as a "principle of justice,"[35] rather than as a paramount constitutional norm with its own distinct historical and philosophical significance.

The Supreme Court has been historically consistent in this treatment.[36] Recently, it said, through Justice Marvic M.V.F. Leonen:

> An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged.[37]

This narrow reading and understanding of the right to the presumption of innocence does not capture the intent of the 1987 Constitution when the same was re-articulated in Section 14(2), Article III to be "the core of [the country's] criminal justice system."[38] While a reproduction of earlier charters,[39] the right to the presumption of innocence under the 1987 Constitution carries with it several important qualifications.

First, it has become a cardinal constitutional norm that ties together the so-called "rights of the accused," a bundle of "guarantees on the part of the State"[40] activated by the prosecution of an individual. And, *second*, this

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[35] Alejandro v. Pepito, G.R. No. L-52090, 96 SCRA 322, 326, Feb. 21, 1980. (Citations omitted.)

[36] *Compare with* People v. Tapeda, G.R. No. 100354, 244 SCRA 339, May 26, 1995. "[T]he burden of proof still rests on the state. [...] He merely has to raise a reasonable doubt and whittle away from the case of the prosecution. The constitutional presumption of innocence demands no less."

[37] Macayan, Jr. v. People, G.R. No. 175842, 753 SCRA 445, 457, Mar. 18, 2015. (Emphasis supplied.) *See also* Boac v. People, G.R. No. 180597, 570 SCRA 533 (2008); *and* People v. Ganguso, G.R. No. 115430, 250 SCRA 268, Nov. 23, 1995.

[38] Lejano v. People [hereinafter "*Lejano*"], G.R. No. 176389, 638 SCRA 104, 295, Dec. 14, 2010 (Sereno, *J., concurring*).

[39] CONST. (1973), art. IV, § 19. "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved[.]"; CONST. (1935), art. III, § 17. "In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved[.]"

[40] *Lejano*, 638 SCRA at 296 (Sereno, *J., concurring*). "The presumption of innocence of the accused is at the center of our criminal justice system the cornerstone, as it were, of all the other rights accorded to the accused, including the right to due process of law. In pronouncing the presumption of innocence of the accused and their right to due process, the Constitution declares that the risk of letting the guilty walk free would be error on the side of justice. This outcome is infinitely better than imprisoning an innocent person."

right must be read in conjunction with novel guarantees in the Charter, in particular, those rights that have been modified from the 1973 Constitution or added therefrom as a result of the country's historical experience with human rights abuses of the Martial Law regime.[41]

A proper reading of this right provides for the *fullest protection* to the accused based on constitutional norm and reclaims this right's substantive force beyond the narrow confines of procedural or evidentiary application—an unfortunate result of the country's misplaced reliance on colonial jurisprudence.[42]

B. The Presumption as a Core Constitutional Guarantee

The earliest Supreme Court case mentioning the right to the presumption of innocence is the 1902 decision in *United States v. Asiao*,[43] where the Court recognized it in this manner: "[the accused] must be presumed to be innocent until their guilt is proven by satisfactory testimony, and even in case there is a reasonable doubt as to their innocence they are entitled to an acquittal."[44]

This holding would be recognized and repeated in later cases,[45] the most significant of which is the 1904 case of *United States v. Navarro*,[46] where

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[41] *See* Part I(C), *infra*. The country's experience with the Marcos dictatorship is an important historical and political undercurrent in the development of the 1987 Constitution. This was recently illustrated in the cases of *Ocampo v. Enriquez*, G.R. No. 225973, 807 SCRA 223, Nov. 8, 2016, on the Marcos burial in the Libingan ng Mga Bayani; *and Lagman v. Medialdea*, G.R No. 231658, July 4, 2017, on the declaration of a state of martial law in Mindanao.

[42] *See* Kenneth Pennington, *Innocent Until Proven Guilty: The Origins of a Legal Maxim*, 63 THE JURIST 106, 124 (2003), noting that the "focus in America has been entirely on [the right's] meaning for the presenting of evidence and for procedural rules in the courtroom" because its "broader meanings were lost during the [legal] transplant[ation]." The scope of this right has been widely studied and debated; *see* Antony Duff, *Who Must Presume Whom To Be Innocent of What?*, 42 NETHERLANDS J. L. PHILO. 170 (2013); Carl-Friedrich Stuckenberg, *Who is Presumed Innocent of What by Whom?*, 8 CRIM. L. & PHILO. 301 (2014); *and* Thomas Weigend, *Assuming that the Defendant is Not Guilty: The Presumption of Innocence in the German System of Criminal Justice*, 8 CRIM. L. & PHILO. 285 (2014).

[43] G.R. No. 310, 1 Phil. 304, July 30, 1902.

[44] *Id.* at 306. This guarantee is based on Section 57 of the General Orders No. 58, which provides that a defendant in a criminal case shall be presumed to be innocent until the contrary is proved.

[45] *See* United States v. Douglass, G.R. No. 994, 2 Phil. 461, Aug. 31, 1903; United States v. Singuimuto, G.R. No. 1298, 4 Phil. 506, May 1, 1905; United States v. De Los Angeles, G.R. No. 1276, 4 Phil. 597, July 26, 1905; United States v. Un Che Sat, G.R. No. 2425, Nov. 11, 1905; United States v. Villos, G.R. No. 2900, Oct. 23, 1906; *and* United States v. Floreindo, G.R. No. 3608, Aug. 7, 1907.

the Court interpreted the accused's right to the presumption of innocence as the basis of the prosecution's duty to prove conviction through guilt beyond reasonable doubt.

In *Navarro*, the Court first laid down the principle that "[i]t is the duty of the prosecution, in order to convict one of a crime, to produce evidence showing guilt beyond a reasonable doubt; and the accused can not be called upon either by express words or acts to assist in the production of such evidence; nor should his silence be taken as proof against him"—a principle that congeals together various sections[47] of the colonial charter to articulate the right to the presumption of innocence as it is understood today. From this conception, the accused may "rely on the presumption of innocence until the prosecution proves him guilty of every element of the crime with which he is charged."[48]

Similarly, in another early case, *United States v. Mina*,[49] the Court stated: "The presumption of innocence which throws its mantle about the accused at every stage of the proceeding imposes upon the prosecution the duty of proving beyond a reasonable doubt every essential allegation of the information."[50]

This reading would be retained in Philippine jurisprudence under the ambit of the 1935 Constitution,[51] 1973 Constitution,[52] and the present charter,[53] restated generally as follows:

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[46] Hereinafter "*Navarro*", G.R. No. 1272, 3 Phil. 143, Jan. 11, 1904.

[47] Gen. Order No. 58, §§ 57, 59.

[48] *Navarro*, 3 Phil. at 155.

[49] G.R. No. 2233, 6 Phil. 78, Apr. 10, 1906.

[50] *Id.* at 79.

[51] *See* People v. Pudol, G.R. No. L-45618, 66 Phil. 365, Oct. 18, 1938; *and* Talusan v. Ofiana, G.R. No. L-31028, 45 SCRA 467, June 29, 1972.

[52] People v. Macaraeg, G.R. No. L-32806, 53 SCRA 285, Oct. 23, 1973; People v. Molina, G.R. No. L-30191, 53 SCRA 495, Oct. 27, 1973; People v. Ogapay, G.R. No. L-28566, 66 SCRA 209, Aug. 21, 1975; People v. Clores, G.R. No. L-61408, 125 SCRA 67, Oct. 12, 1983; People v. Opida, G.R. No. L-46272, 142 SCRA 295, June 13, 1986; *and* Aguirre v. People, G.R. No. L-56013, 155 SCRA 337, Oct. 3, 1987.

[53] People v. Furugganan, G.R. No. 90191, 193 SCRA 471, Jan. 28, 1991; People v. Bormeo, G.R. No. 91734, 220 SCRA 557, Mar. 30, 1993; People v. Villagonzalo, G.R. No. 105388, 238 SCRA 215, Nov. 18, 1994; People v. Baulite, G.R. No. 137599, 366 SCRA 732, Oct. 8, 2001; People v. Cantalejo, G.R. No. 182790, 586 SCRA 777, Apr. 24, 2009; People v. Robelo, G.R. No. 184181, 686 SCRA 417, Nov. 26, 2012; People v. Pepino-Consulta, G.R. No. 191071, 704 SCRA 276, Aug. 28, 2013; People v. Wagas, G.R. No. 157943, 705 SCRA 17, Sept. 4, 2013; People v. Cruz [hereinafter "*Cruz*"], G.R. No. 194234, 726 SCRA 608, June 18, 2014; *and* Macayan, Jr. v. People, G.R. No. 175842, 753 SCRA 445, Mar. 18, 2015.

> [I]n all criminal Prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The Prosecution must further prove the participation of the accused in the commission of the offense. In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.[54]

But, despite, this formulaic construction, the Court has also highlighted the fundamental character of the right to the presumption of innocence in relation to the accused's bundle of constitutional rights.

Thus, in the 1973 case of *People v. Zamora*,[55] the Court noted that "the constellation of constitutional rights which the accused is vouchsafed, especially in presumption of innocence, is "sacred [and] not a mere excrescence."[56] Comparably, in the controversial case of *Lejano v. People*[57] involving the Vizconde Massacre, then-Justice Ma. Lourdes P.A. Sereno, through a separate concurring opinion, expounded on the right to the presumption of innocence as to claim it to be the "core of our criminal justice system."

In *Lejano*, the then-Justice noted:

> [A]t *the core of our criminal justice system* is the presumption of innocence of the accused until proven guilty. Lip service to this

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[54] *Cruz*, 726 SCRA at 626, *quoting* Patula v. People, G.R. No. 164457, 669 SCRA 135, Apr. 11, 2012.

[55] G.R. No. L-34090, 54 SCRA 47, Nov. 26, 1973.

[56] *Id.* at 53, *citing* Bermudez v. Castillo, Prec. Rec. 714-A, 64 Phil. 483, 493, July 26, 1937 (Laurel, *J.*, *concurring*).

[57] *Lejano*, 638 SCRA at, 295-96 (Sereno, *J.*, *concurring*).

> ideal is not enough, as our people are well acquainted with the painful reality that the rights of the accused to a fair trial were violated with impunity by an unchecked authority in our not so distant history. In response, the rights of the accused were enshrined in no less than the 1987 Constitution, particularly Article III thereof. They are further bolstered by the Rules of Court, related legislation, general rules on evidence, and rules on ethical conduct.
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> * * *
>
> The presumption of innocence of the accused is at *the center of our criminal justice system*—the cornerstone, as it were, of all the other rights accorded to the accused, including the right to due process of law. In pronouncing the presumption of innocence of the accused and their right to due process, the Constitution declares that the risk of letting the guilty walk free would be error on the side of justice. This outcome is infinitely better than imprisoning an innocent person.[58]

Despite its rhetorical reading, this construction brings to fore an important development in jurisprudence regarding the right to the presumption of innocence. It recognizes this right to be beyond what the Court has, as shown, historically understood to mean as a mere evidentiary test or standard in criminal prosecution. This is particularly important considering the centrality of the right to the presumption of innocence during the debates of the 1986 Constitutional Commission.

It is for this reason, for instance, that a proposed provision on enshrining command responsibility as a response to Martial Law's police and military brutality was struck down, because, as Commissioner and later Chief Justice Hilario G. Davide, Jr. said, it "will enthrone a presumption of guilt which, therefore, runs counter to the sacred right which is also enshrined in the Bill of Rights—the presumption of innocence."[59]

It is also for this reason that a provision meant to legitimize the powers of the Philippine Commission on Good Governance by constitutional fiat was rejected.[60] Likewise, it is for this "main reason"[61] that

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[58] *Id.* (Emphasis supplied.)

[59] I RECORD CONST. COMM'N 755 (July 18, 1986).

[60] V RECORD CONST. COMM'N 519 (Oct. 6, 1986) (Comm. Romulo). "[T]he issuance of orders of sequestration runs counter to the constitutional presumption of innocence. The law may provide that when certain facts are proven by *prima facie* evidence,

the present Constitution validated the equal protection of the life of the mother and the unborn from the moment of conception, thereby precluding abortion rights in this jurisdiction.[62]

The contemporary reading, however, of this right as a remedial component to criminal prosecution rather than a part of positive law is not an unexpected consequence of the country's experience with colonial rule. Early colonial case law interpreting this right and, which would be used as precedent by later cases, either relied on the statutory force of General Order No. 58[63] or, heavily, on Anglo-American jurisprudence, which itself muddles the extent by which the presumption can protect certain liberties.[64]

In *Navarro*, for instance, the colonial Supreme Court, through Justice John T. McDonough, looked into the constitutionality of the second paragraph of Article 483 of the old Penal Code, which "provides that one who illegally detains another *and fails to give information concerning his whereabouts*, or does not prove that he set him at liberty, shall be punished with *cadena temporal* in its maximum degree to life imprisonment."[65] The defendant challenged his conviction under said provision on the basis that it violated his right against self-incrimination.[66]

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guilt is presumed if it has a reasonable link between the facts established and the inference of guilt."

[61] IV RECORD CONST. COMM'N 597 (Sept. 12, 1986) (Comm. Villegas).

[62] *Id.* "The main reasons why we should say 'no' are: [...] a fetus, just like any human, must be presumed innocent unless proven guilty. It is quite obvious that the fetus has done no wrong. Its only wrong is to be an unwanted baby."

[63] *See* United States v. Asiao, G.R. No. 310, 1 Phil. 304, July 30, 1902; United States v. Andrade, G.R. No. 268, 1 Phil. 308, Aug. 5, 1902; United States v. Douglass, G.R. No. 994, 2 Phil. 461, Aug. 31, 1903; United States v. Lozada, G.R. No. 1320, 2 Phil. 496, Sept. 14, 1903; United States v. Aliño, G.R. No. 1657, 4 Phil. 181, Feb. 1, 1905; United States v. Dela Cruz, G.R. No. 2100, 5 Phil. 24, Sept. 15, 1905; United States v. Cabonce, G.R. No. 4513, 11 Phil. 169, Aug. 28, 1908; *and* United States v. Fernandez, G.R. No. 6067, 17 Phil. 573, Dec. 21, 1910.

[64] *See* Part II(C), *infra.*

[65] *Navarro*, 3 Phil. at 147. (Emphasis supplied.)

[66] *Id.* at 148. "The counsel for the defendants claims that such practice is illegal, since the passage by Congress of the act of July 1, 1902, relating too the Philippines, section 5 of which provides that '. . . no person shall be compelled in any criminal case to be a witness against himself.' Section 57 of General Orders, No. 58, provides that a defendant in a criminal case shall be presumed to be innocent until the contrary is proved; and section 59 provides that the burden of proof of guilt shall be upon the prosecution.

"In fact he contends that as these provisions are in conflict with those of article 483 they have the effect of repealing that section."

In partially siding with the defendant, the Supreme Court cited the 1884 case of *People v. Courtney* of the New York Court of Appeals,[67] which declared that "[a] law which, while permitting a person accused of a crime to be a witness in his own behalf, should at the same time authorize a presumption of guilt from his omission to testify, would be a law adjudging guilt without evidence, and [...], *would be a law reversing the presumption of innocence, and would violate the fundamental principles binding alike upon the legislature and the courts*."[68]

On the other hand, the dissenting opinion, penned by Justice Victorino Mapa, relied on the Spanish precursors of this right through commentaries of the old Penal Code and a comparison thereof with the *Partidas*:[69]

> Centuries ago the Code of the *Partidas*, which for a long time constituted an integral part of the laws of this Archipelago, solemnly recognized this principle [of legal presumption of innocence] by establishing in a number of its provisions that no person should be considered as guilty of a crime except upon proof of his guilt, and that proof to such degree as to exclude all doubt, proof "'as clear as light." "A criminal charge," says Law 12, title 14, third *partida*, "brought against anyone . . . must be proved openly by witnesses or by writing, or by the confession of the accused, and not upon suspicion alone. For it is but just that a charge brought against the person of an man, or against his reputation, should be proved and established by evidence *as clear as light*, evidence not leaving *room for any doubt*. Wherefore the ancient sages held and decided that it was more righteous to acquit a guilty man, as to whom the judge could not find clear and manifest evidence, than to convict an innocent man even though suspicion point his way."
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> Again, the provincial law for the application of the Penal Code which was in force here at the time of the publication of General Orders, No. 58, also required, in order to authorize the conviction of the defendant, that his guilt be established by some of the means of proof enumerated in article 52 of that law. In

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[67] 94 N.Y. 490 (NY 1884).

