

**BANNED FROM THE FRANCHISE: THE
PHILIPPINES' AUTOMATIC IMPOSITION OF THE
PENALTY OF DISENFRANCHISEMENT ON
PRISONERS AS A VIOLATION OF CUSTOMARY
INTERNATIONAL LAW AND TREATY LAW**

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Jose Victornio L. Salud, A.B., J.D., M.P.P./I.P.

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ABSTRACT

The thesis explores the rights of prisoners under international law and determines whether they have a right to vote under it. Specifically, the thesis hones in on the Philippines because it imposes an absolute disenfranchisement of all prisoners and even imposes it post-sentence.

*In exploring Customary International Law and Treaty Law, the thesis will attempt to prove that universal suffrage without discrimination has achieved customary international law status. Additionally and/or alternatively, the right to vote is a treaty obligation under the ICCPR and is therefore obligatory *pacta sunt servanda* on the Philippines.*

Further, the thesis will explore and expound on the interrelationships between International Human Rights Law (“IHRL”) instruments relevant to the Philippines and their domestic implementation. The intent is to highlight the basic minimum standards in relation to the grant of suffrage rights to countries that abide by international law.

*In addition, the thesis seeks to explore the philosophical and public policy underpinnings of the right to vote to identify implementation possibilities. This process is important because one of the primary questions this thesis seeks to answer is what classes of crimes and penalties might the penalty of disenfranchisement be considered as proportionate. As will be expounded further in the thesis, disenfranchisement may be proportionate for those guilty of crimes against national security, peace and order, election offenses, political crimes, and serious violations of the law (such as murder, rape, terrorism, kidnapping, human trafficking, and other classes of crimes similarly situated). In the Philippines, these classes of crimes may be categorized as those falling under the penalty of *reclusion perpetua* or life imprisonment.*

Initially, the intent of the author was to discover and prescribe an international standard for an ICCPR-compliant disenfranchisement of prisoners. However, given the sheer volume of laws and jurisprudence available from all the members of the international community, the author deemed it prudent to focus the research on a specific country. As it appears, the country of choice seemed the most relevant to the author’s personal and professional background: The Philippines.

In discussing the legal and philosophical underpinnings of the right to vote vis-à-vis the legal justifications for the deprivation of the right to vote, it is necessary to trace the Philippine experience. In this regard, a discussion of Philippine constitutional and criminal law are in order. The thesis will expose the intent of the framers of the constitution in institutionalizing the right to vote and the justifications of disenfranchising prisoners.

As a classic “domestic implementation of international human rights law” discourse, this thesis is required to expound on the legal framework of the Philippines. It is striking that the 1987 Constitution and all previous versions dedicated a separate provision for Suffrage, independent of the Bill of Rights.

*The thesis will then attempt to prove that the right to vote has achieved customary status by providing a comprehensive discussion of all the relevant international legal instruments, from the Universal Declaration on Human Rights (“UDHR”) to the relevant domestic legal cases. This is done in attempt to consolidate the relevant state practice and likewise discover sources of *opinio juris* – the two key elements of customary law.*

The thesis then proceeds to a discussion on International Human Rights Law, in particular, the obligations under Article 25 of the ICCPR. In discussing this, references will be made to relevant methods of interpretation such as those prescribed in the Vienna Convention on the Law of Treaties (“VCLT”) and other international instruments to assist in the interpretation of Article 25; that a right to vote, in fact, exists as a matter of treaty obligation.

*Also, the thesis addresses the practical concerns of the Philippine government on the implementation of this proposal. The thesis will take a further step from the approach of the European Court of Human Rights (“ECtHR”) in the case of *Hirst v. UK (No 2)*. In *Hirst*, although it held that a blanket ban on prisoner voting was disproportionate under the ECHR, the policy recommendations were simple policy advices to the United Kingdom. In contrast, this thesis attempts to prescribe actual policy changes that will conform to the standards of Article 25 of the ICCPR.*

Finally, the thesis will deal with the policy considerations of prisoner voting – the logistical and the philosophical. These discussions will not be as comprehensive as the legal discussions and the thesis will not pretend to add to the rich volume of literature on these issues.

As regards the logistical concerns, issues on security, budgetary constraints, establishing residency rules, legal limitations within the prison facilities will be discussed and solutions to them will be proffered with special mention to the activities and mechanisms that are already in place in the Philippines. As regards the philosophical concerns, the thesis will address the traditional arguments regarding supposed violations of the social contract, theories on rehabilitation and punishment.

In the end, the thesis will recommend policy actions that the government can take, both normatively and positively to address these legal and policy concerns.

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I. INTRODUCTION

Prison is designed to break one's spirit and destroy one's resolve. To do this, the authorities attempt to exploit every weakness, demolish every initiative, negate all signs of individuality – all with the idea of stamping out that spark that makes each of us human and each of us who we are."

- **Nelson Mandela**, Long Walk to Freedom

A. BACKGROUND OF THE STUDY

Prisoners are often the most maligned people in society. Having committed acts which society deems inconsistent with its underlying principles, prisoners are culled from it both literally and figuratively.

While people are only mindful of the visible manifestations of the criminal justice system, i.e., imprisonment, people rarely consider the other consequences of a criminal conviction. Together with physical separation, these individuals are divested of many of their civil and political rights, none more significant than their right to participate in the political life of their nation through suffrage.

This thesis is about how voting rights have taken on a central role in society and nationhood.¹ From a mere privilege extended by the kings to the men of the landed classes, it became a right extended to men of color, then to all sexes. In its history, suffrage has been continuously expanded to enfranchise more and more people. However, the old justifications for the disenfranchisement certain groups are still alive and well, but this time, used against convicted prisoners.

To this day, the Philippines and a handful of countries² still deem it proper to exclude convicts (during and after the full service of their sentences) from this

¹ See C.R.G. Murray, *Playing for Time: Prisoner Disenfranchisement under the ECHR after Hirst v. United Kingdom*, 22 KING L. J. 309 (2011).

² See Rottinghaus, Brandon, *Incarceration and Enfranchisement: International Practices, Impact and Recommendations for Reform*, P. 4, available at:

most important of political exercises.³ This is legally indefensible and morally reprehensible.

B. DEFINITIONS

“**Suffrage**” - the right to vote in political elections

“**Disenfranchisement**” - The state of being deprived of a right or privilege, especially the right to vote.

“**Prisoners**” - a person legally committed to prison as a punishment for a crime.

“**Detainee**” - a person legally committed to a detention facility while awaiting trial or pending the resolution of an appeal in a criminal case

“*Reclusion perpetua*” - highest penalty imposed in the Philippine Criminal Justice System, imposed on convictions for crimes like murder, rape, kidnapping, terrorism, drug trafficking, among others.

“*Arresto Menor*” - the lowest tier of custodial penalties according to the Revised Penal Code

C. OBJECTIVES OF THE STUDY

The objective of the study is to determine whether the Philippines (and similarly situated States) is violating Customary International Law⁴ and the

http://ifes.org/sites/default/files/08_18_03_manatt_brandon_rottinghaus.pdf (last visited 07 January 2016), *enumerated* Armenia, Cameroon, Chile, Finland, New Zealand, Philippines, United States (varies per state).

³ Morgan Morgan MacDonald, *Disproportionate Punishment: The Legality of Criminal Disenfranchisement under the International Covenant on Civil and Political Rights*, 40 GEORGE WASHINGTON INT’L L. REV. 1385, 1386 (2009) *citing* *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (“[The right to vote]” is regarded as a fundamental political right, because [it is] preservative of all right.”), MANFRED NOWAK, THE U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 443 (1st ed., 1993)(“The right to vote is without doubt the most important political right.”).

International Covenant on Civil and Political Rights (“ICCPR”)⁵ for the absolute disenfranchisement of prisoners. To this end, the thesis will attempt to prove that universal suffrage *without discrimination*⁶ has achieved customary international law status. Additionally and/or alternatively, the right to vote is a treaty obligation under the ICCPR and is therefore obligatory *pacta sunt servanda*⁷ on the Philippines.

Further, the thesis will explore and expound on the interrelationships between International Human Rights Law (“IHRL”) instruments⁸ relevant to the Philippines and their domestic implementation. The intent is to highlight the basic minimum standards in relation to the grant of suffrage rights to countries that abide by international law.

⁴ See Restatement (Third) of the Foreign Relations Law of the United States § 102 (2) (1987); Statute of the International Court of Justice, June 26, 1945, art 38 (1)(b): “international custom, as evidence of a general practice accepted as law.” Cited in Aloysius P. Llamzon, *The Generally Accepted Principles of International Law as Philippine Law: Towards a Structurally Consistent Use of Customary International Law in Philippines Courts*, 47 ATENEO L.J. 243, 252 (2002).

⁵ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.]

⁶ *Id.*, art. 25. See discussion *infra* part III (A)(1)-(2).

⁷ Vienna Convention on the Law of Treaties art. 26, May 13, 1969, 1155 U.N.T.S. 331 [hereinafter **VCLT**], “Article 26 “*Pacta sunt servanda*” Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”

⁸ [Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).], [Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, *as amended by* Protocols Nos 3, 5, 8, and 11 *which entered into force* on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 *respectively.*], (American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992); American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992); African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986: [excerpts] . . .

In addition, the thesis seeks to explore the philosophical and public policy underpinnings of the right to vote to identify implementation possibilities. This process is important because one of the primary questions this thesis seeks to answer is what classes of crimes and penalties might the penalty of disenfranchisement be considered as proportionate.⁹ As will be expounded further in the thesis, disenfranchisement may be proportionate for those guilty of crimes against national security, peace and order, election offenses, political crimes, and serious violations of the law (such as murder, rape, terrorism, kidnapping, human trafficking, and other classes of crimes similarly situated).¹⁰ In the Philippines, these classes of crimes may be categorized as those falling under the penalty of *reclusion perpetua* or life imprisonment.¹¹

D. SIGNIFICANCE OF THE STUDY

Yearly, 40,531 prisoners¹² are disenfranchised in the Philippines. Although insignificant in comparison to the entire population of the country (which stands at more than 100 M),¹³ the Philippines is one of the few countries where absolute prisoner disenfranchisement that extends beyond the full service of sentence is still a penalty.¹⁴

⁹ See discussion *infra* part V (A)(2).

¹⁰ See discussion *infra* part V (A)(2)(a).

¹¹ Revised Penal Code, art. 41, *viz*: Art. 41. *Reclusion perpetua and reclusion temporal*; Their accessory penalties. — The penalties of *reclusion perpetua* and *reclusion temporal* shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of **perpetual absolute disqualification¹¹ which the offender shall suffer even though pardoned as to the principal penalty**, unless the same shall have been expressly remitted in the pardon. Art.

¹² <http://www.prisonstudies.org/country/philippines>

¹³ http://www.nscb.gov.ph/secstat/d_popnProj.asp

¹⁴ See discussion *infra* part III.

A more noble attempt of the thesis is to add inertia to the global debate, particularly in the United States – where the right to vote has not been constitutionally embedded.¹⁵ Likewise, the thesis seeks to add its voice to the liberal thought that prisoners enjoy substantial residual rights¹⁶ despite their conviction, and that in fact, participation in the political life of the nation through voting is important in their rehabilitation.

E. SCOPE AND LIMITATIONS

Initially, the intent of the author was to discover and prescribe an international standard for an ICCPR-compliant disenfranchisement of prisoners.

¹⁵ See e.g. *Bush v. Gore*, 531 U.S. 98 (2000) where the U.S. Supreme Court held that “[t]he individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college. U. S. Const., Art. II, § 1.”

¹⁶ See e.g. Standard Minimum Rules for the Treatment of Prisoners,¹⁶ the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,¹⁶ the Basic Principles for the Treatment of Prisoners,¹⁶ the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)¹⁶ and the basic principles on the use of restorative justice programmes in criminal matters.¹⁶

Likewise, it also considers the instruments relating to other vulnerable sectors such as children, juvenile and women, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),¹⁶ the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),¹⁶ the United Nations Rules for the Protection of Juveniles Deprived of their Liberty¹⁶ and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).¹⁶

Specific crime prevention instruments were likewise recalled such as Code of Conduct for Law Enforcement Officials,¹⁶ the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment,¹⁶ the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,¹⁶ the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Principles¹⁶ and Guidelines on Access to Legal Aid in Criminal Justice Systems.¹⁶

Regional practices on the treatment of prisoners were also considered in the drafting of the Mandela Rules, including Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, the revised European Prison Rules, the Kampala Declaration on Prison Conditions in Africa,¹⁶ the Arusha Declaration on Good Prison Practice¹⁶ and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.¹⁶

However, given the sheer volume of laws and jurisprudence available from all the members of the international community, the author deemed it prudent to focus the research on a specific country. As it appears, the country of choice seemed the most relevant to the author's personal and professional background: The Philippines.

In discussing the legal and philosophical underpinnings of the right to vote vis-à-vis the legal justifications for the deprivation of the right to vote, it is necessary to trace the Philippine experience. In this regard, a discussion of Philippine constitutional and criminal law are in order. The thesis will expose the intent of the framers of the constitution in institutionalizing the right to vote and the justifications of disenfranchising prisoners.

The thesis will then attempt to prove that the right to vote has achieved customary status by providing a comprehensive discussion of all the relevant international legal instruments, from the Universal Declaration on Human Rights ("**UDHR**")¹⁷ to the relevant domestic legal cases. This is done in attempt to consolidate the relevant state practice and likewise discover sources of *opinio juris* – the two key elements of customary law.¹⁸

The thesis then proceeds to a discussion on International Human Rights Law, in particular, the obligations under Article 25 of the ICCPR. In discussing this, references will be made to relevant methods of interpretation such as those

¹⁷ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948) [hereinafter "**UDHR**"]

¹⁸ See generally *The Asylum Case*, 1948 I.C.J. 24 (Oct. 5); *North Sea Continental Shelf Cases* (F.R.G. v. Den., F.R.G. v. Neth.), 1969 I.C.J. 4 (Feb. 20)

prescribed in the Vienna Convention on the Law of Treaties (“VCLT”)¹⁹ and other international instruments to assist in the interpretation of Article 25; that a right to vote, in fact, exists as a matter of treaty obligation.

Finally, the thesis addresses the practical concerns of the Philippines government on the implementation of this proposal. The thesis will take a further step from the approach of the European Court of Human Rights (“ECtHR”) in the case of *Hirst v. UK (No 2)*.²⁰ In *Hirst*, although it held that a blanket ban on prisoner voting was disproportionate under the ECHR, the policy recommendations were simple policy advices to the United Kingdom. In contrast, this thesis attempts to prescribe actual policy changes that will conform to the standards of Article 25 of the ICCPR.

F. METHODOLOGY

As a principally legal thesis, this paper will determine the content and extent of the obligation of the Philippines under the ICCPR. While this endeavor appears simple, the true nature of Article 25 is complex for several factors. First, Article 25 has not been expounded on as comprehensively as other provisions of the ICCPR through jurisprudence in the form of individual complaints. While General Comment (“GC”) “GC25”,²¹ adopted by the Human Rights Committee (“HRC”) in 1996, expounded on the right to vote in general, the only reference to prisoner disenfranchisement was in paragraph 14, which states:

¹⁹ Vienna Convention on the Law of Treaties art. 26, May 13, 1969, 1155 U.N.T.S. 331

²⁰ *Hirst v. United Kingdom* (No. 2), App. No. 74025/01, Eur. Ct. H.R. (Oct. 6, 2005). [hereinafter “*Hirst*”]

²¹ Human Rights Comm., General Comment 25 (57), General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, Adopted by the Committee at its 1510th meeting, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).