[68] *Id.* at 493-94. (Emphasis supplied.)

[69] *Las Siete Partidas del Rey Don Alfonso X El Sabio* (1807 ed.). For its application in early Philippine jurisprudence, *see* Benedicto v. dela Rama, G.R. No. L-1056, 3 Phil. 34, Dec. 8, 1903.

> default of this proof the presumption prevailed that the accused was innocent and the law required his acquittal.[70]

But while it is clear that early caselaw has propounded the right to the presumption of innocence as a remedial device, the same usage has noted its fundamentality in terms of the other rights of the accused.

Thus, *Navarro* and colonial jurisprudence has utilized the presumption of innocence to strengthen or reify the right to self-incrimination.[71] Comparing Section 14(2), Article III and its precursor provisions in earlier charters[72] with, for instance, the holding in the 1917 case of *United States v. Guendia*[73] shows a parallelism that points to the right to the presumption of innocence as *an overarching principle upon which all other rights of the accused are grounded.*

In *Guendia*, the Court said:

> Every person charged with the commission of a crime in the courts of these Islands is *entitled to the protection afforded by the presumption of innocence* until, and unless he is proved guilty in the course of a trial wherein he has a constitutional right to be

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[70] *Navarro*, 3 Phil. at 163-64 (Mapa, *J.*, *dissenting*). This standard is repeated in Law 26, title 1, seventh *partida*. "*La persona del hombre es la más noble cosa del mundo y por ello decimos que todo juez que hubiere de conocer de un tal pleito sobre el que pudiese venir muerte o pérdida de miembro, que debe poner guardia muy ahicadamente que las pruebas que recibiere sobre tal pleito, que sean leales y verdaderas y sin ninguna sospecha, y que los dichos y las palabras que diejeren afirmado,* sean ciertas y claras como la luz, *de manera que no pueda venir sobre ellas duda ninguna.*" (Emphasis supplied.)

[71] *See* United States v. De Guzman, G.R. No. 9144, 30 Phil. 416, Mar. 27, 1915. "This, doubtless, as a result of the emphasis placed by the new system on the presumption of innocence in favor of an accused person, on the requirement that the Government must establish its case beyond a reasonable doubt before the accused is called upon to def end himself, on the prohibitions against compelling an accused person to be a witness against himself, and against the drawing of inferences of guilt from the silence of the accused."

[72] CONST. (1973), art. IV, § 19. "In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face and to have compulsory process to secure the attendance of witnesses in his behalf." CONST. (1935), art. III, §17. "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified."

[73] G.R. No. 12462, 37 Phil. 337, Dec. 20, 1917.

> present at all stages of the proceedings; to be confronted with and to cross-examine the witnesses against him; and to call witnesses, and to appear and testify in his own behalf. And until final judgment is entered, he is entitled to all the further benefits and protection secured to accused persons by law, in both the trial and appellate courts. He may move for a new trial on the ground of newly discovered evidence or error in the proceedings. He may show cause why the prescribed penalty should not be imposed upon him in case of conviction. He may submit argument in support of contentions that a judgment of conviction should be modified or reversed. In a word, he is entitled to a full and fair hearing upon the charges preferred against him.[74]

Section 14(2), Article III echoes *Guendia*'s enumeration of the "protection[s] afforded by the presumption of innocence":

> In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable.[75]

Beyond this bundle of rights in Section 14(2), other rights such as the right to bail has for its basis the right to the presumption of innocence. According to the case of *De La Camara v. Enage*,[76] the Court, through Justice Enrique Fernando, stated:

> Before conviction, every person is bailable except if charged with capital offenses when the evidence of guilt is strong. *Such a right flows from the presumption of innocence in favor of every accused who should not be subjected to the loss of freedom as thereafter he would be entitled to acquittal, unless his guilt be proved beyond reasonable doubt.* Thereby a regime of liberty is honored in the observance and not in the breach. It is not beyond the realm of probability, however, that a person charged with a crime, especially so where his defense is weak, would just simply make himself scarce and thus

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[74] *Id.* at 349. (Emphasis supplied.)
[75] CONST. art. III, § 14(2).
[76] G.R. No. L-32951, 41 SCRA 1, Sept. 17, 1971.

> frustrate the hearing of his case. A bail is intended as a guarantee that such an intent would be thwarted.[77]

This proposition, thereby, validates the centrality of the right to the presumption of innocence as the core of the accused's "prosecutorial rights" so much so that the Court has stated that "the standard of due process is premised on the presumption of innocence of the accused."[78] This has important implications as regards the right's interaction with other rights of the accused, which the 1987 Constitution has introduced.

C. The Presumption as Cognate to New Rights

The 1987 Constitution established several rights of the accused that are not present in, or are different from their corresponding provision in, the 1973 Constitution. Notably, Section 21, Article IV of the earlier constitution[79] prohibiting the infliction of cruel, degrading or inhumane punishment was modified to state that "[t]he 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."[80]

This addition in the Bill of Rights, according to the Constitutional Commission's President and former Justice of the Supreme Court, Cecilia Muñoz-Palma, represented a radical development. She said:

> For the first time, there is an all-embracing expanded Bill of Rights which constitutes the *cornerstone* of the structure of government. Aside from the traditional guarantees of the rights to life, liberty, property, due process, equal protection under the law, the freedoms of speech, the press, assembly of travel and abode are strengthened and fortified. Thus, under its provisions, practices of the military described as hamletting, forced evacuations, relocation of civilians can no longer be undertaken without lawful orders from the courts. *To uphold the dignity of the*

[77] *Id.* at 6. (Emphasis supplied; citation omitted.)

[78] Gov't of Hong Kong Special Admin. Region v. Olalia, Jr., G.R. No. 153675, 521 SCRA 470, Apr. 19, 2007. *See also* People v. Galvez, G.R. No. 157221, 519 SCRA 521, Mar. 30, 2007 (Ynares-Santiago, *J.*, *dissenting*). "In closing, it is worth noting that the conclusions reached here are consistent with the constitutional right of the accused to be presumed innocent as well as the concomitant burden of the prosecution to prove the guilt of the accused beyond reasonable doubt—both of which are rooted on the fundamental principle of due process in the Constitution."

[79] "Excessive fines shall not be imposed, nor cruel or unusual punishment inflicted."

[80] CONST. art. III, § 19(2). (Emphasis supplied.)

> *human person, the use of torture, secret detention places, solitary confinement, incommunicado and other similar forms of detention, imposition of degrading psychological and bodily punishment and subhuman conditions of the penitentiaries and places of detention are condemned.*[81]

The impetus for Section 19(2) is the apparent lack of remedy for inmates and pretrial detainees from the conventional construction of the prohibition on cruel, degrading, or inhuman punishment.

As Commissioner Father Joaquin Bernas clarified, "[i]n [Section 19(1)], we are talking of a punishment that is contained in a statute which, if as described in the statute is considered to be degrading or inhuman punishment, invalidates the statute itself."[82] It is not, in other words, contemplated for "the problem [or] the situation where a person is convicted under a valid statute or is accused under a valid statute and, therefore, detained but is confined under degrading and inhuman circumstances."[83]

But because of the social realities that the Commissioners had been themselves witnesses to,[84] the Framers, through the initiative of Commissioner Regalado E. Maambong, saw fit to adopt Section 19(2):

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[81] V RECORD CONST. COMM'N 945 (Oct. 12, 1986) (Pres. Muñoz-Palma). (Emphasis supplied.)

[82] I RECORD CONST. COMM'N 778-79 (July 18, 1986) (Comm. Bernas).

[83] *Id.* at 779 (Comm. Bernas).

[84] *Id.* at 778 (Comm. Maambong). "As a lawyer, of course, I would like to call the attention of the Committee to certain things which they already know, that it has been established by courts of modern nations that the concept of cruel or unusual punishment is not limited to instances in which a particular inmate or pretrial prisoner is subjected to a punishment directed to him as an individual, such as corporal punishment or torture, confinement in isolation or in large numbers, in open barracks or uncompensated labor, among other forms. Confinement itself within a given institution may amount to cruel or unusual punishment prohibited by the Constitution where the confinement is characterized by conditions and practices that are so bad as to be shocking to the conscience of reasonably civilized people. It must be understood that the life, safety and health of human beings, to say nothing of their dignity, are at stake. Although inmates are not entitled to a country club existence, they should be treated in a fair manner. Certainly, they do not deserve degrading surroundings and unsanitary conditions.

* * *

"Unless facilities of the penitentiary are brought up to a level of constitutional tolerability, they should not be used for the confinement of prisoners at all. Courts in other jurisdictions have ordered the closure of substandard and outmoded penal institutions. All these require judicial orders in the absence of implementing laws to provide direct measures to correct violations of human rights or institute alterations in the operations and facilities of penal institutions."

> MR. MAAMBONG. Considering that our proposed amendment is very long, I will now propose an amendment by addition after the word "inflicted" on line 29 of Section 22, page 4, which would be very short. It only says: RELIEFS FOR VIOLATIONS OF THIS SECTION SHALL BE PROVIDED BY LAW. Let me explain that in the previous section, we already approved the sentence which says: "Penal and civil sanctions for violation of this section as well as . . . shall be provided by law." Perhaps, if the Committee will consider it as a parallel provision akin to Section 21 and insert the short amendment that I have just stated, that could satisfy us immensely.
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> FR. BERNAS. I think the proposal will not give the relief that the Gentleman wants because if there is a violation of this section, the relief that is needed really is an invalidation of the conviction or of the detention because the law under which he is being held is invalid. Perhaps, we could discuss this sometime in the future.
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> MR. MAAMBONG. Yes, so that I do not have to waste the time of the body and the Committee, considering that the Committee has understood our purpose, perhaps the Committee could help by giving us just one section to be inserted there or one sentence or one phrase which would satisfy the requirements that we have presented, considering that in the United States, circumstances of this nature which happen inside the jail are considered under the provisions and jurisprudence of the United States as cruel and unusual punishment. Probably, we can have a parallel provision along that line and I hope the Committee will help. Would that be all right?
>
> FR. BERNAS. Yes. [...][85]

Commissioner Maambong's proposed phraseology would be later on enshrined as Section 19(2)[86] after several rewordings. The original provision was worded in this manner: "The employment of corporal or psychological punishment against prisoners or *pre-trial detainees*, or the use of substandard or outmoded penal activities characterized by degrading surroundings, unsanitary or subhuman conditions should be dealt with in accordance with law."[87]

Subsequently, the word "degrading" was added at the proposal of Commissioner Regalado, noting that:

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[85] *Id.* at 779. (Emphasis supplied.)

[86] V RECORD CONST. COMM'N 721-23 (Oct. 9, 1986).

[87] II RECORD CONST. COMM'N 4 (July 19, 1986). (Emphasis supplied.)

> The punishment may not be physical but it could be degrading. Perhaps, the Members have seen the picture of that girl who was made to parade around the Manila International Airport with a placard slung on her neck, reading "I am a thief." That is a degrading form of punishment. It may not necessarily be corporal nor physical. That is why I ask for the inclusion of OR DEGRADING "punishment" on this line and employment should be ON ANY PRISONER. *It includes a convicted prisoner or a detention prisoner.*[88]

Another important change came from the proposal of Father Bernas who noted the distinction between convicted offenders and detainees:

> If we just say "'ANY PRISONER," that may connote that the person is either a prisoner convicted or a pretrial prisoner and, therefore, charged. I would rather have ANY PRISONER OR DETAINEE because a "prisoner" usually connotes someone who is convicted; a "detainee" could be on pretrial or not charged at all.
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> THE PRESIDENT. May we now have the recommendation of the Committee as to how this whole provision will read?
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> FR. BERNAS. So, the recommendation of the Committee would be: "The employment of PHYSICAL, psychological OR DEGRADING punishment against ANY PRISONER OR DETAINEE, or the use of INADEQUATE penal facilities UNDER subhuman conditions should be dealt with BY LAW.[89]

This provision, according to Father Bernas, settled the earlier issue as to the lack of remedies for inhumane penal conditions. Thus, Section 19(1) "has reference to the punishment that is prescribed by the law itself," while Section 19(2) "deal[s] with [...] the punishment or condition which is actually being practised [sic]" or "conditions of detainees who may be held under valid laws but are being treated in a manner that is subhuman or degrading."[90]

Given the intent that this right should be *per se* operational, what "shall be dealt with by law" means is not to render this right inexistent by

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[88] *Id.* at 23 (Comm. Regalado). (Emphasis supplied.)
[89] *Id.* at 24.
[90] *Id.* at 25 (Fr. Bernas).

the lack of legislation, but to allow Congress *to expand sanctions for this constitutional violation*, beyond what was then already available as a remedy.

This is clear from the extensive exchange of Commissioners Vicente Foz and Maambong:

> MR. FOZ. May I just ask one question of the proponent of the amendment. I get it that the law shall provide penalties for the conditions described in this amendment.
>
> MR. MAAMBONG. In line with the decisions of the Supreme Court on the interpretation of cruel and unusual punishments, there may be a law which punishes this violation precisely or there may not be a law. *What could happen is that the law could provide for some reliefs other than penalties.*
>
> In the United States, there are what is known as injunctive or declaratory reliefs and that is not exactly in the form of a penalty. But I am not saying that the legislature is prevented from passing a law which will inflict punishment for violations of this section.
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> MR. FOZ. In case the law passed by the legislature would impose sanctions, not so much in the case of the first part of the amendment but in the case of the second part with regard to substandard or outmoded legal penal facilities characterized by degrading surroundings and insanitary or subhuman conditions, on whom should such sanctions be applied?
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> MR. MAAMBONG. It would have to be applied on the administrators of that penal institution. In the United States, in my reading of the cases furnished to me by Commissioner Natividad, there are instances where the law or the courts themselves ordered the closure of a penal institution and, in extreme cases, in some states, they even set the prisoners free for violations of such a provision.
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> MR. FOZ. I am concerned about the features described as substandard or outmoded penal facilities characterized by degrading surroundings, because we know very well the conditions in our jails, particularly in the local jails. It is not really the fault of those in charge of the jails but these conditions are the result of lack of funds and the support by local government, in the first instance, and by the national government. Does the Gentleman think we should penalize the jailers for outmoded penal facilities?

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

MR. FOZ. Thank you. Madam President.

FR. BERNAS. Madam President, we are not telling the legislature what to do; we are just telling them that they should do something about it.[91]

This exchange reveals three valuable points. *Firstly*, the fuller and clearer understanding of what Section 19(2) contemplates can be had only through a review of reliefs available under American constitutional jurisprudence. Such examination of established usage under United States jurisprudence has been referred to in many novel aspects of the 1987 Philippine Constitution.[92]

Secondly, the denial of this right should result to the imposition of liabilities, insofar as public officials are concerned. They are not insulated from sanction despite their execution of generally sovereign functions.

Finally, this right creates a positive mandate that the State could not deflect by oft-repeated reasons of insufficient resources or incapacity, because Section 19(2) was *precisely* developed to countermand this argument.

II. THE RIGHT'S UNDERLYING LEGAL NARRATIVES

A. Parallelisms and Divergences With American Legal Tradition

Like many of the provisions under the Bill of Rights,[93] the right to the presumption of innocence originates from American constitutional

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[91] II RECORD CONST. COMM'N 25 (July 19, 1986). (Emphasis supplied.)