14. In their reports, States parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable. **If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence.** Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote. [Emphasis and underscoring supplied]

Initially, it might be patently clear that the HRC considers an absolute disenfranchisement of prisoners to be a violation of Article 25. However, the author considers this to be a somewhat incomplete depiction of the true state of the law. Hence, an exposition of this statement in conjunction with other methods of statutory legal construction is necessary. In particular, the HRC's comments and pronouncements in its *Concluding Observation of the United States*²² and the individual communication in *Yevdokimov and Rezanov v. the Russian Federation*²³ deserve special focus. In addition, commentaries by respected publicists and the *travaux preparatoires*²⁴ of the ICCPR will be utilized heavily.

Second, the decisions of the ECtHR in *Hirst v. UK*,²⁵ *Greens and M.T. v. UK*,²⁶ *Firth and Others v. UK*,²⁷ *Frodl v. Austria*,²⁸ *Anchugov and Gladkov v. Russia*,²⁹ and *Soyler v. Turkey*,³⁰ will be discussed to draw interpretative guidance on the

²² Human Rights Comm. [HRC], *of the Human Rights Committee: United States of America*, ¶35, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (July 28, 2006)[hereinafter *HRC United States Observations*].

²³ CCPR/C/101/D/1410/2005, ¶ 2.1.

²⁴ See MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 445 (1st ed., 1993) cited in MacDonald, *supra* note 3.

²⁵ *Supra* note 20.

²⁶ *Greens and M.T. v. United Kingdom*, Application Nos. 60041/08 & 60054/08, 23 November 2010.

²⁷ *Firth and Others v. United Kingdom*, Application No. 47784/09, 12 August 2014

²⁸ *Frodl v. Austria*, Application No. 20201/04, 08 April 2010.

²⁹ *Anchugov and Gladkov v. Russian Federation*, Applications nos. 11157/04 and 15162/05, 04 July 2013.

³⁰ *Soyler v. Turkey*, Application No. 29411/07, 20 January 2014.

interpretation of the rights under Article 25 of the ICCPR. While the ECtHR's jurisprudence is not directly applicable, reference to them may be made similar to how the International Court of Justice ("ICJ") makes reference to judicial decisions.³¹ Similarly, municipal decisions in Canada, South Africa and Israel will be referred to in an attempt to view as much of the world's view as practicable.

Third, as a classic "domestic implementation of international human rights law" discourse, this thesis is required to expound on the legal framework of the Philippines. It is striking that the 1987 Constitution and all previous versions dedicated a separate provision for Suffrage,³² independent of the Bill of Rights.

Fourth, the thesis will deal with the policy considerations of prisoner voting – the logistical and the philosophical. These discussions will not be as comprehensive as the legal discussions and the thesis will not pretend to add to the rich volume of literature on these issues.

As regards the logistical concerns, issues on security, budgetary constraints, establishing residency rules, legal limitations within the prison facilities will be discussed and solutions to them will be proffered with special mention to the activities and mechanisms that are already in place in the Philippines. As regards the philosophical concerns, the thesis will address the traditional arguments regarding supposed violations of the *social contract*, theories on rehabilitation and punishment.

³¹ See ICJ STATUTE, art. 38 (1)(d).

³² 1987 PHIL. CONST., Article V

II. THE PHILIPPINE SITUATION

Criminal disenfranchisement traces its storied history to Ancient Greece, where criminal offenders were imposed the penalty of *atimia* – which carries with it the loss of rights as a citizen, including the right to participate in the voting body (“*polis*”).³³ Aristotle envisioned the *polis* as a community that requires the acceptance of certain baseline commitments by all of its members.³⁴ Failure or refusal to abide by said commitments becomes a positive act of withdrawing from that society.³⁵ Rome retained this practice, which they referred to as *infamia*, imposing the same penalty of disenfranchisement and the right to serve in the Roman legions.³⁶ These Greek and Roman practices were in turn adopted in Medieval Europe where prisoners were imposed the penalty of complete loss of citizenship, commonly referred to as “civil death.”³⁷

English law drew from these practices and developed the punishment of “attainder” which involves the seizure of properties and their “return” to the crown, incapacity to inherit and devise property and the deprivation of all civil rights.³⁸ Since then, disenfranchisement has been considered an appropriate punishment for the commission of crimes.³⁹ The United States, in particular, is the only western liberal democracy that still imposes the penalty of permanent

³³ A DREAM COME TRUE, 12 (Commission on Elections, 2010)

³⁴ JEFF MANZA AND CHRISTOPHER UGGEN, LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 25 (2006).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*, see also Deborah Cheney, *Prisoners as Citizens in a Democracy*, 47 THE HOWARD JOURNAL 136, p. 134 (2008); AVERY V. EVERETT, 110 N.Y. 317, 324 (1888) cited in Jason Schall, *The Consistency of Felon Disenfranchisement with Citizenship Theory*, 22 HARV. BLACKLETTER L.J. 53 (2006).

³⁸ Jason Schall, *The Consistency of Felon Disenfranchisement with Citizenship Theory*, 22 HARV. BLACKLETTER L.J. 53 (2006).

³⁹ *Id.*

disenfranchisement for offenses punishable by imprisonment exceeding one (1) year.⁴⁰ In fact, in 48 states (aside from Maine and Vermont, but including the District of Columbia), convicted prisoners are denied their right to vote during the service of their sentence, and in most cases, beyond the service of their sentence.⁴¹

This propensity to impose “civil death” to the prisoner has been adopted by the Philippines where all individuals who have been convicted are legally and practically prohibited from exercising their political right to vote, in most cases – like the United States – well beyond the completion of their prisoner terms. This shall be expounded in later sections.⁴²

A. THE EVOLUTION OF SUFFRAGE FROM A PRIVILEGE TO A CONSTITUTIONAL RIGHT AND GUARANTEE

Former Philippine Chief Justice Reynato Puno outlined the history of Suffrage in the Philippines in his *Concurring and Dissenting Opinion* in the case of *Atty. Romulo B. Macalintal v. Commission on Elections*,⁴³ viz.:

Suffrage is an attribute of citizenship [Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* 582 (1996)] and is ancillary to the principle of republicanism enshrined in section 1, Article II of the 1987 Constitution. The right of suffrage, however, is not absolute. No political system in the whole world has literally practiced universal suffrage, even among its citizens [BRENT & LEVINSON, *PROCESS OF CONSTITUTIONAL DEMOCRACY: CASES AND MATERIALS* 1053 (1992).] The scarlet history of the right of suffrage shows that restrictions have always been imposed on its exercise.

⁴⁰ *Id.*, at 13

⁴¹ *Id.*

⁴² See discussion *infra* part II (B).

⁴³ *Atty. Romulo B. Macalintal v. Commission on Elections*, G.R. No. 157013, 10 July 2003 (Concurring and Dissenting Op., J. Puno).

1. 1907: Suffrage as a statutory privilege granted exclusively to males from elite backgrounds

The right of suffrage has evolved from a statutory right to a constitutional right in the Philippines – from Act No. 1582 (which took effect on 15 January 1907) to the present-day Constitution.⁴⁴ Considered initially as a mere privilege exclusive to males with elitist backgrounds, *viz*:

Like its foreign counterparts, the qualifications for the exercise of the right of suffrage set in section 14 of Act No. 1582 were elitist and gender-biased. The right of suffrage was limited to male citizens twenty-three years of age or over with legal residence for a period of six months immediately preceding the election in the municipality in which they exercise the right of suffrage. Women were not allowed to vote for they were regarded as mere extensions of the personality of their husbands or fathers, and that they were not fit to participate in the affairs of government. But even then, not all male citizens were deemed to possess significant interests in election and the ability to make intelligent choices. Thus, only those falling under any of the following three classes were allowed to vote: (a) those who, prior to the August 13, 1898, held office of municipal captain, *gobernadorcillo*, *alcalde*, lieutenant, *cabeza de barangay*, or member of any *ayuntamiento*; (b) those who own real property with the value of five hundred pesos or who annually pay thirty pesos or more of the established taxes; or (c) those who speak, read and write English or Spanish.⁴⁵

This is reflective of the traditional conceptions of suffrage in England where voting was one of privilege. In England, prior to the Reform Act 1832, only men who owned property that reached a value threshold were entitled to vote.⁴⁶ That Act 1582 severely limited the number of people qualified to vote is axiomatic since only 104,996 were registered to vote at that time.⁴⁷ This represented only 3% of the entire population of the Philippines in 1907.⁴⁸

⁴⁴ 1987 PHIL. CONST.

⁴⁵ *Macalintal*, *supra* note 43.

⁴⁶ Cheney, *supra* note 37 at 136.

⁴⁷ <http://nhcp.gov.ph/the-history-of-the-first-philippine-assembly-1907-1916/>

⁴⁸ STEPHEN KINZER, *OVERTHROW: AMERICA'S CENTURY OF REGIME CHANGE FROM HAWAII TO IRAQ* 94 (2006).

2. The long struggle for women's suffrage

Women suffragists had to wait for almost 30 years before obtaining the government's approval when the Philippine Legislature passed Act No. 411 on 09 November 1933.⁴⁹ Unfortunately, the Act was superseded by the enactment of the 1935 Philippine Constitution, which limited the right to suffrage to male citizens⁵⁰ yet again. The relevant provision states:

Suffrage may be exercised by male citizens of the Philippines not otherwise disqualified by law, who are twenty-one years of age or over and are able to read and write, and who shall have resided in the Philippines for one year and in the municipality wherein they propose to vote for at least six months preceding the election.⁵¹

The arguments in opposition to women's suffrage reveal the second-class status of women at that time. For even though it was conceded that women were capable of exercising their right to vote, those in the opposition maintained that: (1) there was no popular demand for suffrage by Filipino women themselves; (2) woman suffrage would only disrupt family unity; and (3) it would plunge women into the quagmire of politics, dragging them from the pedestal of honor in which they had theretofore been place.⁵²

Resulting in a compromise, after a heated debate among the framers, it was decided that the Constitution will reflect that the right of suffrage would be limited to male citizens but with the following *caveat* included: "[t]he National Assembly shall extend the right of suffrage to women, **if in a plebiscite** which shall be held for that purpose within two years after the adoption of this

⁴⁹ Macalintal, *supra* note 43

⁵⁰ *Id.*

⁵¹ *Id.*; 1935 PHIL. CONST., art. 5.

⁵² G.R. No. 157013, 10 July 2003 *citing* I ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 217 (1936).

Constitution, not less than three hundred thousand women possessing the necessary qualifications shall vote affirmatively on the question.”⁵³ Thus, on 30 April 1937, in a plebiscite mandated by the aforementioned provision, more than 300,000 women voted that they desired to exercise their right to vote.⁵⁴

3. The 1935 Constitution: from privilege to right

Perhaps responding to developments in the United States,⁵⁵ and to be more consistent with the right to vote as enshrined in the US Constitution,⁵⁶ the framers of the 1935 Constitution determined to lower the minimum age requirement from 23 to 21 years old.⁵⁷ Likewise, the literacy requirement was relaxed to simply require that a voter must be “able to read and write.”⁵⁸ Perhaps the most significant change in the 1935 Constitution was the removal of the property ownership requirement, more than 80 years after the United States lifted its own property requirement for suffrage exercise.⁵⁹ The Supreme Court elaborated the underlying principles of this decision in the case of *Maquera v. Borra*,⁶⁰ viz.:

[P]roperty qualifications are inconsistent with the nature and essence of the republican system ordained in our constitution and the principle of social justice underlying the same, for said political

⁵³ *Macalintal*, *supra* note 43.

⁵⁴ *Id.*

⁵⁵ The 19th Amendment to the United States Constitution, ratified on 18 August 1920 which reads: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”

⁵⁶ The 15th Amendment which states: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude. See Bjorn Erik Rasch and Roger D. Congleton, Amendment Procedures and Constitutional Stability, in DEMOCRATIC CONSTITUTIONAL DESIGN AND PUBLIC POLICY: ANALYSIS AND EVIDENCE 541 (Roger D. Congleton and Birgitta Swedenborg, eds., 2005).

⁵⁷ *Macalintal*, *supra* note 43.

⁵⁸ The drafters rejected the proposal that only those who can read and write English, Spanish, or other dialects should be allowed to vote. This was deemed discriminatory to the significant Muslim minority of the Philippines and was therefore rejected.

⁵⁹ *Macalintal*, *supra* note 43.

⁶⁰ 15 SCRA 7 (1965) as cited in *Macalintal*, *supra* note 43.

system is premised upon the tenet that **sovereignty resides in the people and all government authority emanates from them, and this, in turn, implies necessarily that the right to vote and to be voted for shall not be dependent upon the wealth of the individual concerned**, whereas social justice presupposes equal opportunity for all, rich and poor alike, and that, accordingly, no person shall by reason of poverty, be denied the chance to be elected to the public office.

In sum, as noted by Chief Justice Puno, “the 1935 Constitution gave a constitutional status to the right of suffrage.”⁶¹ For the first time in the history of the Philippines, suffrage completed its evolution from a mere statutory privilege to a right protected and enshrined in the fundamental law of the land.⁶² Not only that, the right to vote no longer requires ownership of property, thus removing the monopoly of the landed and rich class to public agency.

4. The 1973 Constitution: broadening the electoral base by lowering the minimum age requirement and removing the literacy requirement

Consistent with the desire of the sovereign to broaden the electoral base, the minimum age for voting was lowered from 21 to 18 years of age under the 1973 Constitution.⁶³ Further, the requirement that a voter must be able to “read and write” was removed as there were “very few countries left in the world where literacy remains a condition for voting.”⁶⁴ To be sure, there were several proposals to actually increase the educational requirements for voting, but in the end, the desire to encourage “popular participation and equalizing the privileges and rights of the people” prevailed.⁶⁵ Furthermore, although the 1935 Constitution implicitly removed any property ownership qualifications, the 1973 Constitution

⁶¹ *Macalintal*, *supra* note 43.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

made this explicit and unequivocal.⁶⁶ Thus, the suffrage provision in the 1973 Constitution reads as follows:

Section 1. Suffrage shall be exercised by citizens of the Philippines not otherwise disqualified by law, who are eighteen years of age or over, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months preceding the election. No literacy, property or other substantive requirement shall be imposed on the exercise of suffrage. The National Assembly shall provide a system for the purpose of securing the secrecy and sanctity of the vote.

5. The 1987 Constitution and the further broadening of the electoral base: providing a system for absentee voting by overseas Filipinos and procedures for illiterate voters

The propensity of Philippine lawmakers and public policy experts to “reflect” the current global trends on suffrage and to further “enfranchise” previously disenfranchised classes of people continued well into the present Constitution. Aware of the growing Philippine diaspora, Congress was constitutionally mandated to “provide for a system for absentee voting by qualified Filipinos abroad.”⁶⁷ Additionally, the present Constitution mandated the relevant government agencies to “design a procedure for the disabled and the illiterates to vote without assistance from other persons.”⁶⁸ It states:

ARTICLE V
SUFFRAGE

Section 1. Suffrage may be exercised by all citizens of the Philippines, not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote, for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

Section 2. The Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad.

The Congress shall also design a procedure for the disabled and the illiterates to vote without the assistance of other persons. Until then, they shall be allowed to vote under existing laws and such rules as the Commission on Elections may promulgate to protect the secrecy of the ballot.