[92] *See, e.g.,* Allan Chester B. Nadate, Lee Edson P. Yarcia, April Joy B. Guiang & Ma. Lia Karen S. Magtibay, *The Public Welfare Dimension of the Competition Clauses: An Exposition and Application of the Proper Constitutional Treatment for Industries with Adverse Public Health Impacts*, 90 PHIL. L.J. 797, 807 (2017), discussing how the drafters of the 1987 Philippine Constitution relied on American jurisprudence to define prohibited "monopolies."

[93] Many of the rights enshrined in the Bill of Rights of the 1935, 1973, and 1987 constitutions have been applied and interpreted in the context of how American constitutional jurisprudence has viewed them. *See* Estrada v. Escritor, A.M. P-02-1651, 492 SCRA 1, June 22, 2006, *affirming* 408 SCRA 1, Aug. 4, 2003, interpreting the right to the free exercise of religion; *and* Chavez v. Gonzales, G.R. No. 168338, 545 SCRA 441, Feb. 15,

tradition as a result of the country's colonial experience.[94] The United States Constitution, however, does not explicitly provide for such a right and, reflecting this, neither the Philippine Organic Act of 1902[95] nor the Philippine Autonomy Act[96] contains an express declaration of this right. Only during the 1935 Philippine Constitution did this first appear.[97]

Despite this absence, American case law has long recognized the right to the presumption of innocence, as it is an integral part of common law.[98] This right was first federally enunciated in the 1895 case of *Coffin v. United States*,[99] upon which the United States Supreme Court predicated the standard of "beyond reasonable doubt" in criminal prosecutions. It said:

> The principle that there is a presumption of innocence in favor of the accused is the *undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law* [...] Concluding, then, that the presumption of innocence is evidence in favor of the accused, introduced by the law in his behalf, let us consider what is 'reasonable doubt.' It is, of necessity, the condition of mind produced by the proof resulting from the evidence in the cause. It is the result of the proof, not the proof itself, whereas the presumption of innocence is one of the instruments of proof, going to bring about the proof from which reasonable doubt arises; thus one is a cause, the other an effect.[100]

2008, interpreting the right to the freedom of expression. Decisions of various courts in the United States may have "persuasive effect" on domestic jurisprudence. *See* Phil. Health Care Providers, Inc. v. Comm. of Internal Revenue, G.R. No. 167330, 600 SCRA 413, Sept. 18, 2009; Javellana v. Exec. Sec'y, G.R. No. L-36142, 50 SCRA 30, Mar. 31, 1973; *and* Phil. Trust Co. v. Yatco, G.R. No. L-46255, 80 SCRA 246, Jan. 23, 1940.

[94] *See, generally*, PACIFICO A. AGABIN, MESTIZO: THE STORY OF THE PHILIPPINE LEGAL SYSTEM (2011).

[95] 32 Stat. 691, c. 1369, § 5.

[96] 39 Stat. 545, c. 416, § 3.

[97] CONST. (1935), art. III, § 1(17) "In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face and to have compulsory process to secure the attendance of witnesses in his behalf."

[98] For a concise discussion on the history of the right to the presumption of innocence, *see* François Quintard-Morénas, *The Presumption of Innocence in French and Anglo-American Legal Traditions*, 58 AM. J. COMP. L. 107 (2010).

[99] 156 U.S. 432 (1895).

[100] *Id.* at 453-54. (Emphasis supplied.)

Later cases would tie the presumption of innocence to the Due Process Clause. The 1970 case of *In re Winship*,[101] for instance, held that although the U.S. Constitution does not specify proof beyond reasonable doubt in criminal cases, such proof is required by due process. It noted that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."[102]

The important case of *Estelle v. Williams*[103] would also tie *Coffin* and *In re Winship* together to concretize the right to the presumption of innocence as part of the fair trial guarantees of the Due Process Clause. In *Estelle*, the Court held:

> The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment. The presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice. Long ago, this Court stated:
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> "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law."
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> To implement the presumption, courts must be alert to factors that may undermine the fairness of the factfinding process. In the administration of criminal justice, courts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt."[104]

This was repeated in *Taylor v. Kentucky*[105] in 1978, which held:

> While use of the particular phrase 'presumption of innocence"—or any other form of words—may not be constitutionally mandated, the Due Process Clause of the Fourteenth Amendment must be held to safeguard "against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt."[106]

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[101] 397 U.S. 358 (1970).
[102] *Id.* at 364.
[103] Hereinafter "*Estelle*", 425 U.S. 501 (1976).
[104] *Id.* at 503. (Citations omitted.)
[105] 436 U.S. 478 (1978).
[106] *Id.* at 485-86. (Citations omitted.)

From this catena of cases, it is clear that, much like the Philippine constitutional tradition, the right to the presumption of innocence has been fleshed out to mean the guarantee of proof beyond reasonable doubt in American constitutional law. The Filipino parallelism is, however, *incomplete.*[107]

While American constitutional law has expanded the application of the presumption of innocence (as a predicate to due process) beyond evidentiary burden, Filipino jurisprudence had not. Notably, in *Estelle*, the American Court held that due process is violated when the accused is compelled to stand trial before a jury while dressed in identifiable prison clothes, because it may impair the presumption of innocence in the mind of the jurors.[108]

In *Estelle*, the respondent was charged with a criminal offense and held in custody awaiting trial, as he could not post bond. When he learned that he was to go on trial, he asked an officer at the jail for his civilian clothes.[109] This request was denied and as a result, Williams appeared at trial in clothes that were "distinctly marked as prison issue."[110] No objections were, however, raised by the defense.[111]

A jury subsequently returned a verdict of guilty on the charge.[112] The Texas Court of Criminal Appeals and United Court District Court affirmed this conviction. But while the Supreme Court affirmed his conviction on the finding that he "was [not] compelled to stand trial in jail garb,"[113] or that his counsel raised no objection, it categorically stated the following principles:

> The potential effects of presenting an accused before the jury in prison attire need not, however, be measured in the abstract. Courts have, with few exceptions, determined that an accused should not be compelled to go to trial in prison or jail clothing because of the possible impairment of the presumption so basic to the adversary system. *This is a recognition that the constant reminder of the accused's condition implicit in such distinctive, identifiable*

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[107] *But, see* Part III.
[108] 425 U.S. 501, 504-05 (1976).
[109] *Id.* at 502.
[110] *Id.*
[111] *Id.* at 509-10.
[112] *Id.* at 502.
[113] *Id.* at 512.

> *attire may affect a juror's judgment.* The defendant's clothing is so likely to be a continuing influence throughout the trial that, not unlike placing a jury in the custody of deputy sheriffs who were also witnesses for the prosecution, an unacceptable risk is presented of impermissible factors coming into play.[114]

This, according to the Court, is necessary to reify and "[t]o implement the presumption [of innocence]"[115] and this mandates the courts to "do the best they can to evaluate the likely effects of a particular procedure, based on reason, principle, and common human experience."[116]

This rationale is a significant departure from the concept of presumption of innocence, which was first laid down in *Coffin*, as it incorporates the extraneous, but necessarily implied, element of prejudicial effect.

From this idea, *Holbrook v. Flynn*[117] unambiguously laid down the test that practices that are "inherently prejudicial" to the presumption of innocence could not be sanctioned by the Constitution.[118] This is borne out of prior cases like *Illinois v. Allen*,[119] where the Court took notice of possible "significant effect[s] on the jury's feelings about the defendant."[120]

Applying this test, *Deck v. Missouri*,[121] more recently held that "given their prejudicial effect, due process does not permit the use of visible restraints if the trial court has not taken account of the circumstances of the particular case."[122] Echoing *Allen* and *Estelle*, *Deck* pronounced that "[t]he law [...] permits a State to shackle a criminal defendant only in the presence of a special need."[123]

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[114] *Id.* at 504-05. (Citations omitted; emphasis supplied.)

[115] *Id.* at 503.

[116] *Id.* at 504.

[117] 475 U.S. 560 (1986).

[118] *Id.* at 572. "All a federal court may do in such a situation is look at the scene presented to jurors and determine whether what they saw was so inherently prejudicial as to pose an unacceptable threat to defendant's right to a fair trial; if the challenged practice is not found inherently prejudicial, and if the defendant fails to show actual prejudice, the inquiry is over."

[119] 397 U.S. 337 (1970).

[120] *Id.* at 344.

[121] 544 U.S. 622 (2005).

[122] *Id.*

[123] *Id.*

Just last year, in *United States v. Sanchez-Gomez*,[124]the U.S. Court of Appeals for the Ninth Circuit held as unconstitutional a policy requiring most pretrial detainees to appear in trial courts wearing shackles. It built on *Deck*[125] to hold as "fundamental" the "right to be free from unwarranted restraints."[126] It added:

> This right to be free from unwarranted shackles no matter the proceeding respects our foundational principle that defendants are innocent until proven guilty. The principle isn't limited to juries or trial proceedings. It includes the perception of any person who may walk into a public courtroom, as well as those of the jury, the judge and court personnel. *A presumptively innocent defendant has the right to be treated with respect and dignity in a public courtroom, not like a bear on a chain.*[127]

The court's "bold constitutional pronouncement,"[128] which used substantive due process arguments to expand the rights of pretrial detainees, is expected to "contribute[] meaningfully to broader discourse surrounding criminal justice reform."[129] *Sanchez-Gomez* follows a jurisprudential trend that addresses important concerns in American criminal justice reform,[130] especially as regards contentious areas in prisoner's rights and treatment.[131]

B. "Punishment" and the Presumption of Innocence of Pretrial Detainees

Another very significant difference between the American and Filipino constitutional legal traditions as regards the right to the

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124 Hereinafter "*Sanchez-Gomez*", 859 F.3d 649 (9th Cir. 2017) (en banc), *cert. granted in part*, 138 S. Ct. 543 (2017). *See Id.* slip op., at 33. "Thus, we hold that if the government seeks to shackle a defendant, it must first justify the infringement with specific security needs as to that particular defendant. Courts must decide whether the stated need for security outweighs the infringement on a defendant's right. This decision cannot be deferred to security providers or presumptively answered by routine policies. All of these requirements apply regardless of a jury's presence or whether it's a pretrial, trial or sentencing proceeding. Criminal defendants, like any other party appearing in court, are entitled to enter the courtroom with their heads held high."

125 *Id.* slip op., at 21-22.

126 *Id.* slip op., at 33.

127 *Id.* slip op., at 24. (Citation omitted; emphasis supplied.)

128 *Recent Cases*, 131 HARV. L. REV. 1163, 1170 (2018).

129 *Id.* at 1169.

130 *See* Part II(D), *infra.*

131 *See, e.g.,* SHIMA BARADARAN BAUGHMAN, THE BAIL BOOK: A COMPREHENSIVE LOOK AT BAIL IN AMERICA'S CRIMINAL JUSTICE SYSTEM (2017); *and* Shima Baradaran, *Restoring the Presumption of Innocence*, 72 OHIO ST. L.J. 723 (2011).

presumption of innocence is the former's expansion in treatments and conditions arising out of pretrial detention. While this has been amply articulated in the former as an expansion of the "implement[ation] of the presumption," in the words of *Estelle*, domestic jurisprudence has largely failed to appreciate this principle.

According to *Estelle*, citing *Griffin v. Illinois*,[132] this articulation is grounded on the rationale that "[t]o impose the condition on one category of defendants, over objection, would be repugnant to the concept of equal justice embodied in the Fourteenth Amendment."[133]

Thus, in *McGinnis v. Royster*,[134] the U.S. Supreme Court opined that the presumption of innocence justified shielding a person awaiting trial from potentially oppressive governmental actions.[135] In particular, it opined that it would be unjustified for a "State to undertake in the pretrial detention period programs to rehabilitate a man *still clothed with a presumption of innocence*."[136] In *Stack v. Boyle*,[137] the U.S. Court propounded that the right to bail of pretrial detainees is part and parcel of the presumption of innocence and where it has not been fixed by proper methods, this presumption is violated.[138] Subjecting a person to hard labor as punishment has also been held as illegal if it was not preceded by judicial trial to establish guilt.[139]

In his dissent in the seminal penological case of *Bell v. Wolfish*,[140] Justice John Paul Stevens expressed that:

> These cases demonstrate that the presumption [...] of innocence that is indulged until evidence has convinced a jury to the contrary beyond a reasonable doubt colors all of the government's actions toward persons not yet convicted. In sum, although there may be some question as to what it means to treat a person as if he were guilty, *there can be no dispute that the government may never do so at any point in advance of conviction.*[141]

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[132] 351 U.S. 12 (1956).

[133] *Estelle*, 425 U.S. at 505-06.

[134] 410 U.S. 263 (1973).

[135] *See* Bell v. Wolfish [hereinafter, "*Wolfish*"], 441 U.S. 520, 582 n.11 (1979) (Stevens, *J.*, *dissenting*).

[136] *Id.* at 273. (Emphasis supplied.)

[137] 342 U.S. 1 (1951).

[138] *Id.* at 4. "Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."

[139] 163 U.S. 228, 237 (1896).

[140] 441 U.S. 520 (1979).

[141] *Id.* (Citations omitted; emphasis supplied.)

Such declarations as regards pretrial detention conditions are more clearly set by decisions of state and federal courts, bearing in mind the fundamental and unambiguous distinctions between pretrial detainees and convicted individuals, as set out in *Estelle* and *Griffin*.

In *Brenneman v. Madigan*,[142] for example, the United States District Court for the Northern District of California observed that there is "no justification for treating pre-trial detainees as convicted prisoners."[143] It added:

> Although the constitutional limitations on the treatment of pre-trial detainees, as opposed to convicted prisoners, are not as well established as they might be, it should at least be settled that more is involved than a distinction without a difference. Both classes are incarcerated, *yet the purpose of incarceration is fundamentally different*: Imprisonment prior to trial is sometimes justified to insure the appearance of the accused at trial; imprisonment after trial is imposed to accomplish the objectives of the criminal law.[144]

In *Anderson v. Nosser*,[145] the Court of Appeals for the Fifth Circuit elaborated:

> Incarceration after conviction is imposed to punish, to deter, and to rehabilitate the convict. Some freedom to accomplish these ends must of necessity be afforded prison personnel. Conversely, where incarceration is imposed prior to conviction, deterrence, punishment, and retribution are not legitimate functions of the incarcerating officials. Their role is but a temporary holding operation, and their necessary freedom of action is concomitantly diminished. [...] *Punitive measures in such a context are out of harmony with the presumption of innocence.*[146]

In other words, the "*only* legitimate purpose of incarcerating those who are accused of crime is to guarantee their presence at trial"[147] as "[t]he constitutional authority for the State [...] furnishes *no justification* for any

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[142] Hereinafter "*Brenneman*", 343 F.Supp. 128 (N.D. Ca. 1972).
[143] *Id.* at 136.
[144] *Id.* at 135-36.
[145] 438 F.2d 183 (5th Cir. 1971).
[146] *Id.* at 190. (Citations omitted; emphasis supplied.)
[147] *Brenneman*, 343 F.Supp. at 136.

additional inequality of treatment beyond that which is inherent in the confinement itself."[148] As *Seale v. Manson*[149] provided:

> [A]ny limitation on the fundamental rights of unconvicted persons must find justification in the legitimate advancement of that interest. Unconvicted detainees may be treated as convicts *only to the extent the security, internal order, health, and discipline of the prison demand*; considerations of rehabilitation, deterrence, or punishment are not material.[150]

Applying this operationalization of the presumption of innocence, courts have ruled against detention conditions that result to punishment, or those that fail to appreciate distinctions between convicted and non-convicted individuals, such as in *Jones v. Wittenberg*,[151] *Hamilton v. Love*,[152] *Davis v. Lindsay*,[153] and *Tyler v. Ciccone*.[154]

In *Tyler*, for instance, the U.S. District Court, in strong and forceful language, held:

> While the Constitution authorizes forfeiture of some rights of convicts, *it does not authorize treatment of an unconvicted person (who is necessarily presumed innocent of pending and untried criminal charges) as a convict*. Unconvicted persons charged with crime are entitled to the rights of free speech and to do business accorded to all

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148 Butler v. Crumlish, 229 F.Supp. 565, 567 (N.D. Pa. 1964). (Emphasis supplied.)