Pursuant to the constitutional mandate, Congress passed into law the Overseas Absentee Voting Law of 2013,⁶⁹ providing a mechanism whereby “qualified Filipinos” who are living abroad “may vote for President, Vice-President, Senators and Party-List Representatives, as well as in all national referenda and plebiscites.”⁷⁰ The law likewise prescribed the system of voting, as follows:

SEC. 23. Voting. – Voting may be done either personally, by mail or by any other means as may be determined by the Commission. For this purpose, the Commission shall issue the necessary guidelines on the manner and procedures of voting.

The OFOV, in consultation with the DFA-OVS, shall determine the countries where voting shall be done by any specific mode, taking into consideration the minimum criteria enumerated under this Act which shall include the number of registered voters, accessibility of the posts, efficiency of the host country’s applied system and such other circumstances that may affect the conduct of voting.

The Commission shall announce the specific mode of voting per country/post at least one hundred twenty (120) days before the start of the voting period.

In the exercise of the powers granted to it by the Constitution⁷¹ and specifically identified by Congress in the Overseas Absentee Voting Law, the Commission on Elections (“COMELEC”) passed COMELEC Resolution No.

⁶⁹ Republic Act No. 10590, An Act Amending Republic Act No. 9189, entitled “An Act Providing For a System of Overseas Absentee Voting by Qualified Citizens of the Philippines Abroad, Appropriating Funds Therefor and for Other Purposes, May 27, 2013. ⁷⁰*Id.*, Section 34.

⁷¹ See generally 1987 PHIL. CONST., Article IX – C, Section 2.

10045⁷² which provides for two (2) forms of voting: personal voting and postal voting. Personal voting is “a mode of voting where the voters personally appear to cast their votes at the Posts or such other voting areas designated by the Commission.”⁷³ On the other hand, postal voting was defined as “a mode of voting where mailing packets, containing official ballots and other election paraphernalia, are sent to the voters through the mail or are personally delivered to or picked-up by the voters at the Post or such other voting areas designated by the Commission; whereupon the voters either mail or personally deliver their accomplished ballots to the Post.”⁷⁴

Thus, hundreds of thousands of previously disenfranchised Filipinos, and despite a huge budgetary burden on the public coffers, the Philippines is ensuring that their rights in fully participating in the political life of the nation are protected. In fact, for the 2016 National and Local Elections, more than 1,376,067⁷⁵ Filipinos are qualified to vote.

6. Detention Prisoners

Prior to 2010, there was a blanket deprivation of the right to vote to detention prisoners – those whose cases are on trial or on appeal. Legally, these individuals have always been entitled to vote because they have not been convicted and therefore, cannot be deprived the right to vote. However, because of

⁷² Resolution No. 10045, Rules on the Constitution, Composition, Appointments of Special Board of Election Inspectors, Special Ballot Reception and Custody Group, Special Board of Canvassers, and Other Matters Related Thereto in the Conduct of Voting, Counting And Canvassing of Votes Under Republic Act No. 9189, otherwise known as “The Overseas Absentee Voting Act of 2003” as amended by Republic Act No. 10590 for purposes of the May 9, 2016 National and Local Elections, January 27, 2016.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵<http://www.comelec.gov.ph/?r=OverseasVoting/Statistics/NumberofRegisteredVoters>

an administrative and logistical vacuum, more than 100,000 detention prisoners⁷⁶ were disenfranchised in the 2007 elections, for example. These all changed during the May 10, 2010 National and Local Elections when 17,336 detainees were able to vote.⁷⁷ For the 2013 National and Local Elections there were 33,076 detainee voters.⁷⁸

a. *The hindrances to detainee voting*

As a brief background, there were several factors that prevented the exercise of the right to vote of detainees in the Philippines.

First, there is no detainee voting law in the Philippines that specifically recognizes their right to vote. Consequently, there is no statutory guidance on how to enforce this right.⁷⁹ To be sure, even the Absentee Voting Law is silent about detainee voting as it limits its coverage to members of the Armed Forces, the Philippine National Police, other government officials, and employees performing election duties.⁸⁰ Further, this means that postal voting is not possible for detention prisoners.

⁷⁶ A DREAM COME TRUE, *supra* note 33.

⁷⁷ *Id.*, at 1; See also IFES 2010 Annual Report, available at: http://www.ifes.org/sites/default/files/ifes_2010_annual_report.pdf (last visited 05 May 2016).

⁷⁸ Report submitted to the COMELEC *En Banc* by the Committee on Detainee Voting (on file with the author).

⁷⁹ A DREAM COME TRUE, *supra* note 33 at 3.

⁸⁰ See Executive Order No. 7166, "Providing for Absentee Voting By Officers and Employees of Government Who Are Away From the Place of Their Registration by Reason for Official Functions on Election Day," March 30, 1987, Section 1 states:

Sec. 1. Any person who by reason of public functions and duties, is not in his/her place of registration on election day, may vote in the city/municipality where he/she is assigned on election day: Provided, That he/she is a duly registered voter.

Second, as a consequence of the legal vacuum, the problem of how to properly define one's residence appears. Most, if not all, detainees in a facility would have been residents of a previous locality.⁸¹ Therefore, they are legally prohibited from registering in the locality where the facility is located because they are technically not residents thereof.⁸²

Surely, this is not a problem exclusive to the Philippines as similar concerns have been raised in other jurisdictions such as Canada, Australia and the United Kingdom.⁸³

Third, voter registration had to be done in person before the relevant local election officials in their locality.⁸⁴ Since they are under custody, a court order that allowed them to temporary leave the detention facility had to be obtained.⁸⁵ This is an exceptionally taxing endeavor that almost all of the detainees even knew was their right.

Fourth, the relevant laws prohibit the establishment of voting precincts "located within the perimeter or inside a military or police camp or reservation or

Republic Act No. 7166, "An Act Providing For Synchronized National and Local Elections and For Electoral Reforms, Authorizing Appropriations Therefore, and for Other Purposes," Section 12 states:

Sec. 12. Absentee Voting. - Absentee voting as provided for in Executive Order No. 157 dated March 30, 1987 shall apply to the elections for President, Vice-President and Senators only and shall be limited to members of the Armed Forces of the Philippines and the Philippine National Police and other government officers and employees who are duly registered voters and who, on election day, may temporarily be assigned in connection with the performance of election duties to place where they are not registered voters.

⁸¹ A DREAM COME TRUE, *supra* note 33 at 3.

⁸² See generally *Id.*

⁸³ A DREAM COME TRUE, *supra* note 33 at 51.

⁸⁴ *Id.*, citing R.A. No. 8189, "An Act Providing For a General Registration of Voters, Adopting a System of Continuing Registration, Prescribing the Procedures Thereof and Authorizing the Appropriation of Funds Therefor," Section 10.

⁸⁵ *Id.*

within a prison compound.”⁸⁶ The concern was expressed that the term “prison compound” includes “detention” facilities or jails and therefore, the Commission on Elections was legally prohibited from establishing voting precincts inside detention facilities and jails.⁸⁷

Fifth, the law also prohibited the release of detainees during the election period, including election day.⁸⁸ In fact, prison officials may be criminally charged for the “illegal release” of prisoners and detainees alike. This highlights the importance of obtaining a court order for the release of the detention prisoners – to shield prison officials from possible prosecution.⁸⁹

Finally, the law also prohibits the entry of armed government personnel inside polling places.⁹⁰ Thus, escorted voting – the temporary release of a detainee from the detention facility to the voting precinct, assisted or escorted by an armed jail officer – is rendered impossible.⁹¹

b. *Overcoming the hindrances*

The COMELEC, together with the Commission on Human Rights (CHR), the Department of Interior and Local Government (DILG), the Bureau of Jail

⁸⁶ A DREAM COME TRUE, *supra* note 33; Batas Pambansa Blg. 881, The Omnibus Election Code, Section 155.

⁸⁷ A DREAM COME TRUE, *supra* note 33 .

⁸⁸ Batas Pambansa Blg. 881, The Omnibus Election Code, Section 261 (n), which states: “Illegal release of prisoners before and after election. – The Director of the Bureau of Prisons, any provincial warden, the keeper of the jail or the person or persons required by law to keep prisoners in their custody who illegally orders or allows any prisoner detained in the national penitentiary, or the provincial, city or municipal jail to leave the premises thereof sixty days before and thirty days after the election. The municipal or city warden, the provincial warden, the keeper of the jail or the person or persons required by law to keep prisoners in their custody shall post in three conspicuous public places a list of the prisoners or detention prisoners under their care. **Detention prisoners must be categorized as such.**”

⁸⁹ A DREAM COME TRUE, *supra* note 33 at 4.

⁹⁰ Batas Pambansa Blg. 881, The Omnibus Election Code, Section 192.

⁹¹ A DREAM COME TRUE, *supra* note 33 at 4, 59.

Management and Penology (BJMP), the Episcopal Commission and Pastoral Care (ECPPC) of the Catholic Bishop's Conference of the Philippines (CBCP), the Prisoners' Rehabilitation and Empowerment Services Organization, Inc. (PRESO), and the Task Force on Detainee Voting⁹² established a Working Group to find ways to operationalize the detainees right to vote. Their work culminated in the approval of E.M. 09-005.⁹³ In order to implement this resolution, the COMELEC passed Resolution No. 8811 or "Rules and Regulations on Detainee Voting in Connection with the May 10, 2010 National and Local Elections."⁹⁴ This was subsequently replaced by COMELEC Resolution No. 9371 or the "Rules and Regulations on Detainee Registration and Voting in Connection with the May 13, 2013 National and Local Elections and Subsequent Elections Thereafter" on 06 March 2012.

i. Residency and Registration issues

The general rule applies that the pre-incarceration residence of a detainee, if he was registered remains. However, the Detainee Voting Committee - recalling the practice in the state of Pennsylvania - took cognizance of the possibility that "prisoners may (*sic*) establish a new residence outside of the correction facility"⁹⁵ during their incarceration. Thus, the Committee decided to make an *exception* to the "pre-incarceration transfer rule to cover situations such as when the spouse or,

⁹² *Id.*, at 4.

⁹³ In Re: Petition for the Issuance of a COMELEC Resolution Implementing the Right to Vote of Persons Deprived of their Liberty (Detainees/Prisoners) in National Prisons, Provincial, City and Municipal Jails and Other Government Detention Facilities in the May 10, 2010 National and Local Elections.

⁹⁴ Resolution No. 8811 or "Rules and Regulations on Detainee Voting in Connection with the May 10, 2010 National and Local Elections.

⁹⁵ A DREAM COME TRUE, *supra* note 33 at 59. Citing Peter Wagner, Pennsylvania Voting Rules Explain Prisoner Residence, *in* <http://www.prisonersofthecensus.org/news/2005/04/18/pennsylvania/> (last visited 21 April 2016)

if he has no spouse, the immediate family (parents or siblings) of the detainee, effectively abandons the original residence and established domicile in another place where the detainee intends to reside upon release from detention.”⁹⁶ Section 4 of Rule 2 of Resolution 9371 in face provides for a system whereby detainees “who are already registered voters may apply for transfer of registration records.”⁹⁷

For the 2013 National and Local Elections, the Commission adopted a different approach to the residency requirement. The COMELEC discovered two Supreme Court cases that would legally justify the use of the detention facility as the “residence” of the detainees for purposes of voter registration. These are the cases of *Macalintal vs. Commission on Elections*⁹⁸ and *Alcantara vs. The Secretary of the Interior*.⁹⁹ Residence, in *Macalintal*,¹⁰⁰ referred to “two residence qualifications,” as such:

Residence in this provision refers to two residence qualifications: residence in the Philippines and residence in the place where he will vote. As far as residence in the Philippines is concerned, the word residence means domicile, but as far as residence in the place where he will actually cast his ballot is concerned, the meaning seems to be different. **He could have a domicile somewhere else and yet he is a resident of a place for six months and he is allowed to vote there.** [Emphasis and underscoring supplied]

The simple import of *Macalintal* is that if a person is temporarily “residing” in a different locality, as long as it complies with the minimum 6-month rule, then that person can register therein as a voter. It is reasonable to apply this rule to

⁹⁶ A DREAM COME TRUE, *supra* note 33 at 66.

⁹⁷ *Id.*

⁹⁸ *Macalintal v. Commission on Elections*, G.R. No. 157013. July 10, 2003, 405 SCRA 614 (2003)(Main decision)

⁹⁹ *Alcantara v. Secretary of the Interior*, G .R. No. L-43592, May 17, 1935.

¹⁰⁰ *Macalintal*, *supra* note 98.

prisoners and detainee voters because of the forced “change” of their residency during the period of their detention. This conclusion is supported by the case of *Alcantara* where the Court rejected the contention that the petitioners were confined in *Culion* (a detention facility) “against their will”¹⁰¹ and that these individuals “have no intention to permanently reside there.”¹⁰² The Supreme Court stated:

There are a large number of people confined in the Culion Leper Colony. They are not permitted to return to their former homes to vote. They are not allowed to visit their former homes even though they have been separated from near and dear relatives who are not afflicted as they are. Why split hairs over the meaning of residence for voting purposes under such circumstances? Assuming that the petitioners intend to return to their former homes if at some future time they are cured, this intention does not necessarily defeat their residence before they actually do return if they have been residents "of the Philippine Islands for one year and of the municipality in which they offer to vote for six months next preceding the day of voting." Surely a mere intention to return to their former homes, a consummation every humane person desires for them, not realized and which may never be realized should not prevent them, under the circumstances, from acquiring a residence for voting purposes. [emphasis and underscoring supplied]¹⁰³

With the strength of these jurisprudence, the COMELEC proceeded to register detainees in their respective detention facilities if they choose to adopt them as their temporary residence. This new system also provided a permanent solution that reduced the number of escorted voters because instead of escorting them to their original residence, detainees can avail of on-site voting. This also reduced the need to obtain court orders to allow detainees to temporarily leave their detention facilities to vote.

ii. Satellite registration

¹⁰¹ *Alcantara*, *supra* note 99.

¹⁰² *Id.*

¹⁰³ *Id.*

Another key feature of Resolution 9371 is the provision for *satellite registration* within the jail/prison facilities,¹⁰⁴ which removed the administrative barrier of “personally appearing” before the election officer as required by the Continuing Registration Act.¹⁰⁵

iii. Two methods of voting

Under Resolution 9371, there are two (2) modes of voting: (a) the establishment of special polling stations inside jail facilities with at least fifty (50) registered voters,¹⁰⁶ and (b) escorted voting for jail/prison facilities with less than a hundred voters.¹⁰⁷ These two options addressed the obvious limitation of

¹⁰⁴ COMELEC Resolution 9371, “Rules and Regulations on Detainee Registration and Voting in Connection with the May 13, 2013 National and Local Elections and Subsequent Elections Thereafter,” Rule 2.

¹⁰⁵ R.A. 8189, Section 10.

¹⁰⁶ COMELEC Resolution 9371, Rule 3, Section 1: “Section 1. *Special Polling Places Inside Jails*. – Special polling places shall be established in detention/jail facility with registered detainee voters in the following manner:

Number of Qualified Detainee Voters	Number of Special Polling Places
50 to 100	1
101 to 200	2
201 to 300	3
301 to 400	4
401 to 500	5

In case there are more than 500 qualified detainee voters, one (1) special polling place shall be established for every additional 100 qualified detainee voters.

¹⁰⁷ COMELEC Resolution 9371, Rule 7:

Rule 7
ESCORTED DETAINEE VOTING

SECTION 1. *Escorted Detainee Voters* – the following shall avail of the escorted voting:

1. Detainee voters who are residents/registered voters of municipalities/cities other than the town/city of detention; and
2. Detainee voters in detention centers/jails where no special polling places are established.

Provided: that said detainee voters obtained court orders allowing them to vote in the polling place where they are registered.

detainees in seeking to exercise their rights. The former brought the voting precincts to the facilities where they are temporarily incarcerated and the latter, provided for a mechanism whereby they can be lawfully escorted to their precincts.

The legal prohibition on the establishment of voting precincts within “prison facilities” was addressed when then Commission on Human Rights (“CHR”) Chairperson Leila De Lima (later Secretary of the Department of Justice) gave the legal opinion that Section 155 of the Omnibus Election Code “does not really pose a legal impediment” because a prison compound refers to facilities with convicted prisoners like the national penitentiaries.¹⁰⁸ A facility that only holds detention prisoners is not a prison in the contemplation of Section 155.

c. *The successes of Detainee Voting*

i. The number of registered voters

In the 2013 National and Local Elections, the following figures¹⁰⁹ represented the number of registered detention prisoners in the Philippines, divided by region and the kinds of facilities they were located at:

REGION	BJMP	PROVINCIAL AND SUB-PROVINCIAL JAILS	BUCOR	TOTAL
NCR	4,899	0	1,984	6,883

Provided further: that it is logistically feasible on the part of the jail/prison administration to escort the detainee voter to the polling place where he is registered.

Provided, finally: that reasonable measures shall be undertaken by the jail/prison administration to secure the safety of detainee voters, prevent their escape and ensure public safety.

¹⁰⁸ A DREAM COME TRUE, *supra* note 33 at 79.

¹⁰⁹ Based on the author’s own figures as the lead contact person of the detainee voting committee for the 2013 National and Local Elections.

I	649	39	0	688
II	627	158	0	785
III	1,780	814	0	2,594
IV-A	5,142	963	0	6,105
IV-B	386	1,267	0	1,653
V	808	555	0	1,363
VI	3,113	233	0	3,346
VII	2,873	1,032	0	3,905
VIII	851	1,156	117	2,124
IX	1,777	541	38	2,356
X	1,506	513	0	2,019
XI	1,092	182	350	1,624
XII	681	631	0	1,312
XIII	691	160	0	851
CAR	221	1	0	222
ARMM	9	9	0	18
TOTAL	27,105	8,254	2,489	37,848

Figure 1. List of registered detainee voters for the 2013 National and Local Elections

In addition, from the number of registered voters, the following figures¹¹⁰ represent the number who actually voted:

Region	Total Registered Detainee Voters	Total DVs Able to Cast their Votes	Turnout
NCR	6,883	5,894	85.63%
I	688	614	89.24%
II	785	681	86.75%
III	2,594	2,103	81.07%
IV-A	6,105	5,369	87.94%
IV-B	1,653	1,643	99.36%

¹¹⁰ Number of detainee voters who actually voted, based on figures of the COMELEC Detainee Committee. On file with the author.

V	1,363	1,349	98.97%
VI	3,346	2,993	89.45%
VII	3,905	3,397	86.99%
VIII	2,124	1,899	89.41%
IX	2,356	1,723	74.74%
X	2,019	1,761	87.22%
XI	1,624	1,500	92.36%
XII	1,312	1,224	93.29%
XIII	851	705	82.84%
CAR	222	203	91.44%
ARMM	18	18	100%
TOTAL	37,848	33,076	87.39%

Figure No. 2. List of detainee voters who actually voted.

Notice the strong reflection of the “captive audience” theory or, as the South African Constitutional Court in *August*,¹¹¹ referred to as the “captive population,” as 87.39% of the registered detainee voters actually exercised their right to vote. Compare this to the national figures where there were 52,014,648 registered voters but only 40,214,324¹¹² people actually voted. This is a voter turnout rate of only 77.31%.¹¹³

ii. Safety of the ballot

The safety and sanctity of the ballot has been a historical concern in the Philippines, with its history of electoral violence and cheating.¹¹⁴ With this in

¹¹¹ *August and Another v. Electoral Commission and Others*, ¶ 28 (CCT8/99) [1999] ZACC 3; 1999 (3) SA 1; 1999 (4) BCLR 363 (1 April 1999).

¹¹² Voter Turnout Data for the Philippines, International Institute for Democracy and Electoral Assistance (International IDEA), available at <http://www.idea.int/vt/countryview.cfm?CountryCode=PH> (last accessed on 07 May 2016)

¹¹³ *Id.*

¹¹⁴ See e.g. UNDERSTANDING ELECTORAL VIOLENCE IN ASIA (United Nations Development Program, 2011).

mind, the COMELEC made sure that there was close coordination with the relevant government agencies including the Philippine National Police and the relevant detention facility officers.

B. THE PHILIPPINES IS A STATE PARTY TO THE ICCPR AND AUTOMATICALLY INCORPORATES CUSTOMARY INTERNATIONAL LAW AS PART OF THE LAW OF THE LAND

Having discussed the history of suffrage in the Philippines and its constitutional status as a right, a discussion of the legal regime that governs its application is in order. In this part, the author will establish the Philippines' legal obligations under treaty and customary international law.

Initially, the Philippines is bound to comply with international law in two ways - under the principle of *transformation* by signing and ratifying a treaty under Article VII, Section 21 of the Constitution¹¹⁵ and under the principle of *incorporation* under Article II, Section 2 of the Constitution.

First, the Philippines signed the ICCPR in 1966 and ratified the same in 1986.¹¹⁶ As a State Party to the ICCPR, the Philippines is bound to comply with its obligations therein in good faith - *pacta sunt servanda*.¹¹⁷ As will be discussed in part *infra* III (C), these obligations include *positive* obligations (to implement policies consistent with the treaty) and *negative* obligations (not to do anything

¹¹⁵ 1987 PHIL. CONST., Article VII, Section 21: "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."

¹¹⁶ The Philippines signed the treaty on 19 December 1966 and ratified the same on 23 October 1986.

¹¹⁷ Vienna Convention on the Law of Treaties art. 26, May 13, 1969, 1155 U.N.T.S. 331 [hereinafter **VCLT**], "Article 26 "*Pacta sunt servanda*" Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

inconsistent with the obligations in a treaty); failure to comply constitutes a breach of the treaty.¹¹⁸

Second, the Philippines automatically incorporate customary international law into its domestic legal policies under Article II, Section 2 of the 1987 Constitution, *viz.*:

Section 2. The Philippines renounces war as an instrument of national policy, **adopts the generally accepted principles of international law as part of the law of the land** and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations. [emphasis and underscoring supplied]

The Philippine Supreme Court in *Mijares v. Ranada*¹¹⁹ stated:

[G]enerally accepted principles of international law, by virtue of the incorporation clause of the Constitution, form part of the laws of the land even if they do not derive from treaty obligations. The **classical formulation in international law sees those customary rules accepted as binding result from the combination [of] two elements: the established, widespread, and consistent practice on the part of States; and a psychological element known as the *opinion juris sive necessitates* (opinion as to law or necessity).** Implicit in the latter element is a **belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it.**

It is noteworthy that the *incorporation clause* as iterated in the 1987 constitution is worded exactly the same as the 1973 Constitution,¹²⁰ which in turn, is an almost verbatim reiteration of the provision in the 1935 version of the fundamental law.¹²¹

¹¹⁸ See MacDonald, *supra* note 3 at 1378.

¹¹⁹ G.R. No. 139325, April 12, 2005.

¹²⁰ 1973 PHIL. CONST. art II, §3.

¹²¹ Llamzon, *supra* note 4 at 256 - 257; 1935 PHIL. CONST. art II, §3 (“The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as part of the law of Nations.”)

It has also been iterated and reiterated consistently by the Supreme Court in the cases of *Mejoff v. Director of Prisons*,¹²² *Borovsky v. Commission of Immigration*,¹²³ *Chriskoff v. Commissioner*,¹²⁴ *Mijares v. Ranada*,¹²⁵ *Government of Hong Kong Special Administrative Region v. Olalia*,¹²⁶ *Tanada v. Angara*,¹²⁷ *Pharmaceutical and Health Care Association of the Philippines vs. Health Secretary Duque*,¹²⁸ *Bayan Muna v. Romulo*,¹²⁹ and *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*,¹³⁰ among others.

Noteworthy is that customary international human rights law is the subject of many of these cases, for example, in the cases of *Mejoff*,¹³¹ *Borovsky*,¹³² *Chriskoff*,¹³³ *Mijares*,¹³⁴ *Government of Hong Kong*,¹³⁵ and *Shangri-La*.¹³⁶ In those cases, the Philippine Supreme Court in fact invoked the UDHR as a source of customary international human rights law, and therefore binding on the Philippines under

¹²² *Mejoff*, *supra* note 190 (which recognized and gave effect to the UDHR barely three (3) years after it was signed) *Llamzon*, *supra* note 4 at 292.

¹²³ *Borovsky v. Commission of Immigration*, 90 Phil. 107 (1951).

¹²⁴ *Chriskoff v. Commissioner of Immigration and Director of Prisons*, 90 Phil. 347 (1951).

¹²⁵ *Mijares v. Ranada*, G.R. No. 139325, April 12, 2005.

¹²⁶ *Government of Hong Kong Special Administrative Region v. Olalia*, G.R. No. 153675, April 19, 2007.

¹²⁷ *Tanada v. Angara*, 338 Phil. 546, 592 (1997).

¹²⁸ *Pharmaceutical and Health Care Association of the Philippines vs. Health Secretary Duque*, G.R. NO. 173034, October 9, 2007.

¹²⁹ *Bayan Muna v. Romulo*, G.R. No. 159618, February 1, 2011.

¹³⁰ *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*, G.R. No. 159938, March 31, 2006, 486 SCRA 405.

¹³¹ *Mejoff*, *supra* note 190.

¹³² *Borovsky v. Commission of Immigration*, 90 Phil. 107 (1951).

¹³³ *Chriskoff v. Commissioner of Immigration and Director of Prisons*, 90 Phil. 347 (1951).

¹³⁴ *Mijares*, *supra* note 125.

¹³⁵ *Government of Hong Kong*, *supra* note 126.

¹³⁶ *Shangri-la*, *supra* note 130.

the *Incorporation Clause*.¹³⁷ This was expressed more clearly in the case *Government of Hong Kong* where the Court held:

On a more positive note, also after World War II, both international organizations and states gave recognition and importance to human rights. Thus, on December 10, 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights in which the right to life, liberty and all the other fundamental rights of every person were proclaimed. While not a treaty, **the principles contained in the said Declaration are now recognized as customarily binding upon the members of the international community.** Thus, in *Mejoff v. Director of Prisons*,² this Court, in granting bail to a prospective deportee, held that under the Constitution,³ the principles set forth in that Declaration are part of the law of the land. **In 1966, the UN General Assembly also adopted the International Covenant on Civil and Political Rights, which the Philippines signed and ratified.** Fundamental among the rights enshrined therein are the rights of every person to life, liberty, and due process. [underscoring supplied]

It is likewise worth mentioning that the Supreme Court in *Government of Hong Kong*¹³⁸ invoked the ICCPR as another source of international human rights law obligations. Further, the Supreme Court has also used international law under the *Incorporation Clause* as a source of law but also to interpret the rights under the Constitution.¹³⁹

While there is a temptation to belabor the point on how customary international law and treaty law are binding on the Philippines, the previous discussions sufficiently establishes these facts and therefore, the author must resist and proceed.

¹³⁷ Llamzon, *supra* note 4 at 294.

¹³⁸ *Government of Hong Kong*, *supra* note 126.

¹³⁹ See *Marcos v. Manglapus*, 177 SCRA 668 (1989) cited in Llamzon, *supra* note 4 at 301.

C. IN LAW AND IN PRACTICE, THE PHILIPPINES IMPOSES AN ABSOLUTE AND AUTOMATIC DISENFRANCHISEMENT OF ALL CONVICTED PERSONS REGARDLESS OF THE NATURE OF THE OFFENSE AND THE LENGTH OF SENTENCE

Legally speaking, the Philippines does not impose disenfranchisement on all convicted prisoners. As we will see below, there are cases where convicts are not legally imposed the penalty of disenfranchisement. However, these cases are very limited.

The Philippine Criminal Justice System is a hodgepodge of laws that revolve principally around the almost 9-decade old Revised Penal Code (“RPC”).¹⁴⁰ Supplementing it are Special Penal Laws that punish acts that are not written and punished under the RPC. These include, but are not limited to the *Anti-Graft and Corrupt Practices Act*,¹⁴¹ the *Anti-Wiretapping Act*,¹⁴² the *Anti-Plunder Law*,¹⁴³ the *Comprehensive Dangerous Drugs Act of 1992*,¹⁴⁴ the *Anti-Trafficking of Persons Act of 2003*,¹⁴⁵ the *Anti-Child Labor Act of 2003*,¹⁴⁶ the *Anti-Money Laundering Law of 2001*,¹⁴⁷ among others. Each of these laws either provides for their specific regime of penalties or makes reference to the RPC and applies its regime of penalties. In order to trace the exact legal nature of the penalty of disenfranchisement, an exposition of these laws is in order.

¹⁴⁰ Act No. 3815, “The Revised Penal Code of the Philippines,” December 8, 1930.

¹⁴¹ R.A. No. 3019, “Anti-Graft and Corrupt Practices Act”, August 17, 1960.

¹⁴² R.A. No. 4200, “The Anti-Wiretapping,” June 19, 1965.

¹⁴³ R.A. No. 7080, “The Anti-Plunder Law” July 12, 1991.

¹⁴⁴ R.A. No. 9165, “Comprehensive Dangerous Drugs Act of 1992,” June 7, 2002.

¹⁴⁵ R.A. No. 9208, “Anti-Trafficking of Persons Act of 2003,” May 26, 2003.

¹⁴⁶ Republic Act No. 9231, “Anti-Child Labor Act of 2003”, December 19, 2003.

¹⁴⁷ R.A. 9160, “Anti-Money Laundering Law of 2001,” September 29, 2001.

1. The underlying theory of disenfranchisement as a penalty in the Philippine criminal justice system

Several theories of disenfranchisement as an appropriate penal sanction have been advanced such as the “subversive voting” theory, the violation of the social contract theory, and the purity of the ballot box theory [See discussion *infra* IV (B)(1)]. In the Philippines, however, the underlying theory for criminal disenfranchisement is “purity of the ballot” theory. This is clear from the pronouncements of the Philippine Supreme Court in *People v. Corral*,¹⁴⁸ *viz.*:

The modern conception of suffrage is that voting is a function of government. The right to vote is not a natural right but it is a right created by law. Suffrage is a privilege granted by the State to such persons or classes as are most likely to exercise it for the public good. In the early stages of the evolution of the representative system of government, the exercise of the right of suffrage was limited to a small portion of the inhabitants. But with the spread of democratic ideas, the enjoyment of the franchise in the modern states has come to embrace the mass of the adult male population. For reasons of public policy, certain classes of persons are excluded from the franchise. Among the generally excluded classes are minors, idiots, paupers, and convicts.

The right of the State to deprive persons of the right of suffrage by reason of their having been convicted of crime is beyond question. **The manifest purpose of such restrictions upon this right is to preserve the purity of elections.** The presumption is that one rendered infamous by conviction of felony, or other base offenses indicative of moral turpitude, is unfit to exercise the privilege of suffrage or to hold office. The exclusion must for this reason be adjudged a mere disqualification, **imposed for protection and not for punishment**, the withholding of a privilege and not the denial of a personal right.