149 326 F.Supp. 1375 (D. Conn. 1971).

150 *Id.* at 1379. (Citations omitted; emphasis supplied.)

151 323 F.Supp. 93 (N.D. Ohio 1971). *See Id.* at 100 "Obviously, no person may be punished except by due process of law. Here, the evidence shows that at best, those who are in the Lucas County Jail pending trial of charges against them suffer the same treatment as those who are confined there for punishment. Hence, even if that punishment were not cruel and unusual, it would still be proscribed for them, since it is imposed as a matter of form and routine, and without any semblance of due process or fair treatment."

152 328 F.Supp. 1182 (E.D. Ark. 1971). *See Id.* at 1191 "Having been convicted of no crime, the detainees [in Pulaski County Jail] should not have to suffer *any* 'punishment', as such, whether 'cruel and unusual' or not."

153 321 F.Supp. 1134 (S.D. N.Y. 1970). *See Id.* at 1139 "Without doubt prison officials are authorized to isolate persons in their custody when substantial evidence establishes a threat to the safety of the prisoner, other inmates, or institution personnel, but no such showing has been made here. Without such a demonstration or other rational justification, there is no basis under the equal protection clause for discriminatory treatment of the plaintiff. The lack of such a demonstration is sufficient by itself to require that plaintiff be housed with the general inmate population and accorded the privileges enjoyed by them; but this conclusion is reinforced by the fact of plaintiff's status as a pretrial detainee whom the law presumes innocent."

154 299 F.Supp. 684 (W.D. Mo. 1969).

> unconvicted citizens. The challenged regulation, in its requirement that permission be obtained before allowing preparation of manuscripts, in its restriction of the length of such manuscripts, in its provision for confiscation and censorship of manuscripts, in its restriction and obstruction of circulation of such manuscripts to publishing houses or other outside sources, and in its condemnation generally of negotiation for publication, deprives the unconvicted inmate of fundamental constitutional rights and cannot therefore be enforced against him.[155]

C. *Wolfish* and the Bifurcation of the Presumption of Innocence

The manifold ways with which state and federal courts, especially the Supreme Court,[156] would read the presumption of innocence as to invalidate particular penal conditions—or automatic sanctions[157]—would be streamlined in the 1979 "watershed"[158] case of *Wolfish*.

Wolfish involved a class action brought by respondent inmates in a Federal District Court to challenge the constitutionality of numerous conditions of confinement and practices of a federally operated short-term custodial facility designed *primarily* to house pretrial detainees.[159]

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[155] *Id.* at 687-88. (Citations omitted; emphasis supplied.)

[156] *See* Hutto v. Finney, 437 U.S. 678 (1978), on whether conditions in an Arkansas prison system constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments; Jones v. North Carolina Prisoners' Labor Union, 433 U.S. 119 (1977), on whether the First Amendment and equal protection rights were violated by regulations promulgated by the North Carolina Department of Correction that prohibited prisoners from soliciting other inmates to join the Union and barred Union meetings and bulk mailings concerning the Union from outside sources; Bounds v. Smith, 430 U.S. 817 (1977), on whether States must protect the right of prisoners to access to the courts by providing them with law libraries or alternative sources of legal knowledge); Meachum v. Fano, 427 U.S. 215 (1976, on whether the Due Process Clause of the Fourteenth Amendment entitles a duly convicted state prisoner to a factfinding hearing when he is transferred to a prison the conditions of which are substantially less favorable to him); Wolff v. McDonnell, 418 U.S. 539 (1974), on whether certain disciplinary proceedings at the prison violated due process; Pell v. Procunier, 417 U. S. 817 (1974), on whether non-permission of press and other media interviews with specific individual inmates infringed the inmates' First and Fourteenth Amendment freedoms; *and* Procunier v. Martinez, 416 U.S. 396 (1974), on whether prisoner mail censorship regulations are unconstitutional under the First Amendment.

[157] *See* Kennedy v. Mendoza-Martinez [hereinafter "*Mendoza-Martinez*"], 372 U.S. 144 (1963).

[158] Frances Coles, *The Impact of* Bell v. Wolfish *Upon Prisoner's Rights*, 10 J. CRIME & JUSTICE 47, 50 (2010).

[159] *Wolfish*, 441 U.S. at 520.

These conditions included, *inter alia,* the practice of housing for sleeping purposes two inmates in individual rooms originally intended for single occupancy; enforcement of the so-called "publisher only" rule prohibiting inmates from receiving hard-cover books that are not mailed directly from publishers, book clubs, or bookstores; the prohibition against inmates' receipt of packages of food and personal items from outside the institution; the practice of body cavity searches of inmates following contact visits with persons from outside the institution; and the requirement that pretrial detainees remain outside their rooms during routine inspections by correctional officials.[160]

Seemingly departing from the more precautionary or salutary holdings in *Stack* and *McGinnis*,[161] the Court found no constitutional violation[162] and held, instead, that the presumption of innocence "has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun."[163] Despite this ruling, however, the Court announced the following doctrine still utilized today in the determination of the constitutionality of pretrial detention policies:[164]

> 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

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[160] *Id.*

[161] *Compare with, Id.* at 582 (Stevens, *J., dissenting*).

[162] *Id.* at 532. "The fundamental disagreement lay with the Court of Appeals' use of a 'compelling necessity' standard based on the presumption of innocence. That standard provides for detainees' substantive right to be free from conditions of confinement that are not justified by compelling necessity."

[163] *Id.* at 533. *But see* Antony Duff, *Pre-Trial Detention and the Presumption of Innocence, in* PREVENTION AND THE LIMITS OF THE CRIMINAL LAW 115, 120 (Andrew Ashworth, Lucia Zedner & Patrick Tomlin, eds. 2013). "Any system of pre-trial detention thus faces the challenge that it seems to be inconsistent with the [presumption of innocence], or with the values expressed in the [presumption of innocence]: inconsistent with the kind of respect, the presumption of law-abidingness, that we should expect from the state."

[164] *See* Turner v. Safley, 482 U.S. 78 (1987); Florence v. Board of Chosen Freeholders of County of Burlington, 132 S.Ct. 1510 (2012); *and* Kingsley v. Hendrickson, 15 S.Ct. 2466 (2015). *See also* Ira P. Robbins, *The Cry of* Wolfish *in the Federal Courts: The Future of Federal Judicial Intervention in Prison Administration*, 71 J. CRIM. L. & CRIMINOL. 211 (1980).

> punishment that may not constitutionally be inflicted upon detainees *qua* detainees.[165]

While criticized as a conservative approach that prejudices detainees' rights,[166] *Wolfish* itself does not depart from earlier treatments of the presumption of innocence, such as *Coffin* and *In re Winship*, which have ingrained this right as a paramount command of due process. In much the same way that *Taylor*, *Holbrook*, *Stack*, or *McGinnis* relied on this presumption to preserve due process guarantees, the standard set in *Wolfish* merely operationalized the right to due process for pretrial detainees. This is clear from *Wolfish*'s own treatment of the presumption of innocence:

> [W]hat is at issue when an aspect of pretrial detention that is not alleged to violate any express guarantee of the Constitution is challenged *is the detainee's right to be free from punishment and his understandable desire to be as comfortable as possible during his confinement*, both of which may conceivably coalesce at some point.
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> * * *
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> 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, we think that the proper inquiry is whether those conditions amount to punishment of the detainee. *For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.*
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> *A person lawfully committed to pretrial detention has not been adjudged guilty of any crime.* He has had only a "judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty following arrest." And, if he is detained for a suspected violation of a federal law, he also has had a bail hearing. Under such circumstances, the Government concededly may detain him to ensure his presence at trial, and may subject him to the restrictions and conditions of the detention facility *so long as those conditions and restrictions do not amount to punishment*, or otherwise violate the Constitution.[167]

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[165] *Wolfish*, 441 U.S. at 520-21. (Emphasis supplied.)

[166] *See* Robbins, *supra* note 167; Catherine T. Struve, *The Conditions of Pretrial Detention*, 161 U. PA. L. REV. 1009 (2013); *and* Aaron Johnson, *Crying* Wolfish*: The Upcoming Challenge to Blanket Strip-Search Policies in* Florence v. Board of Chosen Freeholders, 7 DUKE J. CONST. L. & PUB. POL'Y SIDEBAR 41 (2011).

[167] *Wolfish*, 441 U.S. at 535-37. (Citations omitted; emphasis supplied.)

What *Wolfish* did, in effect, was not to dismiss the presumption of innocence as a basis and safeguard against punitive pretrial conditions,[168] but rather to affirm the incorporation of this proscription as part of due process guarantees. And since *Coffin* and *In re Winship* have pronounced the right to the presumption of innocence as also falling within the Due Process Clause, this means that the U.S. Supreme Court treats the presumption as distinct and separate from the prohibition on pretrial "punishment." Stated differently, despite the Court making a *volte-face* in this line of jurisprudence, it eventually only re-established the original standard or idea in *Coffin* and its analogues.

This confusion may be explained by the bifurcation of the right of the presumption of innocence, which the legal writer James Bradley Thayer first posited after the promulgation of *Coffin*. He said in 1897:

> Obviously, it is in a very compact form; and it seems plain that such a statement adds something to the mere presumption of innocence, [F]or that, pure and simple, says nothing as to the quantity of evidence or strength of persuasion needed to convict. But as it is stated [...], the rule includes two things: *First, the presumption; and second, a supplementary proposition as to the weight of evidence which is required to overcome it*[.]"[169]

On this theory, all the developments or "expansions" on the right to the presumption of innocence go into the second "supplementary proposition." The "presumption" itself, however, is retained and this first element is, in itself, what due process guarantees. As emphatically stated by Justice Stevens in his dissent, "the source of this fundamental freedom [the right to be free of punishment] is the word 'liberty' itself."[170]

D. Recasting the "Reasonable Relationship Test"

In 1974, the U.S. Supreme Court pronounced in *Wolff v. McDonnell*[171] that: "[T]hough his rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is *not wholly stripped* of constitutional

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[168] *Compare with Id.* at 580-81 (Stevens, *J., dissenting*).

[169] James Bradley Thayer, *The Presumption of Innocence in Criminal Cases*, 6 YALE L.J. 185, 194-95 (1897). (Emphasis supplied.)

[170] *Wolfish*, 441 U.S. at 580 (Stevens, *J., dissenting*). *But see* Wolff v. McDonnell [hereinafter "*McDonnell*"], 418 U.S. 539, 557-58 (1974). "We also reject the assertion of the State that whatever may be true of the Due Process Clause in general or of other rights protected by that Clause against state infringement, the interest of prisoners in disciplinary procedures is not included in that 'liberty' protected by the Fourteenth Amendment."

[171] 418 U.S. 539 (1974).

protections when he is imprisoned for crime."[172] The Court added, "*There is no iron curtain drawn between the Constitution and the prisons of this country*,"[173] and proceeded to outline several pertinent prisoners' rights.[174]

According to *Hudson v. Palmer*,[175] this "continuing guarantee of these substantial rights to prison inmates is testimony to a belief that the way a society treats those who have transgressed against it *is evidence of the essential character of that society*."[176] Prisoners, the Court said, have been held to enjoy substantial religious freedom under the First and Fourteenth Amendments.[177] They also retain the right of access to the courts.[178] They are protected under the Equal Protection Clause of the Fourteenth Amendment from invidious discrimination based on race.[179] Prisoners may also claim the protections of the Due Process Clause as they may not be deprived of life, liberty, or property without due process of law.[180]

Prison disciplinary proceedings, however, do not obviously implicate "the full panoply of rights"[181] that an individual holds under the Constitution, and the Due Process Clause "in *no way implies* that these rights are not subject to restrictions imposed by the nature of the regime to which they have been lawfully committed."[182] In the words of the U.S. Court in *Price v. Johnston*:[183] "Lawful incarceration brings about *the necessary withdrawal or limitation* of many privileges and rights, a retraction justified by the considerations underlying our penal system."[184]

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[172] *Id.* at 555-56. (Emphasis supplied.)

[173] *Id.* (Emphasis supplied.)

[174] *Id.* at 556.

[175] Hereinafter "*Hudson*", 468 U.S. 517 (1984).

[176] *Id.* at 523-24. (Emphasis supplied.)

[177] Cruz v. Beto, 405 U.S. 319 (1972); Cooper v. Pate, 378 U.S. 546 (1964). For a more recent case, *see* Holt v. Hobbs, 135 U.S. 853 (2015), holding that an Arkansas prison policy that prohibited a Muslim prisoner from growing a short beard in accordance with his religious beliefs violated the law.

[178] Younger v. Gilmore, 404 U.S. 15 (1971), *affirming* Gilmore v. Lynch, 319 F.Supp. 105 (ND Cal.1970); Johnson v. Avery, 393 U.S. 483 (1969); *and Ex parte* Hull, 312 U.S. 546 (1941).

[179] Lee v. Washington, 390 U. S. 333 (1968).

[180] *See* Haines v. Kerner, 404 U. S. 519 (1972); Wilwording v. Swenson, 404 U.S. 249 (1971); *and* Screws v. United States, 325 U. S. 91 (1945).

[181] *McDonnell*, 418 U.S. at 556.

[182] *Id., citing* CSC v. Letter Carriers, 413 U.S. 548 (1973); Broadrick v. Oklahoma, 413 U.S. 601 (1973); *and* Parker v. Levy, 417 U.S. 733 (1974). (Emphasis supplied.)

[183] 334 U.S. 266 (1948).

[184] *Id.* at 285. (Emphasis supplied.)

The general rule, thus, stands that "there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application."[185] This principle "*applies equally* to pretrial detainees and convicted prisoners."[186]

This and other later pronouncements as regards the rights of prisoners beg the question of what rights in *McDonnell's* "panoply of rights" are retained by pretrial detainees. As *Wolfish* has clarified, they must be treated differently as regards meting punishment because "under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt."[187] Otherwise, such treatment would not be consistent with the legitimate purpose of pretrial detention,[188] and, instead, would only, in the words of *Rochin v. California*,[189] "afford brutality the cloak of law."[190]

But what precisely constitutes such treatment or condition that is tantamount to unconstitutional punishment of pretrial detainees has been left predominantly amorphous. In his dissent in *Wolfish*, for instance, Justice Thurgood Marshall reasoned that "in terms of the nature of the imposition and the impact on detainees, pretrial incarceration, although necessary to secure defendants' presence at trial, *is essentially indistinguishable from punishment*"[191] because, for all intents and purposes, the detainee is involuntarily deprived of the freedom "to be with his family and friends and to form the other enduring attachments of normal life."[192]

For "if the effect of incarceration itself is inevitably punitive," he wrote, "so too must be the *cumulative impact of those restraints* incident to that restraint."[193] What Justice Marshall, in the alternative proposed, is a "test that balances the deprivations involved against the state interests assertedly served."[194] He added:

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[185] *McDonnell*, 418 U.S. at 556.

[186] *Wolfish*, 441 U.S. at 546. (Emphasis supplied.)

[187] *Id.* at 535. *See also* Graham v. Connor, 490 U.S. 386, 395 n. 10 (1989). "[T]he Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment."; *and* Youngberg v. Romeo, 457 U.S. 307, 320 (1982). "We agreed that the detainees, not yet convicted of the crime charged, could not be punished. But we upheld those restrictions on liberty that were reasonably related to legitimate government objectives and not tantamount to punishment."

[188] *Wolfish*, 441 U.S. at 536. Such as detaining him "to ensure his presence at trial."

[189] 342 U.S. 165 (1952).

[190] *Id.* at 173.

[191] *Wolfish*, 441 U.S. at 569 (Marshall, *J., dissenting*).

[192] *Id., quoting* Morrisey v. Brewer, 408 U.S. 471, 482 (1972).

[193] *Id.* (Emphasis supplied.)

[194] *Id.* at 569. (Citation omitted.)

> *When assessing the restrictions on detainees, we must consider the cumulative impact of restraints imposed during confinement.* Incarceration, of itself, clearly represents a profound infringement of liberty, and each additional imposition increases the severity of that initial deprivation. Since any restraint thus has a serious effect on detainees, I believe the Government must bear a more rigorous burden of justification than the rational basis standard mandates. At a minimum, I would require a showing that a restriction is substantially necessary to jail administration. Where the imposition is of particular gravity, that is, where it implicates interests of fundamental importance or inflicts significant harms, the Government should demonstrate that the restriction serves a compelling necessity of jail administration.[195]

This argument seeks to directly address what *Wolfish* set as the test for the determination of punishment—what *Turner*[196] and commentators[197] refer to as the "reasonable relationship test." This standard, borrowed from *Mendoza-Martinez*,[198] looks into:

> Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of *scienter*, whether its operation will promote the traditional aims of punishment — retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned are all relevant to the inquiry, and may often point in differing directions.[199]

Under *Wolfish*, the *first* determination, therefore, is to determine whether the intent to punish exists. *Secondly*, where there is no showing of an

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[195] *Id.* at 570. (Citations omitted; emphasis supplied.)

[196] 482 U.S. 97 (1987).

[197] *See* Struve, *supra* note 169; *and* Johnson, *supra* note 169.

[198] 327 U.S. 144 (1963).

[199] *Wolfish*, 441 U.S. at 537-38, *quoting Mendoza-Martinez*, 372 U.S. at 168-69. *See also Wolfish*, 441 U.S. at 538. "The factors identified in *Mendoza-Martinez* provide useful guideposts in determining whether particular restrictions and conditions accompanying pretrial detention amount to punishment in the constitutional sense of that word. A court must decide whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose."

express intent to punish on the part of detention facility officials,"[200] what needs to be determined next is "whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it]."[201] Thus, "if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.'"[202]

This inordinate deference to "a legitimate government objective" is precisely Justice Marshall's subject of critique in his dissent in the same case and in the later case of *United States v. Salerno*,[203] which involved the constitutionality of law that required courts to detain trial arrestees upon government showing of community security needs.[204] Much like how he called the policies in *Wolfish* as "grievous offenses against personal dignity and common decency,"[205] in *Salerno*, he called the statute "an abhorrent limitation of the presumption of innocence."[206]

It would only be more than three decades after when this rule would be disrupted. Specifically, in the 2015 case of *Kingsley*, the U.S. Supreme Court revisited *Wolfish* to carve out important qualifications to the

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[200] *Wolfish*, 441 U.S. at 538. This follows the analysis in *Shall v. Martin*, 467 U.S. 253 (1984), to the effect that to determine whether a statutory restriction on liberty constitutes punishment or permissible regulation, the courts have to first look to legislative intent.

[201] *Id. quoting Mendoza-Martinez*, 372 U.S. at 168-69.

[202] *Id.* at 539. "Conversely, if a restriction or condition is not reasonably related to a legitimate goal – if it is arbitrary or purposeless – a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees qua detainees."

[203] United States v. Salerno [hereinafter "*Salerno*"], 481 U.S. 739, 755 (1989) (Marshall, *J., dissenting*). *Id.* at 759. "On the due process side of this *false dichotomy appears an argument concerning the distinction between regulatory and punitive legislation.* The majority concludes that the Act is a regulatory, rather than a punitive, measure. The ease with which the conclusion is reached suggests the worthlessness of the achievement." (Emphasis supplied.)

[204] 18 U.S.C. § 3142(e) (1982 ed., Supp. III). The Bail Reform Act of 1984 requires courts to detain prior to trial arrestees charged with certain serious felonies if the Government demonstrates by clear and convincing evidence, after an adversary hearing, that no release conditions "will reasonably assure . . . the safety of any other person and the community."

[205] *Wolfish*, 441 U.S. at 576-77 (Marshall, *J., dissenting*).

[206] *Salerno*, 481 U.S. at 763 (Marshall, *J., dissenting*). "[O]ur fundamental principles of justice declare that the defendant is as innocent on the day before his trial as he is on the morning after his acquittal. Under this statute, an untried indictment somehow acts to permit a detention, based on other charges, which after an acquittal would be unconstitutional. The conclusion is inescapable that the indictment has been turned into evidence, if not that the defendant is guilty of the crime charged, then that, left to his own devices, he will soon be guilty of something else." *Id.* at 764.

reasonable relationship test, in such a manner that renders the intent requirement separate from other objective measures.[207] The Court ruled:

> *Bell's* focus on "punishment" does not mean that proof of intent (or motive) to punish is required for a pretrial detainee to prevail on a claim that his due process rights were violated. Rather, as *Bell* itself shows [...], a *pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose.*[208]

What this ruling has done is to redeem *Wolfish* from an unintended "hands off" approach that has resulted since its promulgation,[209] especially in the domain of police abuse. Although it remains to be applied in other aspects of pretrial detention such as issues of overcrowding, hygiene conditions, strip-searches, and segregation, the reformulated *Wolfish* standard that *Kingsley* offers "constructs a crucial new constitutional protection against [State] abuse."[210]

III. DISSECTING PHILIPPINE CASELAW ON PRETRIAL DETENTION

Under the U.S. Constitution, the distinction between pretrial detainees and convicted individuals has implications in the legality of penal treatment as equivalent rights of convicted individuals fall within the Eighth Amendment analysis of the Cruel and Unusual Punishment Clause—not

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[207] *Kingsley*, slip op., at 7-8. "But the *Bell* Court went on to explain that, in the absence of an expressed intent to punish, a pretrial detainee can nevertheless prevail by showing that the actions are not 'rationally related to a legitimate nonpunitive governmental purpose' or that the actions 'appear excessive in relation to that purpose.'" (Citations omitted.)

[208] *Id.* at 8. (Emphasis supplied.)

[209] *See* Robbins, *supra* note 167, at 219-24; Struve, *supra* note 169, at 1012. "And as caselaw in related areas has developed, it has become more and more questionable whether the *Wolfish* reasonable-relationship test adequately reflects the standards that should govern pretrial detainees' claims."; *and* Terence P. Thornberry & Jack E. Call, *Constitutional Challenges to Prison Overcrowding: The Scientific Evidence of Harmful Effects*, 35 HASTINGS L.J. 313, 313-14 (1983-1984).

[210] Mark Joseph Stern, *After Freddie Gray*, SLATE, June 22, 2015, *available at* http://www.slate.com/articles/news_and_politics/jurisprudence/2015/06/supreme_court_kingsley_v_hendrickson_a_new_protection_against_police_abuse.html (last accessed Feb. 22, 2018). "*Kingsley* makes the gray zone a lot less dangerous. Under the decision, any 'objectively unreasonable' use of force against detainees is unconstitutional. Just as importantly, the court reaffirmed that 'pretrial detainees (unlike convicted prisoners) cannot be punished at all.' In other words, police cannot penalize a suspect, much less abuse him, merely because they believe he's committed a crime."

within the purview of the Due Process Clause or the principle of presumption of innocence.[211] In this jurisdiction, however, the Cruel and Unusual Punishment Clause's[212] reformulation for penal facilities in Section 19(2), as Part I(C) has shown, *meant no legal distinction* as regards pretrial detainees and convicted prisoners for detention facilities.

The latter's right to the presumption of innocence would, moreover, provide stronger protections against unconstitutional detention policies and standards. Reading Section 19(2) as a cognate to the presumption of innocence would show how the 1987 Philippine Constitution's Bill of Rights contemplates providing broader protections for pretrial detainees.

This variance with American interpretation and legal treatment requires modifying the application of the *Wolfish* ruling in Philippine constitutional law.[213] The current state of caselaw, however, has not yet reflected this.

A. *Alejano* and the Legal Transplantation of the *Wolfish* Standard

The application of *Wolfish* as to strengthen the protection of due process rights would be belatedly applied with respect to the Philippine Supreme Court. In the 2005 case of *Alejano v. Cabuay*,[214] the Court's only decision squarely dealing with the validity of pretrial conditions, it extensively cited *Wolfish*[215] in an offhand refutation of an improvident petition for the writ of *habeas corpus*.[216]

Dealing with high-profile petitioners who participated in the notorious "Oakwood mutiny,"[217] the Supreme Court reviewed the Court of Appeals' dismissal of their petition, which was based on several detention policies:

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[211] *See* Ingraham v. Wright, 430 U.S. 651 (1977); United States v. Lovett, 328 U.S. 303 (1946); *and* Trop v. Dulles, 356 U.S. 86 (1958). *See also* David C. Gorlin, *Evaluating Punishment in Purgatory: The Need to Separate Pretrial Detainees' Conditions-of-Confinement Claims from Inadequate Eight Amendment Analysis*, 108 MICH. L. REV. 417 (2009).

[212] CONST. art. III, § 19(1). "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted."

[213] *See* Part III, *infra*.

[214] Hereinafter "*Alejano*", G.R. No. 160792, 468 SCRA 188, Aug. 25, 2005.

[215] *See id.* at 204-07.

[216] *Id.* at 197-98.

[217] *See* Nicole Curato, *The Road to Oakwood is Paved with Good Intentions: The Oakwood Mutiny and the Politics of Recognition*, 59 PHIL. SOCIOLOG. REV. 23 (2011).

> What petitioners bewail is the regulation adopted by Gen. Cabuay in the [Intelligence Service of the Armed Forces of the Philippines (ISAFP)] Detention Center preventing petitioners as lawyers from seeing the detainees—their clients—any time of the day or night.
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> * * *
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> Petitioners also point out that the officials of the ISAFP Detention Center violated the detainees' right to privacy of communication when the ISAFP officials opened and read the personal letters of Trillanes and Capt. Milo Maestrecampo[.] Petitioners further claim that the ISAFP officials violated the detainees' right against cruel and unusual punishment when the ISAFP officials prevented the detainees from having contact with their visitors. Moreover, the ISAFP officials boarded up with iron bars and plywood slabs the iron grills of the detention cells, limiting the already poor light and ventilation in the detainees' cells.[218]

The Court's treatment of these allegations closely mirrored the logical progression of *Wolfish*. The Court first admitted that "[p]re-trial detainees *do not forfeit their constitutional rights upon confinement*;"[219] then, it weighed the policies in question against "reasonable measures or regulations"[220] and eventually found no violation of substantive rights.

In particular, by utilizing the *Wolfish* standard, the Court found no violation of the detainees' right to counsel[221] as "the visiting hours accorded to the[ir] lawyers [...] are *reasonably connected to the legitimate purpose* of securing the safety and preventing the escape of all detainees."[222] By citing *Block v. Rutherford*,[223] it found contact visit restrictions legal as it "bore a rational connection to the legitimate goal of internal security."[224] On this rationale, it

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218 *Alejano*, 468 SCRA at 201-02.

219 *Id.* at 202, *citing* Ford v. City of Boston, 154 F.Supp.2d 123 (2001). (Emphasis supplied.)

220 *Id.* at 203. (Citations mark omitted.)

221 *Id.* "Petitioners' contention does not persuade us. The schedule of visiting hours does not render void the detainees' indictment for criminal and military offenses to warrant the detainees' release from detention. The ISAFP officials did not deny, but merely regulated, the detainees' right to counsel. The purpose of the regulation is not to render ineffective the right to counsel, but to secure the safety and security of all detainees."

222 *Id.* at 204. (Emphasis supplied.)

223 468 U.S. 576 (1984). *Block* also depended on *Wolfish* in affirming the legality of conducting random, irregular "shakedown" searches of cells in the absence of the cell occupants, finding it a reasonable response by the jail officials to legitimate security concerns. *Id.* at 589-91.

224 *Alejano*, 468 SCRA at 207. (Citation omitted.)

also found boarded grills, which resulted to diminished illumination and ventilation, reasonable.[225] Finally, by citing *McDonnell* and *Hudson*, it found mail screening legal "to prevent the smuggling of contraband into the prison facility and to avert coordinated escapes."[226]

But while this reasoning itself is not problematic, *Alejano* suffers from the same flaw that *Wolfish* had—the ingraining of a "hands off" approach or the inordinate deference to the subjective standard of punitive intent that *Kingsley* eventually refuted. This may be prudent in this *sui generis* highly politicized and well-documented case involving numerous implications on national security,[227] but the same could not be said for the tens of thousands of pretrial detainees who are afforded *no special treatment.*

For instance, the Court said, as if affirming the same position: "*Bell v. Wolfish* expressly *discouraged courts* from skeptically questioning challenged restrictions in detention and prison facilities. The U.S. Supreme Court *commanded the courts* to afford administrators 'wide-ranging deference' in implementing policies to maintain institutional security."[228] It reverted on this caveat when it dismissed the petitioners' allegations regarding housing conditions:[229]

> *Bell v. Wolfish* pointed out that while a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law, detention inevitably interferes with a detainee's desire to live comfortably. The fact that the restrictions inherent in detention intrude into the detainees' desire to live comfortably does not convert those restrictions into punishment. *It is when the restrictions are arbitrary and purposeless that courts will infer intent to punish. Courts will also infer intent to punish even if the restriction seems to*

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[225] *Id.* at 208. "The boarding of the iron grills is for the furtherance of security within the ISAFP Detention Center. This measure intends to fortify the individual cells and to prevent the detainees from passing on contraband and weapons from one cell to another. The boarded grills ensure security and prevent disorder and crime within the facility. The diminished illumination and ventilation are but discomforts inherent in the fact of detention, and do not constitute punishments on the detainees."

[226] *Id.* at 209.

[227] Such characterization is conceded in the decision. *See id.* at 214. "The detainees in the present case are junior officers accused of leading 300 soldiers in committing *coup d'etat*, a crime punishable with *reclusion perpetua.* The junior officers are not ordinary detainees but visible leaders of the Oakwood incident involving an armed takeover of a civilian building."

[228] *Id.* at 204. (Citations omitted; emphasis supplied.)

[229] *Id.* at 205. "Petitioners further argue that the bars separating the detainees from their visitors and the boarding of the iron grills in their cells with plywood amount to unusual and excessive punishment."

> *be related rationally to the alternative purpose if the restriction appears excessive in relation to that purpose.* Jail officials are thus not required to use the least restrictive security measure. They must only refrain from implementing a restriction that appears excessive to the purpose it serves.[230]

Also citing *Block*, the Court added: "This case reaffirmed the 'hands-off' doctrine enunciated in *Bell v. Wolfish*, a form of judicial self-restraint, based on the premise that courts should decline jurisdiction over prison matters in deference to administrative expertise."[231]

But perhaps the greatest defect of *Alejano* is its spurious pronouncements—*obiter dicta* that would have been better left unwritten. Several of the Court's statements would not pass constitutional muster when read now in light of the history and meaning of the right to the presumption of innocence.

Its non-libertarian approach can be gauged especially in its treatment of the detainee's right to privacy. Citing *Hudson*, the Supreme Court said almost matter-of-factly that "an inmate has no reasonable expectation of privacy inside his cell."[232] But *Hudson* was clear that "[t]he curtailment of certain rights is [only] necessary, as a practical matter, to accommodate a myriad of 'institutional needs and objectives' of prison facilities, chief among which is internal security."[233] And even though the *Hudson* Court held that "the Fourth Amendment [on the reasonable expectation of privacy] has no applicability to a prison cell,"[234] it only did so upon a balancing of interests[235] and upon the establishment that "meaningful postdeprivation remedy" was available to the detainee.[236]

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[230] *Id.* (Citations omitted; emphasis supplied.)