It must be noted that the “purity of elections” standard is a principle that overarches the electoral system in the elections and has been invoked and cited in various situations and in dealing with different issues.¹⁴⁹ It is interesting that the

¹⁴⁸ 62 Phil. 945 (1936).

¹⁴⁹ See e.g. *Paulino v. Cailles*, G.R. No. L-12753, March 15, 1918; *Luna v. Rodriguez*, G.R. No. L-13744, November 29, 1918; *De Guzman v. Provincial Board of Canvassers of La Union*, G.R.

“purity” of elections/ballot box standard has been used to justify the imposition of a criminal penalty on a person who feigned ownership of a property in order to qualify as a voter in pre-universal suffrage Philippines.¹⁵⁰

2. The Revised Penal Code (“RPC”) and its system of penalties

The RPC was enacted into law on 08 December 1930, and is the most comprehensive repository of the Philippines’ criminal laws. The custodial penalties in the RPC are denominated in their Spanish names. Ranging from death¹⁵¹ and *reclusion perpetua* to *arresto menor*, these principal penalties are imposed depending on the nature of the offense and the level of participation of the perpetrators involved. Of these custodial penalties, *arresto menor* is the minimum penalty that may be imposed¹⁵² as it involves imprisonment “from one day to thirty days.”¹⁵³

Under the RPC, the penalty of disenfranchisement is not imposed as a principal penalty, but rather, as an “accessory penalty” to those denominated above. It could either be denominated as “perpetual absolute disqualification,” “perpetual special disqualification,” or simply “suspension of the right of suffrage.” Below is an enumeration of the “accessory penalties”¹⁵⁴ that may be imposed depending on the principal penalty:

No. L-24721, November 3, 1925; *Borja v. Roxas*, G.R. No. L-36131, February 4, 1931; *Lambonao v. Tero and Vestal et al.*, G.R. No. L-23240, December 31, 1965; *Saya-Ang, Sr. v. COMELEC*, G.R. No. 155087, November 28, 2003.

¹⁵⁰ See e.g. *US v. Navarro*, G.R. No. L-6160, March 21, 1911

¹⁵¹ No longer applicable because the Philippines became a state party to the 2nd Additional Protocol of the ICCPR on 20 November 2007.

¹⁵² See Revised Penal Code.

¹⁵³ Revised Penal Code, art. 27: xxx *Arresto menor*. – The duration of the penalty of *arresto menor* shall be from one day to thirty days.

¹⁵⁴ *Id.*, arts. 41 – 44.

Art. 41. Reclusion perpetua and reclusion temporal; their accessory penalties. – The penalties of reclusion perpetua and reclusion temporal shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of **perpetual absolute disqualification¹⁵⁵ which the offender shall suffer even though pardoned as to the principal penalty**, unless the same shall have been expressly remitted in the pardon. Art.

42. Prision mayor; its accessory penalties. – The penalty of prision mayor, shall carry with it that of temporary absolute disqualification and that of **perpetual special disqualification from the right of suffrage** which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

Art. 43. Prision correccional; its accessory penalties. – The penalty of prision correccional shall carry with it that of suspension from public office, from the right to follow a profession or calling, and that of **perpetual special disqualification from the right of suffrage**, if the duration of said imprisonment shall exceed eighteen months. The offender shall suffer the disqualification provided in the article although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

Art. 44. Arresto; Its accessory penalties. – The penalty of arresto shall carry with it that of suspension of the right to hold office and the right of suffrage during the term of the sentence.

Based on these provisions, it is apparent that as long as you have been imposed the minimum prison term under *arresto menor*, you will not be able to exercise your right to vote. Worse, if a convict was imposed the penalty of *reclusion perpetua*, *reclusion temporal*, and *prision mayor*, the accessory penalty of “**perpetual disqualification**” from the right to suffrage is likewise imposed.¹⁵⁶ This equates to

¹⁵⁵ N.B. Revised Penal Code, article 30, states:

Art. 30. Effects of the penalties of perpetual or temporary absolute disqualification.
– The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

x x x

2. The deprivation of the right to vote in any election for any popular office or to be elected to such office.

x x x

¹⁵⁶ See RPC, arts. 41 – 43 which impose either a perpetual absolute or special disqualification from suffrage.

a lifetime prohibition from voting. To this day, this penalty is still being imposed on all convicts, and therefore, they are legally prohibited from ever exercising their right to vote.

This lifetime ban has seemingly been overturned by the provisions of Republic Act No. 8189, otherwise known as the “Continuing Registration Act,” discussed in Part *infra* II (D)(1). However, the Supreme Court has not conclusively clarified the clear inconsistency between the RPC and the Continuing Registration Act. Until such time, the presumption is that both laws are still applicable.¹⁵⁷

3. Special Penal Laws

a. *Those that apply the regime of penalties of the RPC*

The difficulty in identifying with specificity a general rule on voting disqualification in the Philippines is highlighted by the multitude of Special Penal Laws that either adopt the regime of the RPC or impose its own system of penalties. In those classes of laws that adopt the RPC,¹⁵⁸ there is no difficulty since we need only refer to the RPC itself.¹⁵⁹ However, in those laws that do not adopt the RPC, we must carefully examine each of those.

b. *Those that do not apply the regime of penalties of the RPC but imposes the accessory penalty of disenfranchisement*

In the Comprehensive Dangerous Drugs Act,¹⁶⁰ for example, all persons convicted under this Act are imposed the following accessory penalties, *viz.*:

¹⁵⁷ See discussion *infra* part II (D)(2).

¹⁵⁸ See *e.g.*, “The Cybercrime Prevention Act of 2012,” September 12, 2012.

¹⁵⁹ Consequently, all accessory penalties imposed in the RPC are automatically imposed on these special laws as well. See *e.g.*, Republic Act No. 7080, “An Act Defining and Penalizing the Crime of Plunder,” promulgated on July 12, 1991.

¹⁶⁰ Republic Act No. 9165, An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, repealing Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, providing funds therefor, and for other purposes. June 07, 2002.

Sec. 35. *Accessory Penalties.* A person convicted under this Act shall be **disqualified to exercise his/her civil rights such as but not limited to**, the rights of parental authority or guardianship, either as the person or property of any ward, the rights to dispose of such property by any act or any conveyance *inter vivos*, and political rights such as but not limited to, **the right to vote** and be voted for. Such rights shall also be suspended during the pendency of an appeal from such conviction. [emphasis and underscoring supplied]

In the Anti-Plunder Act,¹⁶¹ there is no specific provision that imposes the accessory penalty of disqualification; however, Section 2 thereof specifically referred to the penalties of *reclusion perpetua* to death.¹⁶² This is a reference to the provisions of the RPC and therefore, the accessory penalties relevant will be imposed on any person found guilty thereof. To be sure, in the celebrated case of *People of the Philippines v. Joseph Estrada, et al.*,¹⁶³ (decided by the Sandiganbayan – the special anti-corruption court) former Philippine President Joseph Estrada was found guilty of the crime of plunder and was imposed the penalty of *reclusion perpetua* as well as the accessory penalty of permanent absolute disqualification, *viz.:*

¹⁶¹ Republic Act No. 7080, “An Act Defining and Penalizing the Crime of Plunder,” promulgated on July 12, 1991.

¹⁶² *Id.*, Section 2. Definition of the Crime of Plunder; Penalties. – Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and **shall be punished by reclusion perpetua to death**. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. (As amended by RA 7659, approved Dec. 13, 1993.)

¹⁶³ *People of the Philippines v. Joseph Estrada, et al.*, Sandiganbayan Criminal Case No. 26558, 12 September 2007.

The penalty imposable for the crime of plunder under Republic Act No. 7080, as amended by Republic Act No. 7659, is *Reclusion Perpetua* to Death. There being no aggravating or mitigating circumstances, however, the lesser penalty shall be applied in accordance with Article 63 of the Revised Penal Code. Accordingly, accused Former President Joseph Ejercito Estrada is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and the accessory penalties of civil interdiction during the period of sentence and **perpetual absolute disqualification**.

It must be recalled that permanent absolute disqualification includes “the deprivation of the right to vote in any election for any popular office.”¹⁶⁴

c. *Those that do not apply the RPC and do not impose the accessory penalty of disenfranchisement*

There are classes of special laws that neither refer to the RPC nor impose the accessory penalty of disenfranchisement. These laws include, but not limited to, the following special laws:

- (1) The Human Security Act of 2007¹⁶⁵
- (2) The Anti-Trafficking in Persons Act of 2003¹⁶⁶
- (3) Anti-Graft and Corrupt Practices Act¹⁶⁷
- (4) The Anti-Child Labor Law¹⁶⁸
- (5) Anti-Money Laundering Act of 2001¹⁶⁹
- (6) The Bouncing Checks Law¹⁷⁰

That these laws are silent does not mean people convicted under them will not suffer that disenfranchisement. As will be discussed in part *infra* II (D)(2), prisoners who were imposed the penalty of imprisonment of at least one (1) year

¹⁶⁴ Revised Penal Code, art. 30 (2).

¹⁶⁵ R.A. No. 9372, “The Human Security Act of 2007,” 15 July 2007.

¹⁶⁶ R.A. No. 9208, “Anti-Trafficking of Persons Act of 2003,” May 26, 2003.

¹⁶⁷ R.A. No. 3019, “Anti-Graft and Corrupt Practices Act”, August 17, 1960.

¹⁶⁸ Republic Act No. 9231, “Anti-Child Labor Act of 2003”, December 19, 2003.

¹⁶⁹ R.A. 9160, “Anti-Money Laundering Law of 2001,” September 29, 2001.

¹⁷⁰ Batas Pambansa Blg. 22.

are deprived of their right to register as a voter, in effect, prohibiting a prisoner from the vote.

D. THE PREVAILING LAW AND PRACTICE ON VOTING DISQUALIFICATIONS: A RECAP

1. All individuals imposed a prison sentence under the RPC of at least one (1) day are disqualified from voting.

As discussed in Part *supra* II(C)(3), the accessory penalty of the deprivation of the right to vote is imposed on all prisoners convicted of any prison term. To be sure, even if a person was imposed the minimum term of imprisonment under the Revised Penal Code - *arresto menor*, which includes a prison term of at least one (1) day to thirty (30) days - that person still cannot vote.

Further, and perhaps, most alarming, is that for certain classes of crimes, the penalty of absolute and permanent disenfranchisement is imposed.

2. Additionally, prisoners who are imposed the penalty of at least one (1) year imprisonment are prohibited from registering as voters and are therefore, disenfranchised

It must be recalled that the Constitution states that although everyone has a right to vote, it nonetheless provides that a statutory law may disqualify individuals. The prevailing law on registration disqualification in the Philippines is Section 11 of R.A. No. 8189, otherwise known as the "Continuing Registration Act." It states:

Sec. 11. Disqualification. - The following shall be disqualified from registering:

Any person who has been **sentenced by final judgment to suffer imprisonment of not less than one (1) year**, such disability not having been removed by plenary pardon or amnesty: Provided, however, That any person disqualified to vote under this paragraph **shall automatically reacquire the right to vote upon expiration of five (5) years after service of sentence;**

Any person who has been adjudged by final judgment by a competent court or tribunal of having committed any crime involving disloyalty to the duly constituted government such as rebellion, sedition, violation of the firearms laws or any crime against national security, unless restored to his full civil and political rights in accordance with law: Provided, That he shall automatically reacquire the right to vote upon expiration of five (5) years after service of sentence; and

Insane or incompetent persons declared as such by competent authority unless subsequently declared by proper authority that such person is no longer insane or incompetent. [emphasis and underscoring supplied]

Clear from the provisions is that regardless of the crime you committed, as long as you have been imposed the penalty of imprisonment of at least one (1) year, you will still be disenfranchised. This disenfranchisement is not a consequence of a penalty imposed but simply a blanket determination by Congress that all prisoners who commit any crime are not worthy of the right of suffrage.

The COMELEC interpreted these provisions to mean that those individuals who are suffering from a prison term of less than one (1) year are qualified to vote.¹⁷¹ While the author supports this interpretation as a progressive interpretation of the right to vote, the Supreme Court of the Philippines may not interpret it as liberally as the COMELEC.

It must be noted that the law in question is a law on “registration”; as such, it does not enfranchise prisoners but only allows them to register as voters. Further, there is no indication in the Continuing Registration Act that the

¹⁷¹ See COMELEC Resolution 9371, Section 2:
SECTION 2. Definition of Terms – a. *Detainee* – Refers to any person: x x x(2) serving a sentence of imprisonment for less than one (1) year.

provisions of the Revised Penal Code - that imposes the accessory penalty of deprivation of the right to vote - has been repealed.

The author suspects that if this issue is brought before the Supreme Court, it will rule that Section 11 has not removed the accessory penalty for crimes punishable of less than a year because the Supreme Court frowns upon implied repeal of laws.¹⁷² In fact, there is a “presumption against implied repeals” and the Court stated that it must be satisfied that there is a “substantial conflict” and “an irreconcilable inconsistency and repugnancy (*sic*) in the terms of the new and the old laws.”¹⁷³ In this case, the law that disenfranchises people is a criminal/penal statute, while the new law in question is merely a “registration” act. Further, there is nothing in the language of the Continuing Registration Act that explicitly enfranchises ex-convicts. Therefore, the Court would be hard-pressed to find an “irreconcilable inconsistency” between the two.

E. FINALLY, THE PHILIPPINES IMPOSES AN ADDITIONAL 5-YEAR VOTING BAN POST-SENTENCE

Another feature of the Continuing Registration Act is that the disenfranchisement of prisoners extends to after five (5) years upon their release,¹⁷⁴ *viz:*

Sec. 11. Disqualification. - The following shall be disqualified from registering:

Any person who has been sentenced by final judgment to suffer imprisonment of not less than one (1) year, such disability not having been removed by plenary pardon or amnesty: Provided, however, That any person disqualified to vote under this paragraph **shall automatically reacquire the right to vote upon expiration of five (5) years after service of sentence;**

¹⁷² See *e.g. Relampagos v. Cumba and COMELEC*, G.R. No. 118861, April 27, 1995.

¹⁷³ *Id.*

¹⁷⁴ R.A. 8189, Section 11.

Any person who has been adjudged by final judgment by a competent court or tribunal of having committed any crime involving disloyalty to the duly constituted government such as rebellion, sedition, violation of the firearms laws or any crime against national security, unless restored to his full civil and political rights in accordance with law: Provided, **That he shall automatically reacquire the right to vote upon expiration of five (5) years after service of sentence;**

A source of confusion here is, does the Continuing Registration Act, automatically enfranchise all ex-convicts despite the fact many crimes¹⁷⁵ under the RPC impose a perpetual disqualification to vote? To reiterate, the author believes that this legal limbo will be decided in favor of the legality of both laws since the penalty of disenfranchisement is imposed under a criminal statute whereas the law above-mentioned is merely a voter registration one.¹⁷⁶

In any case, it must be noted that the Philippines is only one of eight (8) countries - including the United States of America - that disenfranchises ex-prisoners.¹⁷⁷ While this is not specifically prohibited in Article 25 in the ICCPR, it is safe to conclude that post-sentence disenfranchisement is inconsistent with it and perhaps, partakes of a status of customary law given the almost universal prohibition against the same.

¹⁷⁵ See discussion *supra* II (C)(2) and (D)(2).

¹⁷⁶ See discussions *supra* II (D)(2).

¹⁷⁷ Rottinghaus, *supra* note 2 at 4.

III. THE RIGHT TO SUFFRAGE AND THE RIGHTS OF PRISONERS UNDER INTERNATIONAL LAW AND THE PHILIPPINES' FAILURE TO ABIDE THEREBY

At the heart of true democracies is the active participation of the citizenry in its political processes, casting a ballot being the most direct and explicit expression of this.¹⁷⁸ No less than the Universal Declaration of Human Rights, in Article 21 (3) states this: “[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”¹⁷⁹ In order to give life to this principle and to animate the democratic project, states - either through their respective constitutions or through their accession to international legal instruments - bind themselves to ensure that all qualified individuals can exercise their right to vote.

At the heart of this thesis an attempt to construct a strong theoretical and practical proof to the existence of a customary norm of universal suffrage *without discrimination*; that states cannot universally deprive prisoners as an entire group of people from the franchise.

In conjunction with the discussions in part *supra* II, the Philippines, by automatically disenfranchising all prisoners is doing so in violation of this newly emerging customary norm. Alternatively and/or cumulatively, the Philippines is violating Article 25 of the ICCPR.

¹⁷⁸ BOGDANOR AND BUTLER, DEMOCRACY AND ELECTIONS: ELECTORAL SYSTEMS AND THEIR POLITICAL CONSEQUENCES 1 (1983) cited in *Arturo M. Tolentino v. Commission on Elections*, G.R. No. 148334, January 21, 2004 (Dissenting Opinion of Justice Reynato Puno). Also citing *Akbayan – Youth v. Commission on Elections*, 355 SCRA 318, 359 (2001) (Dissenting Opinion of Justice Bernardo Pardo).

¹⁷⁹ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), art. 21 (3).

A. UNIVERSAL SUFFRAGE WITHOUT DISCRIMINATION IS A NORM OF CUSTOMARY INTERNATIONAL LAW

The proposition that universal suffrage applied in a nondiscriminatory manner has achieved customary status is controversial but not a novel one.¹⁸⁰ This thesis does not claim to be groundbreaking research on this; instead, the thesis attempts to humbly build on to this discourse.

1. The content and evolution of customary international law: State practice and *opinio juris*

Customary international law results from “a general and consistent practice of States followed by them from a sense of legal obligation.”¹⁸¹ Its two constitutive elements are State Practice and *opinio juris* – the “psychological element” that gives states a sense of a legal obligation to comply with the practice in question.¹⁸² With the concurrence of these two (2) elements, including the duration that the practice has been followed and the character of the practice, customary international law develops as a binding norm.¹⁸³ The traditional coverage of customary international law focused on the relationship and conduct between and among the sovereign states; issues such as territory, sovereign immunities, the law of the sea, use of force, and intervention.¹⁸⁴ This is consistent with the traditionalist view that

¹⁸⁰ See Richard J. Wilson, *The Right to Universal, Equal, and Nondiscriminatory Suffrage as a Norm of Customary International Law: Protecting the Prisoner's Right to Vote in CRIMINAL DISENFRANCHISEMENT IN AN INTERNATIONAL PERSPECTIVE* 109 - 135 (Ewald and Rottinghaus, eds., 2014).

¹⁸¹ See Restatement (Third) of the Foreign Relations Law of the United States § 102 (2) (1987); Statute of the International Court of Justice, June 26, 1945, art 38 (1)(b): “international custom, as evidence of a general practice accepted as law.” Cited in Llamzon, *supra* note 4 at 252.

¹⁸² See generally *The Asylum Case*, 1948 I.C.J. 24 (Oct. 5); *North Sea Continental Shelf Cases* (F.R.G. v. Den., F.R.G. v. Neth.), 1969 I.C.J. 4 (Feb. 20); See also KAROL WOLFKE, *CUSTOM IN PRESENT INTERNATIONAL LAW* 47 (1993).

¹⁸³ Llamzon, *supra* note 4 at 252.

¹⁸⁴ *Id.*

only States are proper subjects of international law.¹⁸⁵ However, with the advent of international humanitarian and international human rights law,¹⁸⁶ international law has expanded to include individuals as subjects.

2. Evidence of State Practice and *opinio juris*

Professor Ian Brownlie, one of the foremost experts on international law, once enumerated some material sources of state practice, *to wit*:

Diplomatic correspondence, policy statements, press releases, the opinions of official legal advisers, official manuals on legal questions, e.g. manual of military law, executive decisions and practices, orders to naval forces, etc., comments by governments on drafts produced by the International Law Commission, **state legislation, international national judicial decisions, recitals in treaties and other international instruments, a pattern of treaties in the same form, the practice of international organizations**, and resolutions relating to legal questions in the United Nations General Assembly.¹⁸⁷

a. *International and Constitutional Instruments*

First, the Universal Declaration of Human Rights (“UDHR”),¹⁸⁸ which although is not a binding treaty as such was adopted by the United Nations, with 46 nations voting in favor of it, eight (8) abstentions, and no opposition. Although there is no unanimity among international legal scholars, strong arguments in favor of it achieving customary status has been offered.¹⁸⁹ In fact, the Philippine

¹⁸⁵ See IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (7th ed., 2008).

¹⁸⁶ Aloysius P. Llamzon, *supra* note 4 at 252.

¹⁸⁷ IAN BROWNLIE, *supra* note 185, at 6 – 7 citing BRIERLY, THE LAW OF NATIONS 61 (1978).

¹⁸⁸ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948); See *The Namibia Case* (The Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)) Advisory Opinion, 1971 ICJ Report 16 cited in RHONA KM SMITH, TEXTBOOK ON INTERNATIONAL HUMAN RIGHTS 36 (2004). See also SCHWELB, HUMAN RIGHTS AND THE INTERNATIONAL COMMUNITY 70 (1964).

¹⁸⁹ Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law* 25 G.A. J. INT’L & COMP. L. 287 cited in Wilson, *supra* note 180 at in EWALD AND ROTTINGHAUS, *supra* note 180 at 118.

Supreme Court has referred to the UDHR in *Mejoff v. Director of Prisons*,¹⁹⁰ *Mijares v. Ranada*,¹⁹¹ *Government of Hong Kong Special Administrative Region v. Olalia*,¹⁹² *Tanada v. Angara*,¹⁹³ and *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*,¹⁹⁴ among others and concluded that it is in fact of customary status.

In the case of the right to vote, Article 21 states clearly:

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Everyone has the right to equal access to public service in his country.

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections, which shall be by **universal and equal suffrage** and shall be held by secret vote or by equivalent free voting procedures. [emphasis and underscoring supplied]

It is true that the entire document's consideration as customary is not universal among the highly qualified publicists, and therefore, it may be argued that Article 21 itself is not customary. This would be a more convincing proposition had the Philippine Supreme Court not constantly applied it in deciding its cases. Thus, it would seem unlikely that the Philippine Supreme Court would reject its status now. In fact, the Court in *Government of Hong Kong*¹⁹⁵ stated:

On a more positive note, also after World War II, both international organizations and states gave recognition and importance to human rights. Thus, on December 10, 1948, the United Nations General Assembly adopted the Universal

¹⁹⁰ *Mejoff v. Director of Prisons*, 90 Phil. 70 (1951).

¹⁹¹ *Mijares*, *supra* note 125.

¹⁹² *Government of Hong Kong*, *supra* note 126.

¹⁹³ *Tañada v. Angara*, 338 Phil. 546, 592 (1997).

¹⁹⁴ *Shangri-la*, *supra* note 130.

¹⁹⁵ *Government of Hong Kong*, *supra* note 126.

Declaration of Human Rights in which the right to life, liberty and all the other fundamental rights of every person were proclaimed. While not a treaty, the principles contained in the said Declaration are now recognized as customarily binding upon the members of the international community. [underscoring supplied]

Note that the Supreme Court referred to the “principles contained in the Declaration” as one unit and thus, the principles “are now recognized as customarily binding upon the members of the international community.”¹⁹⁶ As a jurisdiction that abides by the principle of *stare decisis*,¹⁹⁷ the Supreme Court is bound to apply the same reasoning in future cases involving invocations of the UDHR.

Further, as discussed, the right to vote is enshrined in the constitution itself. Hence, since the focus of this thesis is on the domestic implementation of the right to vote, an invocation of the UDHR as a binding customary law instrument before the Supreme Court would net a positive response as we saw in the cases of *Mejoff v. Director of Prisons*,¹⁹⁸ *Mijares v. Ranada*,¹⁹⁹ *Government of Hong Kong Special*

¹⁹⁶ *Id.*

¹⁹⁷ Civil Code of the Philippines, art. 8: “ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.” See also *Fermin v. People* [G.R. No. 157643, March 28, 2008, 550 SCRA 132 citing *Castillo v. Sandiganbayan*, 427 Phil. 785, 793 (2002)], where the Supreme Court stated, *viz.*: “[t]he doctrine of *stare decisis* enjoins adherence to judicial precedents. **It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof.** That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.

¹⁹⁸ 90 Phil. 70 (1951).

¹⁹⁹ G.R. No. 139325, April 12, 2005.

Administrative Region v. Olalia,²⁰⁰ *Tanada v. Angara*,²⁰¹ and *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*²⁰²

Second, the ICCPR – aside from being a binding treaty – provides a very strong support to the establishment of the customary law²⁰³ principle of universal suffrage. The acts of signing and ratifying a treaty are strong evidence of *opinio juris* – for it is a clear and unequivocal expression of a state’s intent to be bound by the legal expressions in that treaty.²⁰⁴

Adopted in 1966, the ICCPR²⁰⁵ currently enjoys wide acceptance with 168 states parties including the Philippines, the United States, Japan and most European countries. Article 25 thereof states:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

(b) To vote and to be elected at genuine periodic elections which shall be by **universal and equal suffrage** and shall be held by secret ballot, guaranteeing the free expression of the will of the electors. [emphasis and underscoring supplied]

An interesting sidebar to this discussion is that there were very few reservations made for Article 25 of the ICCPR, most notably from the Kingdom of

²⁰⁰ G.R. No. 153675, April 19, 2007.

²⁰¹ 338 Phil. 546, 592 (1997).

²⁰² G.R. No. 159938, March 31, 2006, 486 SCRA 405.

²⁰³ D.J. HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW 27 (2012) *citing North Sea Continental Shelf Cases* (F.R.G. v. Den., F.R.G. v. Neth.), 1969 I.C.J. 4 (Feb. 20) (that treaties are evidence of state practice and hence, a material source of customary international law binding upon parties and non-parties alike); *See also* The Palestinian Wall Advisory Opinion, 2004 I.C.J. 136, 172 (DATE); Mark E Villinger, *Customary International Law and Treaties* (1985).

²⁰⁴ BRIAN D. LEPARD, CUSTOMARY INTERNATIONAL LAW: A NEW THEORY WITH PRACTICAL APPLICATIONS, 193 (2010)

²⁰⁵ *See generally* SARAH JOSEPH ET AL., THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS AND COMMENTARY (2004).

Kuwait and the Republic of Pakistan. Kuwait, for its part, made the following reservations on Article 25:

Reservations concerning article 25 (b):

The Government of Kuwait wishes to formulate a reservation with regard to article 25(b). The provisions of this paragraph conflict with the Kuwaiti electoral law, which restricts the right to stand and vote in elections to males.

This reservation, however, was strongly objected to by Finland and Sweden.

The Government of Finland, in particular, raised doubts on Kuwait's commitment to the "object and purpose" of the Covenant.²⁰⁶ Specific to article 25, Finland referred to the discriminatory application of the right to vote within Kuwait as it limits it to males. In any case, aside from the reservations made by Kuwait and Pakistan, no other significant reservations were made to the Article 25.

²⁰⁶ With regard to declarations and the reservation made by Kuwait:

"The Government of Finland notes that according to the interpretative declarations the application of certain articles of the Covenant is in a general way subjected to national law. The Government of Finland considers these interpretative declarations as reservations of a general kind.

The Government of Finland is of the view that such general reservations raise doubts as to the commitment of Kuwait to the object and purpose of the Covenant and would recall that a reservation incompatible with the object and purpose of the Covenant shall not be permitted. As regards the reservation made to article 25 (b), the Government of Finland wishes to refer to its objection to the reservation made by Kuwait to article 7 of the Convention on the Elimination of All Forms of Discrimination Against Women.

It is the common interest of States that treaties to which they have chosen to become parties are respected, as to their object and purpose, by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Finland is further of the view that general reservations of the kind made by the Government of Kuwait, which do not clearly specify the extent of the derogation from the provisions of the covenant, contribute to undermining the basis of international treaty law.

The Government of Finland therefore objects to the aforesaid reservations made by the Government of Kuwait to the [said Covenant] which are considered to be inadmissible.

This objection does not preclude the entry into force in its entirety of the Covenant between Kuwait and Finland."

Further, as we will see in the HRC general comments, concluding observations and individual communication jurisprudence, the content of Article 25 prohibits the discriminatory application of the right to vote.

Third, constitutions²⁰⁷ and domestic legislation²⁰⁸ enjoy significant evidentiary weight in the determination of state practice and *opinio juris* as they reflect the views of the lawfully elected representatives of the people “about the desirability of implementing certain norms as universal legal norms.”²⁰⁹ In a 2004 study,²¹⁰ examined 182 of the 190 countries (at that time) who are members of the United Nations. Of the 182 countries, the laws of 179 include a right to vote or some synonymous term. More explicitly, 109 of those 179 countries included reference to either the protection of “universal” or “equal” suffrage. A total of 72 countries included protection of both universal and equal suffrage.²¹¹

That there are countries wherein democracy is not the form of government, it must be noted that a universal application of a practice is not required. Otherwise stated, international law does not require that each and every single state applies the same practice domestically. All that is required is that there is general, consistent, and widespread state practice.²¹² This means that in countries where elections are not regularly held or where voting is not domestically recognized as a human right, the newly emerged right to vote is not a customary

²⁰⁷ LEPARD, *supra* note 204 at 175.

²⁰⁸ *Id.*, 176; *See generally*, D.J. HARRIS, *supra* note 203.

²⁰⁹ LEPARD, *supra* note 204 at 176.

²¹⁰ Wilson, *supra* note 180 at *in* EWALD AND ROTTINGHAUS, *supra* note 180 at 118.

²¹¹ *Id.*, at 121.

²¹² *See* Restatement (Third) of the Foreign Relations Law of the United States § 102 (2) (1987)

obligation.²¹³ This notion is legally defensible under the *persistent objector* principle, which excuses from implementation a state that has consistently objected to a norm before, during and after the development of a new norm.²¹⁴ Perhaps, it must be emphasized that the *persistent objector* doctrine does not apply to customary international law that has achieved *jus cogens* status²¹⁵ - those norms from which no derogation is allowed such as slavery, torture, or piracy.²¹⁶

b. *Practice of International Bodies*

The U.N. General Assembly has adopted resolutions each year since at least 1991 on the topic of strengthening elections, including “the right to vote freely... by universal and equal suffrage.”²¹⁷ Although the idea of suffrage has been linked to the fight against discrimination,²¹⁸ it cannot be denied that the principle being defended is the same - that everyone must be extended the right to vote. In Resolution 46/137, for example, the United Nations affirmed that:

The systematic denial or abridgment of the right to vote on grounds of race or colour is a gross violation of human rights and an affront to the conscience and dignity of mankind, and ... the right to participate in the political system based on common and equal citizenship and universal franchise is essential for the exercise of the principle of periodic and genuine elections

²¹³ See *Anglo-Norwegian Fisheries Case* 1951 I.C.J. 8, ¶327 (the existence of dissenting states does not prevent a rule from coming into existence)

²¹⁴ Restatement (Third) of the Foreign Relations Law of the United States § 102 reads: “in principle a state that indicates its dissent from a practice while the law is still in the process of development is not bound by that rule even after it matures. Historically, such dissent and consequent exemption from a principle that became general customary law has been rare.”