[231] *Id.* at 207. (Citation omitted.)

[232] *Id.* at 211. *See also Id.* at 214. "That a law is required before an executive officer could intrude on a citizen's privacy rights is a guarantee that is available only to the public at large but not to persons who are detained or imprisoned."

[233] *Hudson*, 468 U.S. at 524.

[234] *Id.* at 536.

[235] *Id.* at 527. "Determining whether an expectation of privacy is 'legitimate' or 'reasonable' necessarily entails a balancing of interests. The two interests here are the interest of society in the security of its penal institutions and the interest of the prisoner in privacy within his cell. The latter interest, of course, is already limited by the exigencies of the circumstances: a prison 'shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room'." (Citation omitted.)

[236] *Id.* at 530-31.

Tempering this pronouncement, the Philippine Supreme Court later merely conceded that, instead, "pre-trial detainees and convicted persons have a *diminished expectation of privacy rights*"[237] (*i.e.*, they do have privacy rights) because Republic Act No. 7438[238] gives them some leeway insofar as attorney-client privileges are concerned.[239]

B. Revisiting *Alejano* Towards a Meaningful Protection of Rights

The full implication of *Alejano* would be limited when seen against its factual backdrop as it concerns detainees who "are not ordinary detainees,"[240] but "junior officers accused of leading 300 soldiers in committing *coup d'etat*."[241] They are "members of the military armed forces" and "subjects to the Articles of War."[242] Some of these detainees are also "detained with other high-risk persons."[243]

But it cannot be left to chance that future decisions would be able to readily understand these nuances as, in itself, *Alejano* has, after all, interpreted and applied the Bill of Rights to pretrial detentions, and its interpretation and application are now part of the law of the land. Instead of its labyrinthine review of American federal and state jurisprudence, it could have ended briefly with the only narrow issue it needed to close, as it protractedly did—that "*habeas corpus* is not the proper mode to question conditions of confinement."[244]

It becomes obvious, therefore, that many of *Alejano*'s rationales need revisiting. *First*, its cautionary statement that the ruling "does not foreclose the right of detainees and convicted prisoners from petitioning the courts for the redress of grievances"[245] should not be taken as lip service alone. This should be amplified as to remove any signification that the Supreme Court has sanctioned or endorsed the "hands off" approach that places undue emphasis on inscrutinable governmental defenses.

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[237] *Alejano*, 468 SCRA at 214. (Emphasis supplied.)

[238] An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as Well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof (1992).

[239] *See, e.g., id.* at § 2(b).

[240] *Alejano*, 468 SCRA at 214.

[241] *Id.*

[242] *Id.* at 215.

[243] *Id.*

[244] *Id.*

[245] *Id.*

Second, and more importantly, the remedies that it has proffered[246] must be examined for their adequacy in light of the depredations that many "non-special" pretrial detainees face. This is especially true considering what the Framers have contemplated in articulating what is now Section 19(2) of the Bill of Rights.[247]

Third, its reliance in *Wolfish* must be qualified by the recent holding in *Kingsley*, as to allow for a more just assessment of human rights abuses made by State agents. *Fourth*, the Court must go beyond its traditional narrow procedural construction of this right, in light of recent developments in American constitutional law, as well as in international law—the latter in recognition of the Philippines' membership in the community of nations.

Finally, the Court must take a conscious role in vindicating the rights of the "lowest" of the Filipino people for, after all, this is its "province and duty."[248] It must, in other words, remove judicial deferment for actual cases or controversies and repudiate the "hands off" approach.

IV. THE RIGHT'S EXPRESSION IN THE INTERNATIONAL HUMAN RIGHTS LEGAL REGIME

A. Preliminary Considerations

Having discussed the breadth of American jurisprudence on illegal pretrial detention, in relation to the right to be presumed innocent, another underpinning legal consideration in the interpretation of this right under the Constitution is its construction and enforcement under the regime of international human rights law.

This is crucial considering two factors. *First*, the Constitution unequivocally provides that the Philippines "adopts the generally accepted principles of international law as part of the law of the land."[249] As a cardinal constitutional postulate, this "doctrine of incorporation"[250] warrants in no

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

[247] *See* Part I(C), *supra*.

[248] Marbury v. Madison, 5 U.S. 137, 177 (1803).

[249] CONST. art. II, § 2.

[250] *See* Secretary of Justice v. Lantion, G.R. No. 139465, 322 SCRA 160, Jan. 18, 2000.

small measure that these principles, as well as "international jurisprudence,"[251] will "*automatically* form part of Philippine law by operation of the Constitution."[252]

And, *second*, the Supreme Court has, recently, become keener in appreciating international human rights concepts and jurisprudence in its interpretation of the Constitution,[253] especially the Bill of Rights.[254] Particular attention has been given to the Universal Declaration of Human Rights (UDHR)[255] and the International Covenant on Civil and Political

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251 Bayan Muna v. Romulo [hereinafter "*Bayan Muna*"], G.R. No. 159618, 641 SCRA 244, 257, Feb. 1, 2011. "[T]he doctrine of incorporation, as expressed in Section 2, Article II of the Constitution, [provides that] the Philippines adopts the generally accepted principles of international law and international jurisprudence as part of the law of the land and adheres to the policy of peace, cooperation, and amity with all nations."

252 *Bayan Muna*, 641 SCRA at 315 (Carpio, *J., dissenting*). (Emphasis supplied.) *See also* Arigo v. Swift, G.R. No. 206510, 735 SCRA 102, Sept. 16, 2014. "Even without such affirmation, we would still be bound by the generally accepted principles of international law under the doctrine of incorporation. Under this doctrine, as accepted by the majority of states, such principles are deemed incorporated in the law of every civilized state as a condition and consequence of its membership in the society of nations. Upon its admission to such society, the state is automatically obligated to comply with these principles in its relations with other states."

253 *See, e.g.,* Poe-Llamazares v. Commission on Elections, G.R. No. 221697, 786 SCRA 1, Mar. 8, 2016, on the issue of citizenship, the Court ruled: "The common thread of the UDHR, UNCRC and ICCPR is to obligate the Philippines to grant nationality from birth and ensure that no child is stateless."; *and* Simon, Jr. v. Commission on Human Rights, G.R. No. 100150, 229 SCRA 117, Jan. 5, 1994, on the scope of power and authority of the Commission on Human Rights.

254 *See, e.g.,* Central Bank Employees Assoc., Inc. v. Bangko Sentral ng Pilipinas, G.R. No. 148208, 446 SCRA 299, Dec. 15, 2004; Chavez v. Gonzales, G.R. No. 168338, 545 SCRA 441, Feb. 15, 2008; In re Macasaet, A.M. No. 07-09-13-SC, 561 SCRA 395, Aug. 8, 2008; Reyes v. Gonzales, G.R. No. 182161, 606 SCRA 580, Dec. 3, 2009; Sec'y of Nat'l Defense v. Manalo, G.R. No. 180906, 568 SCRA 1, Oct. 7, 2008; Razon, Sr. v. Tagitis, G.R. No. 182498, 612 SCRA 685, Feb. 16, 2010, *affirming* 606 SCRA 598, Dec. 3, 2009; MVRS Pub., Inc. v. Islamic Da'wah Council of the Phil., Inc., G.R. No. 135306, 396 SCRA 210, Jan. 28, 2003; Ang Ladlad LGBT Party v. Commission on Elections, G.R. No. 190582, 618 SCRA 32, Apr. 8, 2010; *and* Corpuz v. People, G.R. No. 180016, 724 SCRA 1, Apr. 29, 2014.

255 The enforceability of the UDHR has been a subject of debate in domestic jurisprudence. *Compare* J.B.L. Reyes v. Bagatsing, G.R. No. L-65366, 125 SCRA 553, Nov. 9, 1983. "The Philippines can rightfully take credit for the acceptance, as early as 1951, of the binding force of the Universal Declaration of Human Rights even if the rights and freedoms therein declared are considered by other jurisdictions as merely a statement of aspirations and not law until translated into the appropriate covenants" *and* Republic v. Sandiganbayan & Ramas [hereinafter "*Ramas*"], G.R. No. 104768, 407 SCRA 10, July 21, 2003. "The UDHR is not a treaty and its provisions are not binding law, but it is a compromise of conflicting ideological, philosophical, political, economic, social and juridical ideas [...] on matters generally considered desirable and imperative." *See also Ramas*, 407 SCRA at 138 (Vitug, *J., separate opinion*), noting that the UDHR, as an authoritative listing of human rights, has

Rights (ICCPR), the latter a treaty to which the Philippines is a State Party since 1986.

As regards the presumption of innocence, the pertinent treaties to which the country is a State Party are: (i) the ICCPR, particularly Article 14, paragraph 2, and its First[256] and Second[257] Optional Protocol; (ii) the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment,[258] particularly, Article 2, paragraph 2,[259] its Inquiry procedure,[260] and Optional Protocol;[261] (iii) the Convention on the Elimination of All Forms of Discrimination against Women,[262] specifically Article 3;[263] (iv) the International Convention on the Elimination of All Forms of Racial Discrimination,[264] as emphasized in Article 5;[265] and (v) the

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become a basic component of international customary law, indeed binding all states and not only members of the United Nations.

[256] Optional Protocol to the International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 59, UN Doc. A/6316 (1966); 999 UNTS 302 (ratified Aug. 22, 1989).

[257] Second Optional Protocol to the International Covenant on Civil and Political Rights, GA res. 44/128, annex, 44 UN GAOR Supp. (No. 49) at 207, UN Doc. A/44/49 (1989) (ratified Nov. 20, 2007).

[258] GA res. 39/46, annex, 39 UN GAOR Supp. (No. 51) at 197, UN Doc. A/39/51 (1984); 1465 UNTS 85 (ratified June 18, 1986).

[259] "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." *Compare with Id.* art. 1, on definition of torture.

[260] Under Article 20.

[261] Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. A/RES/57/199 (2003); 42 ILM 26 (2003) (ratified Apr. 17, 2012).

[262] GA res. 34/180, 34 UN GAOR Supp. (No. 46) at 193, UN Doc. A/34/46; 1249 UNTS 13; 19 ILM 33 (1980) (ratified Aug. 5, 1981).

[263] "States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them *the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality* with men." (Emphasis supplied.)

[264] 660 UNTS 195; G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966) (ratified Sept. 15, 1967).

[265] "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

"(a) The right to equal treatment before the tribunals and all other organs administering justice

"(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;"

Convention on the Rights of the Child (CRC),[266] particularly Article 37(b)[267] and Article 40, paragraph 2(b)(i)[268] and its two Optional Protocols.[269]

These conventional obligations define with particularity the extent of the country's obligation to respect, protect, and fulfill[270] the human right to the presumption of innocence. Their expression in these treaties evinces the universal character of this right across legal systems and the right's status as a general concept of international law.[271]

B. The Presumption as Articulated in International Law

As a general principle of international law, the right to the presumption of innocence is inscribed in the UDHR[272] and in various supranational human rights[273] and international criminal law instruments.[274]

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[266] GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989) (ratified Aug. 21, 1990).

[267] "States Parties shall ensure that:

* * *

"(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time[.]"

[268] "Every child alleged as or accused of having infringed the penal law has at least the following guarantees: (i) To be presumed innocent until proven guilty according to law[.]"

[269] Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, G.A. res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49 (2000) (ratified Aug. 26, 2003); Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, G.A. res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49 (2000) (ratified May 28, 2002).

[270] *See* Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc. A/RES/53/144 (1999), art. 2. "Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms."

[271] Legal scholars are generally consistent on their view of the presumption of innocence's universality across legal systems, *see, e.g.,* Ferry de Jong & Leonie van Lent, *The Presumption of Innocence as a Counterfactual Principle*, 12 UTRECHT L. REV. 32 (2016); Ivan V. Mironuk, Andrey S. Burtsev, Anzhlekika I. Lyakhova, Elena F. Lukyanchikova & Andrey V. Stepanyuk, *Formalization of Innocence Presumption Principle in the States of The Post-Soviet Space*, 5 INT'L J. SCIENTIFIC STUDY 327 (2017); *and* Pamela R. Ferguson, *The Presumption of Innocence and Its Role in the Criminal Process*, 27 CRIM. L. FORUM 131 (2016).

[272] UDHR art. 11(1). "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

[273] *See* European Convention on Human Rights, art. 6(2); International Covenant on Civil and Political Rights, art. 14(2); Inter-American Convention of Human Rights, art.

1. General Comments of International Human Rights Committees

With this articulation across human rights instruments, discussions on the right of the presumption of innocence have naturally cut across various General Comments,[275] or authoritative commentaries, of various international human rights bodies, such as (i) the UN HRC for the ICCPR,[276] (ii) the Committee on the Elimination of Racial Discrimination for the Convention on the Elimination of All Forms of Racial Discrimination,[277] and (iii) the Committee on the Rights of the Child for the CRC.[278]

General Comments of the UN HRC have highlighted the fundamentality of the presumption of innocence—the earliest being *General Comment No. 6*,[279] on the right to life, where the Committee noted the presumption of innocence as a part of procedural guarantees.[280]

8(2); African Charter on Human and People's Rights, art. 7(1); *and* Arab Charter of Human Rights, art. 7.

[274] *See* Additional Protocol I to the 1949 Geneva Conventions, art. 75(4)(d); Additional Protocol II to the 1949 Geneva Conventions, art. 6(2)(d); Statute of the Special Court of Sierra Leone, art. 17(3); UN-Cambodia Agreement Concerning the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, art. 12(2) & 13(1); Statute of the Special Court for Lebanon, art. 15 & 16; Rome Statute of the International Criminal Court, art. 66(1); Statute of the International Criminal Tribunal for the Former Yugoslavia, art. 21(3); *and* Statute of the International Criminal Tribunal for Rwanda, art. 20(3).

[275] For a discussion on the scope and impacts of General Comments in development and articulation of international human rights law, *see* Kertstin Mechlem, *Treaty Bodies and the Interpretation of Human Rights*, 42 VANDERBILT J. TRANSNAT'L L. 905, 926-30 (2009).

[276] The HRC is the body of independent experts that monitors the implementation of the ICCPR by its State parties.

[277] The Committee on the Elimination of Racial Discrimination is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination.

[278] The Committee on the Rights of the Child is the body of independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties. It also monitors implementation of two Optional Protocols to the Convention. On December 19, 2011, the UN General Assembly approved a third Optional Protocol on a communications procedure, which will allow individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols.

[279] CCPR General Comment No. 6: Article 6 (Right to Life), Apr. 30, 1982.

[280] "The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the

It would be a year later, in 1982, when the Committee would more fully recognize this presumption in the treatment of pretrial detainees. Thus, in *General Comment No. 9*,[281] on the humane treatment of persons deprived of liberty, the Committee opined that "[t]he segregation of accused persons from convicted ones is required in order to emphasize their status as unconvicted persons who are *at the same time protected by the presumption of innocence* stated in article 14, paragraph 2."[282]

This is closely reiterated in subsequent General Comments. In *General Comment No. 13*,[283] on the administration of justice, the Committee declared that the presumption of innocence "is fundamental to the protection of human rights"[284] and

> [b]y reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. *Further, the presumption of innocence implies a right to be treated in accordance with this principle.*[285]

In the 2007 *General Comment No. 32*,[286] on the right to equality before courts and tribunals and to a fair trial, the Committee described the concomitant State obligations to the protection of the presumption of innocence more clearly. This effort, an offshoot of the development in international human rights law following the right's expression in

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sentence." ¶ 7. Other general comments have treated the presumption as, *e.g.*, a fundamental principle of fair trial, *see* General Comment No. 29: Article 4: Derogations during a State of Emergency, adopted at the Seventy-second Session of the Human Rights Committee, on 31 August 2001, CCPR/C/21/Rev.1/Add.11, ¶¶ 11, 16; General Comment No. 32, Article 14, Right to equality before courts and tribunals and to fair trial (Aug. 23, 2007), CCPR/C/GC/32, ¶ 6 ("Deviating from fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times.").

[281] UN Human Rights Committee (HRC), CCPR General Comment No. 9: Article 10 (Humane Treatment of Persons Deprived of Their Liberty), July 30, 1982 (now replaced by General Comment No. 21).

[282] Emphasis supplied.

[283] CCPR General Comment No. 13: Article 14 (Administration of Justice), Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, Apr. 13, 1984.

[284] ¶ 7.

[285] *Id.* (Emphasis supplied.)

[286] General Comment No. 32, Article 14, Right to equality before courts and tribunals and to fair trial (Aug. 23, 2007), CCPR/C/GC/32.

international human rights jurisprudence,[287] addresses the "very ambiguous terms"[288] upon which the presumption rests,

> According to article 14, paragraph 2 everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, *ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.* It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused. Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. The media should avoid news coverage undermining the presumption of innocence. Furthermore, the length of pretrial detention should never be taken as an indication of guilt and its degree. The denial of bail or findings of liability in civil proceedings do not affect the presumption of innocence.[289]

As regards pretrial detainees, the UN HRC's 2014 *General Comment No. 35,*[290] more specifically tackled the contents of the presumption of innocence in this context, and with particular concern for the increasing use of pretrial detention, noted:

> It should not be the general practice to subject defendants to pretrial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The relevant factors should be specified in law and should not include vague and expansive standards such as "public security". *Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.*

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[287] *General Comment No. 32*'s cited various Views of the Human Rights Committee pursuant to its mandate under the ICCPR's First Optional Protocol, *see* nn.56-59, at 9.

[288] ¶ 7. This ambiguity was first described in 1984 in *General Comment No. 13*. "The Committee has noted a lack of information regarding article 14, paragraph 2 and, in some cases, has even observed that the presumption of innocence, which is fundamental to the protection of human rights, is expressed in very ambiguous terms or entails conditions which render it ineffective."

[289] Citations omitted; emphasis supplied.

[290] Article 9 (Liberty and security of person), CCPR/C/GC/35 (Dec. 16, 2014).

> Neither should pretrial detention be ordered for a period based on the potential sentence for the crime charged, rather than on a determination of necessity. Courts must examine whether alternatives to pretrial detention, such as bail, electronic bracelets or other conditions, would render detention unnecessary in the particular case.[291]

Furthermore, the Committee echoed that "[e]xtremely prolonged pretrial detention may [...] jeopardize the presumption of innocence."[292] As such, "[p]ersons who are not released pending trial must be tried as expeditiously as possible, to the extent consistent with their rights of defence."[293]

The presumption of innocence is also found in the Committee on the Elimination of Racial Discrimination's *General Recommendation XXXI*, on the prevention of racial discrimination in the administration and functioning of the criminal justice system, albeit in an expectedly narrower conception:

> This right implies that the police authorities, the judicial authorities and other public authorities must be forbidden to express their opinions publicly concerning the guilt of the accused before the court reaches a decision, much less to cast suspicion in advance on the members of a specific racial or ethnic group. These authorities have an obligation to ensure that the mass media do not disseminate information which might stigmatize certain categories of persons, particularly those belonging to the groups referred to in the last paragraph of the preamble.[294]

Despite this description, the same *General Recommendation* has found the need to emphasize that international law have made important restrictions to the use of pretrial detention. It noted:

> That the mere fact of belonging to a racial or ethnic group or one of the aforementioned groups is *not a sufficient reason, de jure or de*

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[291] ¶ 38. (Citations omitted; emphasis supplied.) *See also* United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), A/RES/40/33 (Nov. 29, 1985), Rule 13.1. "Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time."; *and* United Nations Rules for the Protection of Juveniles Deprived of their Liberty, A/RES/45/113 (Dec. 14, 1990), ¶17. "Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances."

[292] ¶ 37. *See also* General Comment No. 8, Article 9 (Right to Liberty and Security of Persons); *and* CCPR/C/GC/8 (June 30, 1982), the precursor to *General Comment No. 8*.

[293] *Id.*

[294] ¶ 29.

> *facto, to place a person in pretrial detention.* Such pretrial detention can be justified only on objective grounds stipulated in the law, such as the risk of flight, the risk that the person might destroy evidence or influence witnesses, or the risk of a serious disturbance of public order.[295]

As a necessary distinction against convicted criminal offenders, it further affirmed that State parties must ensure "[t]hat persons belonging to such groups who are held pending trial enjoy all the rights to which prisoners are entitled under the relevant international norms, and *particularly the rights specially adapted to their circumstances*: the right to respect for their traditions as regards religion, culture and food, the right to relations with their families, the right to the assistance of an interpreter and, where appropriate, the right to consular assistance."[296]

The increasing concern for protecting children in conflict with law also brought about the Committee on the Rights of the Child's *General Comment No. 10*,[297] which comprehensively articulated Article 40(2)(b)(i) of the Convention on the Rights of Children.

> *The presumption of innocence is fundamental to the protection of the human rights of children in conflict with the law.* It means that the burden of proof of the charge(s) brought against the child is on the prosecution. The child alleged as or accused of having infringed the penal law has the benefit of doubt and is only guilty as charged if these charges have been proven beyond reasonable doubt. *The child has the right to be treated in accordance with this presumption* and it is the duty of all public authorities or others involved to refrain from prejudging the outcome of the trial. States parties should provide information about child development to ensure that this presumption of innocence is respected in practice. Due to the lack of understanding of the process, immaturity, fear or other reasons, the child may behave in a suspicious manner, but the authorities must not assume that the child is guilty without proof of guilt beyond any reasonable doubt.[298]

Resonating the statements of other human rights bodies, the Committee categorically noted in the same General Comment that "[u]se of

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[295] ¶ 26(a). (Emphasis supplied.)
[296] ¶ 26(d). (Emphasis supplied.)
[297] Children's Rights in Juvenile Justice, CRC/C/GC/1 (Apr. 25, 2007).
[298] ¶ 42. (Emphasis supplied.)

pretrial detention as a punishment violates the presumption of innocence."[299] More specifically,

> The Committee notes with concern that, in many countries, children languish in pretrial detention for months or even years, which constitutes a grave violation of article 37 (b) of CRC. An effective package of alternatives must be available (see chapter IV, section B, above), for the States parties to realize their obligation under article 37 (b) of CRC to use deprivation of liberty only as a measure of last resort. The use of these alternatives must be carefully structured to reduce the use of pretrial detention as well, rather than "widening the net" of sanctioned children. In addition, the States parties should take adequate legislative and other measures to reduce the use of pretrial detention. *Use of pretrial detention as a punishment violates the presumption of innocence.* The law should clearly state the conditions that are required to determine whether to place or keep a child in pretrial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to himself/herself or others. The duration of pretrial detention should be limited by law and be subject to regular review.[300]

These expressions from committees tasked by convention to monitor the implementation of respective conventions show the international community's acceptance as to the universality of the presumption of innocence. While there are some variations in the interpretation of this right as regards *lex specialis* application, they are consistent in holding that the pretrial detainee's right to the presumption of innocence protects him from being punished. Jurisprudence of human rights tribunals further concretizes this notion.

2. Opinions of Human Rights Tribunals

Recent "authoritative"[301] views of the United Nations Human Rights Committee have affirmed that *all criminal proceedings* must be

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[299] ¶ 82.

[300] ¶ 80. (Emphasis supplied.)

[301] General Comment No. 33 (The Obligation of State Parties under the Optional Protocol to the International Covenant on Civil and Political Rights), CCPR/C/GC/33 (Nov. 5, 2008), ¶13. "The views of the Committee under the Optional Protocol represent an authoritative determination by the organ established under the Covenant itself charged with the interpretation of that instrument. *But, see,* Wilson v. Exec. Sec'y, G.R. No. 189220, Dec. 7, 2016, noting that the Supreme Court could not compel by writ of mandamus the executive branch to enforce the views of the Human Rights Committee.

consistent with the principles of fairness and the presumption of innocence.[302]

What this means, echoing *General Comment No. 32*,[303] is that not only is the accused given the benefit of the doubt and the prosecution given the burden to prove all charges (in the general conception of this right),[304] public authorities are, likewise, obliged not to prejudge the outcome of the trial. Thus, where high-ranking officials make widely covered statements portraying a defendant as guilty, this right was found to have been violated.[305] In *Larranaga v. The Philippines*,[306] for instance, the Committee said:

> Concerning the public statements made by senior officials portraying the author as guilty, *all of which were given very extensive media coverage*, the Committee refers to its General Comment No. 13 on article 14, where it stated that: "it is, therefore, a duty for all public authorities to refrain from pre-judging the outcome of a trial". In the present case, the Committee considers that the authorities failed to exercise the restraint that article 14, paragraph 2, requires of them, especially taking into account the repeated intimations to the trial judge that the author should be sentenced to death while the trial proceeded. Given the above circumstances, the Committee concludes that [Larranaga's] trial *did not respect the principle of presumption of innocence*, in violation of article 14, paragraph 2.[307]

Similar to American jurisprudence, the Committee also found that the right to the presumption of innocence requires that defendants *should not be shackled* or kept behind bars at trial, or otherwise presented to the court in a manner indicating that they are criminals.[308] In *Zinsou v. Benin*,[309] the Committee clarified:

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[302] *See, e.g.,* Eugène Diomi Ndongala Nzo Mambu v. Democratic Republic of Congo, Comm'n 2465/2014 (Dec. 16 2016), ¶11; Zhakhangir Bazarov v. Kyrgyzstan, Comm'n No. 2187/2012 (Dec. 8, 2016); *and* Azimjan Askarov v. Kyrgyzstan, Comm'n No. 2231/2012 (May 11, 2016), ¶10.

[303] ¶ 30.

[304] *See* J.O. v. France, Comm'n 1620/2007 (Mar. 23, 2011), ¶ 9.6.

[305] Gridin v. Russian Federation, Comm'n 770/1997 (July 18, 2000); Saidova v. Tajikistan, Comm'n 964/2001 (July 8, 2004); *and* Mwamba v. Zambia, Comm'n 1520/2006 (Apr. 30, 2010).

[306] Comm'n 1421/2005 (July 24, 2006).

[307] *Id.* at ¶ 7.4.

[308] Karimov v. Tajikistan, Comm'n 1108/2002 and 1121/2002 (Mar. 27, 2007).

[309] Comm'n 2055/2011 (Oct. 27, 2014).

> Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. In this case, and in the absence of any justification from the State party, the Committee considers that the requirement to appear at his public hearing handcuffed and wearing a jacket indicating his place of detention constitutes a violation of the author's right to presumption of innocence under article 14, paragraph 2, of the Covenant.
>
> The [defendant] states that he was required to attend court on 5 September 2008 wearing a jacket saying "Cotonou Civil Prison" and that his appearance attracted jibes and ridicule from the gallery. The Committee notes that, although the State party asserts in its observations that the prisoners' jackets are taken off when they come before a judicial or administrative authority, it has failed, in the present case, to adduce any reason why the author had to wear such a jacket at his hearing. The Committee also takes note of the author's claim that he was taken to court, and appeared in court, in handcuffs, which the State party has not contested.[310]

Finally, and perhaps most pertinent to Philippine carceral conditions, the Committee has consistently held that prolonged pretrial detention is a violation of the right to the presumption of innocence.

Thus, in *Cagas v. The Philippines*,[311] the Human Rights Committee found the Philippines to have violated the right to the presumption of innocence of three Filipino nationals who were in pretrial detention because

> *the excessive period of preventive detention*, exceeding nine years, [...] *affect[s] the right to be presumed innocent* and therefore reveals a violation of article 14 (2)[.]
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> * * *
>
> The Committee further notes that, at the time of the adoption of the Committee's Views, the authors appear to have been detained without trial for a period in excess of nine years, which would seriously affect the fairness of the trial. Recalling its General Comment 8 according to which "pre-trial detention should be an exception and as short as possible", and noting that the State party has not provided any explanation justifying such a

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[310] ¶¶ 7.3-7.4. (Citations omitted.)

[311] Comm'n 788/1997 (Oct. 23, 2001).

> long delay, the Committee considers that the period of pre-trial detention constitutes in the present case an unreasonable delay.[312]

3. Guidance from Regional Human Rights Tribunals

Opinions of various international human rights tribunals have also adopted a similar view as regards pretrial detention. The European Court of Human Rights has intimated that States eschew protracted pretrial detention for its tendency of degrading this primordial right. Thus, in *Frasik v. Poland*,[313] the European Court of Human Rights said that "there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending, because the defendant should *benefit fully from the principle of the presumption of innocence*."[314] In *Jablonski v. Poland*,[315] the Court took it one step further by saying that "[u]ntil conviction he must be presumed innocent" and his provisional release is required "once his continuing detention ceases to be reasonable."[316]

More recently, in *Vosgien v. France*,[317] European Court reiterated:

> It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release.[318]

The Inter-American Court of Human Rights, in construing an equivalent right,[319] has also firmly protected the liberty as an application of the right to the presumption of innocence. In several cases, it has held that

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[312] ¶¶ 7.3-7.4. (Emphasis supplied.)

[313] App'n 22933/02, Judgment (Jan. 5, 2010).

[314] *Id.* at ¶ 63. (Emphasis supplied.)

[315] App'n 33492/96, Judgment (Dec. 21, 2000).

[316] *Id.* at ¶ 83.

[317] App'n 124301/11, Judgment (Oct. 3, 2013/3 Jan. 2014).

[318] Translated from the original French text. *Id.* at ¶ 46. *See also* Paradysz v. France, App'n 17020/05, Judgment (Oct. 29, 2009/Mar. 1, 2010), ¶ 65; *and* Letellier v. France, App'n 12369/86, Judgment (June 26, 1991), ¶35.

[319] American Convention of Human Rights, 1144 U.N.T.S. 144, art. 8(2). "Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law."

"liberty is always the rule, and its limitation or restriction always the exception."[320]

A stronger declaration regarding pretrial detention and the presumption was made in the 2005 case of *Acosta-Calderón v. Ecuador.*[321]

> This Court has stated that the principle of presumption of innocence constitutes a foundation for judicial guarantees. The obligation of the State to not restrict the detainee's liberty beyond the limits strictly necessary to ensure that he will not impede the efficient development of the investigations and that he will not evade justice derives from that established in Article 8(2) of the Convention. In this sense, the preventive detention is a cautionary measure and not a punitive one. This concept is laid down in multiple instruments of international human rights law. The International Covenant on Civil and Political Rights provides that preventive detention should not be the normal practice in relation to persons who are to stand trial (Article 9(3)). *It would constitute a violation to the Convention to keep a person whose criminal responsibility has not been established detained for a disproportionate period of time. This would be tantamount to anticipating a sentence, which is at odds with universally recognized general principles of law.*[322]

Another regional human rights tribunal, the African Commission on Human and Peoples' Rights, follows the same normative design[323] and has affirmed the universal recognition of the presumption of innocence.[324]

Recalling the African Charter's Article 7(b), that "[e]very individual shall have the right to have his cause heard [which includes] [t]he right to be presumed innocent until proven guilty by a competent court or tribunal," in the illustrative case of *Haregowoin Gabre-Selassie v. Ethiopia,*[325] the Commission found that the extreme length of the defendants' pretrial detention

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[320] Catrimán et al. v. Chile, Judgment on Merits, Reparations and Costs (May 29, 2014), ¶ 309; Álvarez & Íñiguez v. Equador, Judgment on Preliminary Objections, Merits, Reparations and Costs (Nov. 21, 2007), ¶ 53. *See also* Tibi v. Ecuador, Judgment on Preliminary Objections, Merits, Reparations and Costs (Sept. 7, 2004), ¶ 61; *and* Leiva v. Venezuela, Judgment on Merits, Reparations and Costs (Nov. 17, 2009), ¶ 115.

[321] Judgment on Merits, Reparations and Costs (June 24, 2005).