²¹⁵ See e.g. LOUIS HENKIN, *INTERNATIONAL LAW: POLITICS AND VALUES* 39 (1995) cited in D.J. HARRIS, *supra* note 203 at 32.

²¹⁶ VCLT, art. 53; See D.J. HARRIS, *supra* note 203 at 32 - 33

²¹⁷ Wilson, *supra* note 180 at 118, referring to U.N. General Assembly, “Promoting and consolidating democracy,” U.N. Doc. A/RES/55/96 (28 February 2001); U.N. General Assembly, “Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization,” U.N. Doc. A/RES/60/162 (February 28, 2006).

²¹⁸ Wilson, *supra* note 180 at 118.

Other agencies such as the then U.N. Commission on Human Rights (“CHR”) [renamed Human Rights Council in 2006], the Human Rights Committee (“HRC”), the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”). The CHR, for example, has adopted resolutions each year since 1999 that call for the right to “universal and equal suffrage” in periodic and free elections.²¹⁹

c. *The Human Rights Committee (“HRC”)*

The HRC, the official body that oversees the implementation of the ICCPR, periodically issues General Comments (“GC”). The legal basis for issuing such GCs is Article 40 (4), which states:

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such **general comments** as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant. [emphasis and underscoring supplied]

Although not a treaty-mandated responsibility *strictu sensu*, general comments are a part of the reporting procedures under Article 40 of the ICCPR.²²⁰ They provide for interpretative guidance to the provisions of the ICCPR and are relied upon by the Committee members in evaluating the compliance of states with their obligations under therein.²²¹ Increasingly, States parties²²² and individual complainants under the procedures laid down in the Optional Protocol,

²¹⁹ See e.g. U.N. Commission on Human Rights, “Promotion of the Right to Democracy,” Resolution 1999/57; U.N. Commission on Human Rights, “Strengthening of popular participation, equity, social justice and non-discrimination as essential foundations of democracy,” Resolution 2005/29.

²²⁰ Thomas Buergenthal, *The U.N. Human Rights Committee*, MAX PLANCK UNITED NATIONS YEARBOOK, 386 (2001).

²²¹ MacDonald, *supra* note 3 at 1387.

²²² *Id.*

have been relying on General Comments to support their arguments before the Committee. Likewise, many international decisions – both multilateral and domestic – have made reference to GCs as a source of interpretative guidance.²²³

To be sure, the Philippine Supreme Court has relied on the comments of the HRC in a significant number of cases to interpret the Philippines' obligations under the ICCPR and customary international, *viz.*: *Leo Echegaray v. Secretary of Justice*,²²⁴ *Central Bank Employees Association v. Bangko Sentral ng Pilipinas*,²²⁵ *Gen. Avelino I. Razon et al. v. Mary Jean V. Tagitis*,²²⁶ *People of the Philippines v. Elpidio Mercado*,²²⁷ among others. Thus, they have become important tools in the lawmaking process of the Committee²²⁸ and persuasive in Philippines courts.

In 1996, the Committee released GC 25, which interpreted the provisions of Article 25. In relevant parts, it states:

1. Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, **the right to vote and to be elected and the right to have access to public service**. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights to protects. **Article 25 lies at the core of democratic government based on the consent of the people** and in conformity with the principles of the Covenant. [emphasis and underscoring supplied]

This statement is a reiteration of what is already explicit in Article 25.

However, the value of GC 25 cannot be discounted. *First*, as an international

²²³ See e.g. *The Palestinian Wall Advisory Opinion*, 2004 I. C. J. Reports 136, para. 136; *Adonis v. Philippines*, Communication No. 1815/2008, CCPR/C/103/D/1815/2008/Rev.1, 26 April 2012; *Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No. 190582, 08 April 2010.

²²⁴ *Leo Echegaray v. Secretary of Justice*, G.R. No. 132601. October 12, 1998.

²²⁵ *Central Bank Employees Association v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004.

²²⁶ *Gen. Avelino I. Razon et al. v. Mary Jean V. Tagitis*, G.R. No. 182498, December 3, 2009

²²⁷ *People of the Philippines v. Elpidio Mercado*, G.R. No. 116239, November 29, 2000.

²²⁸ Buergenthal, *supra* note 220 at 387.

organization, the HRC 's practice is a strong evidence of practice. As a body composed of experts on the field of international human rights law²²⁹ and imbued with the power to interpret the provisions of the ICCPR under the Optional Protocol, it is arguable that the Committee as a whole is a highly qualified publicist under Article 38 (1)(d) of the ICJ Statute. To be sure, the composition of the HRC from the years 1995 - 1996 (the time when GC 25 was adopted) included well-known experts on international law including Thomas Buergenthal of the United States (became member of the ICJ), Fausto Pocar of Italy (became judge at the ICTY), Andrea V. Mavrommatis of Cyprus, Christine Chanet of France and Nisuke Ando of Japan.²³⁰ As such, even individually, the member of the HRC that drafted GC 25 would be considered as most highly qualified publicists.

Second, while it is true that the legal foundations of the General Comments are less stable than ideal, it must be noted that in respect to GC 25, the interpretations of the Committee have been reiterated in the Committee's Concluding Observations.²³¹ Concluding observations are assessments of the current state of a Party's human rights situation.²³² These conclusions are based on the information the state provides to the Committee, the responses to the questions the Committee proffered to them, and information available from other relevant and reliable sources.²³³ Judge Burgenthal considers the Concluding Observation as

²²⁹ LEPARD, *supra* note 204 at 183.

²³⁰ <http://www1.umn.edu/humanrts/hrcommittee/members95-96.htm>

²³¹ Buergenthal, *supra* note 220 at 351.

²³² *Id.*

²³³ *Id.*

a form of Committee “jurisprudence”²³⁴ which, although non-binding in future cases, are useful tools in the interpretation of treaty obligations under the ICCPR.

With respect to its contributions to the development of a custom, it is admitted that their views are not direct evidence of *opinio juris*.²³⁵ However, reading their comments in conjunction with other evidence of state practice and *opinio juris* would push the norm out of existential limbo and into custom. Likewise, care must be attached to the nature of the statements of the Committee; to ensure that the Committee is not speaking merely in interpretation of the treaty but of a universal legal rule.²³⁶ With respect to GC 25, the Committee refers to Article 25 as a core of a democratic government based on the consent of the people **and** in conformity with the principles of the Covenant. The use of the adjunctive “and” suggests that the Committee considers Article 25 independently of the principles of the Covenant but one that reflects a more universal tone. Otherwise stated, it is suggestive of a customary principle rather than one that is purely contractual in nature.

d. *The Regional Instruments for the Protection Human Rights*

The Convention for the Protection of Human Rights and Fundamental Freedoms (“**European Convention on Human Rights**” or the “ECHR”),²³⁷ The

²³⁴ *Id.*

²³⁵ *Id.*, 183.

²³⁶ *Id.*

²³⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols No. 3, which entered into force on 21 September 1970, states:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the people in the choice of the legislature.”

Charter of Fundamental Rights of the European Union,²³⁸ The American Convention on Human Rights,²³⁹ the American Declaration of the Rights and Duties of Man,²⁴⁰ and the African [Banjul] Charter on Human and Peoples' Rights²⁴¹ all protect the right to vote of its stead.

²³⁸Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) 1 (Dec. 7, 2000), arts. 39 – 40, and 23, which states:

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct **universal suffrage** in a free and secret ballot.

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

²³⁹ American Convention on Human Rights, O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992) states:

Article 23.

Right to Participate in Government

1. Every citizen shall enjoy the following rights and opportunities:
 - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b. **to vote** and to be elected in genuine periodic elections, which shall be by **universal and equal suffrage** and by secret ballot that guarantees the free expression of the will of the voters; and
 - c. to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, **or sentencing by a competent court in criminal proceedings."**

²⁴⁰ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992), states:

Article XX.

B. EVEN IF UNIVERSAL SUFFRAGE WITHOUT DISCRIMINATION IS NOT A CUSTOMARY RIGHT, ABSOLUTE PRISONER DISENFRANCHISEMENT VIOLATES TREATY OBLIGATIONS UNDER THE ICCPR

The conclusion that will be made with respect to the legal obligations in this thesis is cumulative. The right to vote is customary and as will be proven below, treaty-based. However, although the right to vote is customary, the precise content of the obligation is better defined under the relevant treaty provisions of the ICCPR and its interpretative issuances. In order to begin this discussion, therefore, an analysis of the principal legal document in question is necessary.

Article 25 of the ICCPR²⁴² states:

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

A textual reading of Article 25 reveals three (3) things. *First*, Article 25 creates a positive obligation²⁴³ to extend the right and the *opportunity* to vote to its

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

²⁴¹ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986, states:

Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

²⁴² ICCPR, art. 25.

citizens. Note that the right includes the *opportunity* to vote.²⁴⁴ This means that the State must ensure that citizens must have equal access to their voting privileges; persons with disabilities (PWDs), indigenous communities who do not have access to the registration centers, and others who suffer from any form of limitations must be given some form of assistance in order for them to exercise their right to vote.²⁴⁵

Second, this interpretation is enhanced by Article 2 (1) which requires “[e]ach State Party... to respect and to ensure... the rights recognized in the present Covenant, without distinction of any kind.”²⁴⁶ According to the Human Rights Committee (HRC), Article 25 establishes both a *positive* and a *negative* obligation to both perform actions to further the right and to refrain from any action that undermines said right, respectively.²⁴⁷ Judge Thomas Burgenthal, former judge to the International Court of Justice (“ICJ”) further stated that Article 2 “implies an affirmative obligation by the state to take whatever measures are necessary to enable individuals to enjoy or exercise the rights guaranteed in the

²⁴³See MacDonald, *supra* note 3 at 1378, *citing* Human Rights Comm., General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13, ¶ 6 (2004); *see also* SARAH JOSEPH ET AL., THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS AND COMMENTARY (2004); GC 25.

²⁴⁴Melinda Ridley-Smith and Ronnit Redman, *Prisoners and the Right to Vote*, in PRISONERS AS CITIZENS: HUMAN RIGHTS IN AUSTRALIAN PRISONS 296 (David Brown and Meredith Wilkie, eds., 2002) *citing* ICCPR, art. 25.

²⁴⁵*Id.*, 299 – 300.

²⁴⁶ICCPR, art. 2 (1).

²⁴⁷Human Rights Comm. [HRC], General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant on Civil and Political Rights, ¶ 6, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004) *cited in* *Disproportionate Punishment: The Legality of Criminal Disenfranchisement under the International Covenant on Civil and Political Rights*, 40 GEORGE WASHINGTON INT’L L. REV. 1385 (2009).

Covenant, including the removal of governmental and possibly also some private obstacles to the enjoyment of these rights.”²⁴⁸

Third, Article 25 recognizes that while the right to vote is not absolute²⁴⁹ and may be limited,²⁵⁰ any restrictions on the right must not be imposed “without unreasonable restrictions.”²⁵¹

As regards Article 25, it has two (2) prongs of qualifications. First, that the right to vote cannot be implemented in a discriminatory manner and second, that it must be without reasonable restrictions.²⁵²

1. First prong: the right to vote cannot be implemented in a discriminatory manner.

One of the last bastions of male domination and discrimination in general in the human rights plain is in suffrage.²⁵³ Many nations, including the Philippines, have historically withheld the franchise based on sex, racial, ethnic,²⁵⁴ and even socio-economic²⁵⁵ divides. Thus, a key aspect of Article 25 is a reference to Article 2

²⁴⁸ Thomas Buergenthal, *To Respect and to Ensure: State Obligations and Permissible Derogations*, in *THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS* 72, 77 (Louis Henkin ed., 1981) quoted in *See MacDonald, supra* note 3 at 1379.

²⁴⁹ *Ridley-Smith and Redman, supra* note 244 at 298.

²⁵⁰ “The term “limitation” refers to a permanent (but permissible) restriction of a right guaranteed by a treaty,” Alexandre Charles Kiss, *Permissible Limitations on Rights*, in *LOUIS HENKIN, supra* note 248 at 290 cited in *MacDonald, supra* note 3 at 1380.

²⁵¹ *Ridley-Smith and Redman, supra* note 244 at 298.

²⁵² *Id.*, 298 – 300.

²⁵³ *See* discussions *supra* part II (A).

²⁵⁴ *See* Christopher Uggen, et al., *Punishment and Social Exclusion: National Differences in Prisoner Disenfranchisement* in *EWALD AND ROTTINGHAUS, supra* note 180 at 59.

²⁵⁵ *See* property qualifications in the United Kingdom, the United States and Philippines [discussion *supra* part II (A)].

of the ICCPR,²⁵⁶ which prohibits the application of the right to vote in a discriminatory manner.²⁵⁷

Article 2 clearly prohibits discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Of interest in this part of the discussion is the catch-all phrase “**other status**.”²⁵⁸

The author contends that Article 25, in relation to Article 2, prohibits the deprivation of the right to vote to an entire group people, which includes a prohibition on disenfranchising all “prisoners.”²⁵⁹

It must be noted that Article 2 does not provide an exhaustive list of all the protected classes of people as indicated by the inclusion of the phrase “other status.”²⁶⁰ According to the Committee on the ICESCR, as discrimination varies according to the context and evolves over time, a “flexible approach to the ground of “other status” is (*sic*) needed to capture other forms of differential treatment that cannot be reasonably and objectively justified.”²⁶¹ It further stated that “additional grounds are commonly recognized when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer

²⁵⁶ ICCPR, art. 2 (1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or **other status**. [emphasis and underscoring supplied]

²⁵⁷ *Ridley-Smith and Redman*, *supra* note 244.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *See Id.*

²⁶¹ Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2) U.N. Doc. E/C.12/GC/20, § 27. (2009).

marginalization.”²⁶² In the case of prisoners, their status is undoubtedly within the purview of Article 2 of the ICCPR. Prisoners, as a entire group, have traditionally suffered that ignominy of public scrutiny. When it comes to their rights in prison, people often justify less than humane treatment on the fact that they have breached the social contract.²⁶³

To be sure, the ICESCR²⁶⁴ Committee recognized that other possible grounds of discrimination that is prohibited “could include the **denial of a person’s legal capacity because he or she is in prison**, or is involuntarily interned in a psychiatric institution, or the *intersection* of two prohibited grounds of discrimination, e.g., where access to a social service is denied on the basis of sex and disability.”²⁶⁵ Likewise, given the multitude of international instruments²⁶⁶ that protect prisoners as a group of people, it cannot be denied that being a prisoner is “other status” under the purview of Article 2 of the ICCPR. As such, they must not be discriminated as an entire group just because they have committed a crime.

²⁶² *Id.*

²⁶³ See discussion *infra* part IV (B)(1)(c).

²⁶⁴ Note that Article 2 (2) of the ICESCR enumerates the same kind of discrimination that is prohibited as in Article 2 (1) of the ICCPR.

Article 2 (2) of the ICESCR states: 2. “[t]he States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised **without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**”

Article 2 (1) of the ICCPR states: “[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, **without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**”

²⁶⁵ *Id.*

²⁶⁶ See discussion *infra* part III (E).