[322] ¶ 111. (Emphasis supplied.)

[323] *See* Nsongurua J. Udombana, *The African Commission on Human and Peoples' Rights and the development of fair trail norms in Africa,* 6 AFR. HUMAN RIGHTS L.J. 299 (2006).

[324] *See* Civil Liberties Organisation v. Liberia, Comm'n 218/98 (May 7, 2001), ¶¶ 40-41.

[325] Comm'n 301/05 (Oct. 12, 2013).

constituted *de facto* punishment for the alleged crimes before guilt had been proven.

C. "Soft Law" and International Standards on Prisoner Treatment

The universality of the right to the presumption of innocence in international law, juxtaposed to the prevalence with which pretrial detention and incarceration is used as a general and initial strategy to meet penological and criminal justice ends, merits a continued, periodic reiteration of this right.

In this regard, various "soft law" instruments on detention protection and prison standards have been set up.[326] In 1955, the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders issued the *Standard Minimum Rules for the Treatment of Prisoners*.[327] While not binding, the Rules seek to "to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions."[328]

In Rules 84 to 93, the 1955 *Rules* explicitly provided significant distinctions in the treatment between convicted individuals and pretrial detainees—distinctions that include the separation of these two classes of prisoners,[329] the opportunity for work,[330] and reasonable facilities for communication with his family and friends.[331]

In 2015, the United Nations General Assembly, through Resolution No. 70/175,[332] revised the 1955 *Rules* with what is called the "Mandela

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[326] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173 (Dec. 9, 1988); *and* Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, ESC/RES/1989/65 (May 24, 1989). For an extensive review, *see* UNITED NATIONS OFFICE ON DRUGS & CRIME, COMPENDIUM OF UNITED NATIONS STANDARDS AND NORMS IN CRIME PREVENTION AND CRIMINAL JUSTICE (2006).

[327] Held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977.

[328] Preliminary Observations, ¶ 1.

[329] Rule 85(1). "Untried prisoners shall be kept separate from convicted prisoners."

[330] Rule 89. "An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it."

[331] Rule 92. "An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution."

[332] Adopted on Dec. 17, 2015.

Rules."[333] Rule 11 of the Mandela Rules, consistent with presumption of innocence,[334] provides:

> 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:
>
> (a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate;
>
> (b) *Untried prisoners shall be kept separate from convicted prisoners;*
>
> (c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
>
> (d) Young prisoners shall be kept separate from adults.[335]

The Mandela Rules, a codification of principles that "cover[ ] the general management of prisons, and [...] applicable to all categories of prisoners, criminal or civil, untried or convicted,"[336] represents "a significant progress in the treatment of prisoners."[337]

CONCLUSION

Because of the ongoing "War on Drugs," Philippine jails have been subjected to a "breaking point."[338] Since it started, "the prison population has risen dramatically," with "[a] staggering 94 per cent of people swept up

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[333] United Nations Standard Minimum Rules for the Treatment of Prisoners.

[334] "Unconvicted prisoners are presumed to be innocent and shall be treated as such." *Mandela Rules*, Rule 111(2).

[335] Emphasis supplied.

[336] *Mandela Rules*, Preliminary Observation 3, ¶ 1.

[337] Oh Joon, President of the UN Economic and Social Council, *quoted in UN launches 'Nelson Mandela Rules' on improving treatment of prisoners*, UNITED NATIONS NEWS CENTRE, Oct. 7, 2015, *available at* http://www.un.org/apps/news/story.asp?NewsID=52190#.WkIb9bT1XsE.

[338] Neil Jerome Morales, *Jails, justice system at breaking point as Philippine drug war intensifies*, REUTERS, Sept. 1, 2017, *available at* https://www.reuters.com/article/us-philippines-justice/jails-justice-system-at-breaking-point-as-philippine-drugs-war-intensifies-idUSKCN1BB39F.

in this drug war and currently behind bars [...] still waiting for their first day in court."[339] Around 64% of these detainees are charged with violating the illegal drugs law.[340]

With the current disdain, too, for what government officials have preemptively labeled as "not humans,"[341] the right to the presumption of innocence sees its nadir. Not only are prisons getting more and more overcrowded, hundreds of presumptively innocent prisoners have been subjected to degrading conditions in furtherance of this "war."

As narrated and admitted by prison officers in the Cebu provincial jail last March 2017: "the inmates of the Cebu provincial jail were woken before dawn on Tuesday, herded into the jail's quadrangle and forced to strip while anti-drug agents, police and military searched their cells[.]"[342] Photos released by the PDEA and provincial police showed the inmates sitting naked and cross legged in neat rows on the concrete quadrangle, illuminated by spotlights, as armed police guarded them.[343]

But even before this "war," Philippine carceral conditions have already been deplorable. In 2014, for example, the Supreme Court ordered 286 people to be released from jail because they had *already spent* the same amount of time behind bars as the minimum penalties for their *alleged offenses*.[344] They were all released while awaiting verdict.[345] One could only

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[339] Ginny Stein, *Philippine prisons overflowing with hungry inmates as Duterte's drug war intensifies*, ABS.NET (Aus.), Sept. 20, 2017, *available at* http://www.abc.net.au/news/ 2017-09-20/philippine-prisons-overflowing-as-war-on-drugs-intensifies/8959448.

[340] *142,000 held in Philippine jails built for 20,000 as Duterte's drug war intensifies*, S. CHINA MORNING POST, May 14, 2017, *available at* http://www.scmp.com/news/asia/southeast-asia/article/2094273/142000-held-philippine-jails-built-20000-dutertes-drug-war. "At a recent forum about the condition of Philippine jails and prisons, Paulino Moreno Jnr of the Bureau of Jail Management and Penology said more than 142,000 people, as of last month, are detained across the country, many of them awaiting trial. Around 64 per cent of these detainees are charged with violating the illegal drugs law."

[341] *See* Marlon Ramos, *'Junkies are not humans'*, PHIL. DAILY INQUIRER, Aug. 28, 2016, *available at* http://newsinfo.inquirer.net/810395/junkies-are-not-humans.

[342] *Naked prisoners in Cebu jail cause uproar*, PHIL. DAILY INQUIRER, Mar. 2, 2017, *available at* http://newsinfo.inquirer.net/876895/naked-prisoners-in-cebu-jail-cause-uproar.

[343] *Id. See also* Ador Vincent Mayol, *PDEA-7 head: I, not gov, ordered inmates to strip for inspection*, PHIL. DAILY INQUIRER, Mar. 9, 2017, *available at* http://newsinfo.inquirer.net/879164/pdea-7-head-i-not-cebu-gov-ordered-inmates-to-strip-for-inspection.

[344] Carlos H. Conde, *Dispatches: Relieving the Philippines' Overcrowded Jails*, HUMAN RIGHTS WATCH, Jan. 5, 2015, *available at* https://www.hrw.org/news/2015/01/05/dispatches-relieving-philippines-overcrowded-jails.

[345] Tarra Quismundo, *Judgment Day: SC frees 286 still in jail due to delayed trials*, PHIL. DAILY INQUIRER, Dec. 31, 2014, *available at* http://newsinfo.inquirer.net/660815/sc-orders-release-of-nearly-300-jailed-for-a-long-time.

imagine the human toil inflicted if any one of them would have been declared not guilty. Unfortunately, however, criminal trials nationwide last an average of six to 10 years and "an innocent man is jailed for at least five years before he is eventually acquitted."[346]

Professor Raymund E. Narag's research[347] on detained defendants in the Philippines provides another dire illustration of how pretrial detention effectively rends human dignity:

> *From the perspectives of the inmates, the major essence of prolonged trial detention is the notion that the process has become the punishment.* Nationwide, only around 18% of the pretrial detainees are eventually convicted and 82% of the inmates are either acquitted or dismissed. However, majority of the inmates had already served time equivalent to their imposable penalties, even if acquitted. As one inmate mentioned, "it is not a question of whether you are guilty or not, it is question of how much punishment you get from the process of determining your guilt" (Roderick, male, 10 years in jail). Thus, inmates believe that court actors may conveniently utilize the tenets of "due process" as a "pretext" to delay their cases. They believe that drug cases and violent offenses are currently on the top of the political agenda on "war against drugs and criminality," and the slow process is utilized as the mechanism for their indirect punishment.[348]

The 2016 Commission on Audit's 2016 census further painted a stark picture of Philippine detention facilities. This official government report revealed that the country's jails are already overpopulated by 511%.[349]

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[346] Ayee Macaraig, *Slow justice in the Philippines as drug war rages*, GMA NEWS ONLINE, Sept. 6, 2017, *available at* http://www.gmanetwork.com/news/news/specialreports/624690/slow-justice-in-philippines-as-drug-war-rages/story/.

[347] *Understanding Factors Related to Prolonged Trial of Detained Defendants in the Philippines*, 2017 INT'L J. OF OFFENDER THERAPY & COMP. CRIMONOL. 1. *See also* Raymund E. Narag, *Exploring the consequences of prolonged pretrial incarceration: evidence from a local jurisdiction in the Philippines*, 2018 INT'L J. OF COMP. & APPLIED CRIM. JUST. 1, 14."[P]rolonged pretrial incarceration is a form of exposure to the criminogenic ethos of the jail environment. Efforts to rehabilitate the detainees thus become more difficult in the presence of prolonged pretrial detainees who peddle scripts that justify criminal behaviours."

[348] *Id.* at 13. (Citations omitted; emphasis supplied.)

[349] Elizabeth Marcelo, *Philippine Jails 511% congested, audit finds*, PHIL. STAR, June 16, 2017, *available at* http://www.philstar.com/headlines/2017/06/16/1710620/philippine-jails-511-congested-audit-finds, *citing* COMMISSION ON AUDIT, CONSOLIDATED ANNUAL AUDIT REPORT ON THE BUREAU OF JAIL MANAGEMENT AND PENOLOGY FOR THE YEAR ENDED DECEMBER 31, 2016, at 34 (2017).

According to the Commission, this overcrowding in the country's district jails, city jails, municipal jails, extension jails, and female dormitories violates the Bureau of Jail Management and Penology's (BJMP) own *Manual on Habitat, Water, Sanitation and Kitchen in Jails*, as well as the United Nations' *Minimum Standard Rules for the Treatment of Prisoners*.[350] Under the BJMP manual, the ideal habitable floor for each inmate is 4.7 square meters and the ideal maximum number of inmates per cell should only be 10.[351]

These are but a few cases in a gamut of human rights violations, both known and unknown that happen across Philippine jails and detention facilities.[352] The *Report of the Office of the United Nations High Commissioner on Human Rights* during the Third Universal Periodic Review of the HRC, perhaps summed these up:

> The same Committee was particularly concerned at *the persistence of critical and chronic overcrowding in all detention facilities*. Moreover, the incidence of infectious diseases such as tuberculosis was extremely high. The Committee was also concerned that child offenders were kept in regular prisons and were not separated from adult detainees, about sexual violence against detainees and about the treatment of detainees belonging to minorities.

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[350] *Id.*

[351] *Id.*

[352] *See, e.g.*, Jodesz Gavilian, *Looking into the food system of PH inmates*, RAPPLER, Apr. 16, 2015, *available at* https://www.rappler.com/move-ph/issues/hunger/90133-food-system-philippines-prisons-jails; Rick Rocamora, *Bursting at the seams: Philippine detention centers*, RAPPLER, Mar. 3, 2018, *available at* https://www.rappler.com/views/imho/197309-bursting-seams-duterte-drug-war-detention-centers; *Inhuman and Degrading Prison Conditions*, Alliance for the Advancement of People's Rights, May 28, 2014, *available at* http://www.karapatan.org/ features-inhuman-degrading-PHprison-conditions; Marielle van Uitert & Jannie Schipper, *Inside the jails of Duterte's drug war*, NEW INTERNATIONALIST, Oct. 11, 2017, *available at* https://newint.org/features/web-exclusive/2017/10/11/philippine-prisons-drugs; *and* Summary of stakeholders' submissions - the Philippines, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/27/PHL/3 (Feb. 27, 2017), ¶¶ 42, 46.

For research documenting various aspects of Philippine prison conditions, *see* Raymund E. Narag & Clarke R. Jones, *Understanding Prison Management in the Philippines: A Case for Shared Governance*, 97 THE PRISON J. 3 (2017); Jo Baker & DIGNITY, *Conditions for Women in Detention in the Philippines: Needs, vulnerabilities and good practices*, DIGNITY Publication Series on Torture and Organised Violence No. 11 (2015); JC Gaillard, Etienne Marie Casing-Baring, Dewy Sacayan, Marjorie Balay-As & Michelle Santos, *Reducing and Managing the Risk of Disaster in Philippine Jails and Prisons*, Disaster Prevention and Management Policy Brief Series No. 1 (2016); *and Overcrowding fuels TB in prisons*, INSIDE STORIES ON EMERGENCIES, Feb. 26, 2010, *available at* http://www.irinnews.org/report/88241/ philippines-overcrowding-fuels-tb-prisons.

> Referring to the relevant supported recommendation, the United Nations country team stated that the *extreme overcrowding of prisons had worsened*, the training of prison guards was *substandard* and that the provision of food, water, sanitation and treatment for health conditions, including communicable diseases such as HIV and tuberculosis, was *grossly inadequate*.[353]

From these facts, if one should, indeed, judge nations not by "how it treats its highest citizens, but its lowest ones,"[354] as the late Nobel laureate suggested, then this Note would have made it clear that the Philippines has failed as a nation.

There remains a systemic neglect of the human rights of prisoners nationwide and not the least, pretrial detainees who suffer the same situation as those convicted—more than 30 years after the 1987 Constitution incorporated Section 19(2) of the Bill of Rights as cognate to the right to the presumption of innocence and the right to due process. This acquiescence to human rights violations is unfortunate, for as the United Nations Commissioner for Human Rights intimated:

> Only by accepting human rights *as the cornerstone could the rest of the edifice*—success in economic development, durable peace—become possible. It is a point that even today—perhaps especially today – needs to be absorbed by the numerous political actors who only see human rights as a tiresome constraint. Indeed, many people who have enjoyed their rights since birth simply do not realise what these principles really mean. Like oxygen, they lie beyond our daily sensory perception, and *only when suddenly deprived of it do we fathom their enormous significance*.[355]

The injustice that thousands of disenfranchised Filipinos face in jails, prisons, *bartolinas*, in detention centers, and in all sorts of penal or carceral confinements, could not drag any longer in apathy. The law, having been articulated and found to be on the side of liberty, emancipation, or comfort, must now compel action and, if necessary, vigorous dissent. Borrowing from the late civil rights activist, Martin Luther King, Jr.,[356] their injustice is a threat to justice everywhere because, precisely and ultimately, "the recognition of the *inherent dignity* and of the equal and unalienable

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[353] A/HRC/WG.6/27/PHL/2 (Feb. 27, 2017), ¶¶ 25-26. (Emphasis supplied.)

[354] UNODC, *supra* note 31.

[355] Zeid Ra'ad Al Hussein, *Is International Human Rights Law Under Threat?* Grotius Lecture at the Law Society, London (June 26, 2017), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21803&LangID=E. (Emphasis supplied.).

[356] *See supra* note 1.

rights" of *all Filipinos* "is the foundation of freedom, justice and peace" in the nation.[357]

The injustice that thousands of disenfranchised Filipinos face in jails, prisons, the *bartolina*, in detention centers, and in all sorts of penal or carceral confinement, could not drag any longer in apathy. The law, having been articulated and found to be on the side of liberty, emancipation, or comfort, must now compel action and, if necessary, vigorous dissent. Borrowing from the late civil rights activist, Martin Luther King, Jr., their injustice is a threat to justice everywhere. And, ultimately, "the recognition of the *inherent dignity* and of the equal and unalienable rights" of *all Filipinos* "is the foundation of freedom, justice and peace" in the nation.

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[357] UDHR, preamble, ¶ 1. (Emphasis supplied.)