2. Second prong: although the right to vote is not absolute, it may only be limited *without unreasonable restrictions*.

The difficulty in interpreting the phrase “*without unreasonable restrictions*” is evident from the vague wording of Article 25 itself. In this regard, a resort to the Vienna Convention on the Law of Treaties (“VCLT”) is necessary. As a general rule, the text of the treaty governs according to article 31 (1) which states: “[a] treaty shall be interpreted in good faith in accordance with the **ordinary meaning to be given to the terms of the treaty** in their context and in the light of its object and purpose.”²⁶⁷ As to what “context” means, Article 31 (2) provides that it shall comprise, in addition to the text: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; and (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.²⁶⁸

a. *The definition of “without unreasonable restrictions”*

Rather unfortunately, the definition of “without unreasonable restrictions” is not easily discernible from the text of Article 25;²⁶⁹ the context upon which it was written does not make much room for clarification as well.

b. *Supplementary means of interpretation*

i. Drafting History of Article 25

The *travaux préparatoires* of the ICCPR reveals that “without unreasonable restrictions” was included to emphasize the eligibility of individuals to vote.²⁷⁰

²⁶⁷ See MacDonald, *supra* note 3 at 1380 – 1381 quoting VCLT, art. 31. s

²⁶⁸ *Id.*

²⁶⁹ See MacDonald, *supra* note 3 at 1385.

This strict *caveat* is a reflection of the intent of the framers to ensure the universality of suffrage,²⁷¹ without unduly binding states with the unhappy task of ensuring that everyone had the right to vote despite clear and logical exceptions to the right, i.e., citizenship issues and age.²⁷² Concerns were raised that using the word “universal” would be redundant since the introductory class already stated “[e]very citizen shall have the right.”²⁷³ Those adamant in the inclusion of the term “universal” won as “they considered the concept of universal suffrage a most fundamental one and, therefore, included it in Article 25 despite the appearance of redundancy.”²⁷⁴

ii. Human Rights Committee (“HRC”) Comments and Jurisprudence Relevant to Criminal Disenfranchisement

(1) *Yevdokimov and Rezanov v. The Russian Federation*

In *Denis Yevdokimov and Artiom Rezanov v. the Russian Federation*,²⁷⁵ the two authors were found guilty of various crimes related to the organization of a criminal group dealing with drug trafficking, illegal deprivation of liberty, extortion, and abuse of official powers on 19 February 2001.²⁷⁶ This decision was

²⁷⁰ MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 445 (1st ed., 1993) cited in MacDonald, *supra* note 3.

²⁷¹ See Karl Josef Partsch, *Freedom of Conscience and Expression, and Political Freedoms*, in LOUIS HENKIN, *supra* note 248 at 240 cited in MacDonald, *supra* note 3.

²⁷² See e.g. MARC BOSSUYT, GUIDE TO THE “TRAVAUX PREPARATOIRES” OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 473 (1987) cited in MacDonald, *supra* note 3 at 1385.

²⁷³ *Id.*, at 474

²⁷⁴ *Id.*

²⁷⁵ *Denis Yevdokimov and Artiom Rezanov v. the Russian Federation*, H.R. Comm., U.N. Doc. Comm. CCPR/C/101/D/1410, ¶ 2.1 (2005)

²⁷⁶ *Id.*, ¶ 2.1.

affirmed on appeal on 03 October 2001 by the Collegium of the Supreme Court on criminal cases.²⁷⁷

On 07 December 2003 and 14 March 2004, parliamentary elections and presidential elections were held, respectively. Neither author was able to vote in both elections since Section 32, paragraph 3 of the Constitution restricts the right of persons deprived of liberty under court sentence to vote and to be elected.²⁷⁸ Alleging violations of Articles 25²⁷⁹ and 2 (1) and (3) of the ICCPR, the authors filed the communication with the HRC. In relation to Article 2 (1), the authors claim that the Constitution is discriminatory on the grounds of social status.²⁸⁰ As regards Article 3 (1), they allege that there is “no effective remedy to challenge the provision of the Constitution domestically.”²⁸¹

Finding a violation of Article 25, the HRC stated:

7.5 The Committee notes the State party’s reference to earlier decisions of the European Court of Human Rights. However, the Committee is also aware of the Court’s judgment in the case *Hirst v United Kingdom*, in which the Court affirmed that the principle of proportionality requires sufficient link between the sanction and the conduct and circumstances of the individual concerned. **The Committee notes that the State party, whose legislation provides a blanket deprivation of the right to vote to anyone sentenced to a term of imprisonment, did not provide any arguments as to how the restrictions in this particular case would meet the criterion of reasonableness as required by the Covenant.** In the circumstances, the Committee concludes there has been a violation of article 25 alone and in conjunction with article 2, paragraph 3, of the Covenant. Having come to this conclusion, the Committee does not need to address the claim regarding the violation of article 2, paragraph 1 of the Covenant. [Emphasis and underscoring supplied]

²⁷⁷ *Id.*

²⁷⁸ *Id.*, ¶ 2.2.

²⁷⁹ *Id.*, ¶ 3.1.

²⁸⁰ *Id.*, ¶ 3.2.

²⁸¹ *Id.*, ¶ 3.3.

This is the very first, and so far, the only individual communication where the HRC found that a state party's laws were inconsistent with the provisions of Article 25. While this is fortunate insofar as legal support for the "without unreasonable restrictions" legal conclusions that are sought to be made by the thesis, the refusal of the HRC to deal with allegations of Article 2 (1) violations is regrettable. The HRC missed the opportunity to establish jurisprudential guidance as regards the first caveat of Article 25 and determine that being a prisoner is a status and that the entire group cannot be discriminate as such.

(2) General Comments and Concluding Observations

The comments of the HRC are *arguably* the most authoritative discussions in the interpretation of the obligations under the ICCPR; GC 25 was the most comprehensive of the HRC's comments on the right to vote.²⁸² There, the issue on criminal disenfranchisement was discussed,²⁸³ viz.:

14. In their reports, States parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable. **If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence.** Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote. [emphasis and underscoring supplied]

Although paragraph 14 is in itself incomplete - with respect to the which forms and what extent of disenfranchisement are proportionate²⁸⁴ - it is clear that an absolute disenfranchisement of prisoners is inconsistent with the provisions of

²⁸² See discussion *infra* Part IV (A)(2)(c).

²⁸³ H.R. Comm., General Comment 25 (57), General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, Adopted by the Committee at its 1510th meeting, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).

²⁸⁴ MacDonald, *supra* note 3 at 1384.

Article 25. Therefore, the Philippines, which imposes the penalty of criminal disenfranchisement to all convicted prisoners, is violating the ICCPR. The next crucial question, therefore, is what is proportionate punishment?

Indicative of the answer to what is a “reasonable restriction” are the HRC decisions and concluding observations. For example, a Luxembourg law that imposed the mandatory disenfranchisement on an individual convicted of a serious crime like murder or rape. As regards individuals who are convicted of minor offenses, the law still permits the imposition of disenfranchisement on them.²⁸⁵ Regardless of the crime though, the Grand Duke of Luxembourg is authorized by law to re-enfranchise individuals.²⁸⁶ Although the HRC did not call on Luxembourg to repeal the said law, it raised concerns regarding the deprivation of the right to vote as a further sanction, and “suggested that the country consider abolishing the deprivation of the right to vote.”²⁸⁷ In its 2003 Concluding Observation on Luxembourg, the Committee stated that it “remains concerned that, for a large number of offences, the systematic deprivation of the right to vote is an additional penalty in criminal cases (article 25 of the Covenant).”²⁸⁸ Further, the Committee recommended that Luxembourg “should take steps to bring its legislation into line with paragraph 14 of General Comment No. 25.”²⁸⁹

²⁸⁵ Human Rights Comm., *Report of the Human Rights Committee*, ¶132, U.N. Doc. A/48/40 (Part I)(Oct. 7, 1993) *cited in* MacDonald, *supra* note 3 at 1386.

²⁸⁶ *Id.* *cited in* MacDonald, *id.*, at 1386.

²⁸⁷ *Id.*, ¶ 143 *cited in* MacDonald, *id.*, at 1386.

²⁸⁸ *Id.* *cited in* MacDonald, *id.*, at 1386.

²⁸⁹ Human Rights Comm., *Concluding Observations of the Human Rights Committee, Luxembourg*, U.N. Doc. CCPR/CO/77/LUX (2003) [hereinafter HRC Luxembourg Observations] *cited in* MacDonald, *supra* note 3 at 1386.

The Committee also raised concerns about Hong Kong's laws which "deprived convicted persons of their voting rights for periods of up to 10 years" Although the HRC was not categorical it did state that it "may be [a] disproportionate restriction on the rights protected by Article 25."²⁹⁰ The law has since been repealed.

It is interesting that prior to the *Hirst (No. 2)* decision of the ECtHR, the HRC had the opportunity to examine the United Kingdom's laws pertinent to criminal disenfranchisement. Similar to the eventual findings of the ECtHR in *Hirst*, the HRC in its *Concluding Observations on the United Kingdom and Northern Ireland*, was concerned about the UK's criminal blanket disenfranchisement of prisoners because it could not "discern the justification for such practice in modern times, considering that it amounts to an additional punishment and that it does not contribute towards the prisoner's reformation and social rehabilitation, contrary to Article 10."²⁹¹

There are two important things in the *HRC United Kingdom Observations*. First of all, it pre-echoes the ECtHR's decision in the *Hirst* and the subsequent cases. This is a strong indication that the HRC's interpretations of the obligations under Article 25 of the ICCPR is similar to how the ECtHR views Article 3,

²⁹⁰ Human Rights Comm., *Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Island (Hong Kong)*, U.N. Doc. CCPR/C/79/Add.57, ¶19 (Nov. 1995)[hereinafter *HRC Observations (Hong Kong)*] *cited in* MacDonald, *supra* note 3 at 1387.

²⁹¹ Human Rights Comm., *Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland*, ¶10, U.N. Doc. CCPR/CO/73/UK (Dec. 6, 2001) [hereinafter *HRC United Kingdom Observations*] *cited in* MacDonald, *supra* note 3 at 1387.

Protocol 1 of the ECHR.²⁹² Conversely, the ECtHR's views in *Hirst* and the subsequent criminal disenfranchisement jurisprudence are equally applicable as an interpretative guide to the Philippines' obligations under Article 25 of the ICCPR. In other words, *Hirst* is a consistent interpretation of Article 25 as well.

Some would raise the concern that *Hirst* would not be directly applicable to Article 25 of the ICCPR;²⁹³ however, aside from the fact that the HRC, in its *Concluding Observation on the United Kingdom and Northern Ireland*, pre-echoed *Hirst*,²⁹⁴ it must be noted that *Hirst* cannot and will not be heard by the HRC. The rules of the HRC prohibit this.²⁹⁵ This is relevant because aside from being a

²⁹² Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos. 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively.

²⁹³ (Since the ECtHR's jurisdiction is limited to interpretations of the provisions of the ECHR) ECHR, art. 32:

Article 32 – Jurisdiction of the Court

1 The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.

2 In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

²⁹⁴ The ECtHR would later hold that the UK's laws on prisoner disenfranchisement was inconsistent with Article 3, Protocol 1 of the ECHR.

²⁹⁵ Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976, art. 5 (2)(a): "2. The Committee shall not consider any communication from an individual unless it has ascertained that: (a) The same matter is not being examined under another procedure of international investigation or settlement." See also Individual Complaint Procedures Under the United Nations Human Rights Treaties, available at

<http://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf> which states:

"Has the same matter been submitted to another international body? If it has been submitted to another treaty body or to a regional mechanism such as the Inter-American Commission on Human Rights, the European Court of Human Rights, the African Commission on Human and Peoples' Rights, or the African Court on Human and Peoples' Rights, the **Committees cannot examine the complaint**. The aim of this rule is to avoid unnecessary duplication at the international level. This is an issue that the complainant should indicate in the original complaint, specifying the body to which it was submitted"

procedural rule of *exhaustion of remedies*,²⁹⁶ it shows that the HRC shows deference to cases decided by regional human rights bodies.

Finally, the HRC, in its *Concluding Observations to the United States*,²⁹⁷ for the first time used strong and categorical language to condemn the United States' disenfranchisement law. As a background, the United States (similar to the Philippines, *except* for Maine and Vermont but including the District of Columbia) imposes a blanket disenfranchisement on all convicted. Worse still, 13 states permanently disenfranchise convicted felons.²⁹⁸ In short, even after prisoners have completely served their sentences, they are still prohibited from voting. With this factual scenario in mind, the HRC stated:²⁹⁹

35. The Committee is concerned that about five million citizens cannot vote due to a felony conviction, and that this practice has significant racial implications. xxx **The Committee is of the view that general deprivation of the right to vote for persons who have received a felony conviction, and in particular those who are no longer deprived of liberty, do not meet the requirements of articles 25 (sic) of the Covenant**, nor serves the rehabilitation goals of article 10 (3). [emphasis and underscoring supplied]

²⁹⁶ See e.g. First Optional Protocol (ICCPR), art. 5 (2)(b): 2. The Committee shall not consider any communication from an individual unless it has ascertained that: (b) **The individual has exhausted all available domestic remedies**. This shall not be the rule where the application of the remedies is unreasonably prolonged.

See also BIN CHENG, *GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURT AND TRIBUNALS* 180 (1953); 2 HYDE, *INTERNATIONAL LAW* 911 (1945); KELSEN, *PRINCIPLES OF INTERNATIONAL LAW* (1966); VALLAT, *INTERNATIONAL LAW AND THE PRACTITIONER* 33FF (1966)

²⁹⁷ Human Rights Comm., *of the Human Rights Committee: United States of America*, ¶35, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (July 28, 2006)[hereinafter *HRC United States Observations*] cited in MacDonald, *supra* note 3 at 1387.

²⁹⁸ ROTTINGHAUS, BRANDON, *INCARCERATION AND ENFRANCHISEMENT: INTERNATIONAL PRACTICES, IMPACT AND RECOMMENDATIONS FOR REFORM*, 31 available at: http://ifes.org/sites/default/files/08_18_03_manatt_brandon_rottinghaus.pdf (last visited 07 January 2016)

²⁹⁹ Human Rights Comm., *of the Human Rights Committee: United States of America*, ¶35, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (July 28, 2006)[hereinafter *HRC United States Observations*].

In view of its negative findings against the United States, the HRC stated:³⁰⁰

The State party should adopt appropriate measures to ensure that states restore voting rights to citizens who have fully served their sentences and those who have been released on parole. The Committee also recommends that the State party review regulations relating to deprivation of votes for felony conviction to ensure that they always meet the reasonableness test of article 25. The State party should also assess the extent to which such regulations disproportionately impact on the rights of minority groups and provide the Committee with detailed information in this regard.

Dissecting the recommendations of the HRC, we find three (3) distinct activities the United States must do. With respect to the post-sentence conviction, the HRC was categorical that the restoration of voting rights after the full service of sentence or those have been released on parole is mandatory. Having used the word “shall,” the mandatory character of paragraph 35 is without doubt; however, this is strengthened by the HRC’s earlier pronouncements that the “general deprivation of the right to vote” with special mention of “those who are no longer deprived of liberty, do not meet the requirements of Article 25.”³⁰¹

Further, that HRC was less categorical about what the United States must do with regard to those still serving their sentences, does not mean that the HRC considers blanket disenfranchisement consistent with Article 25. Rather, it only reflects the view that some prisoner disenfranchisement is valid as long as it meets the “reasonableness test of article 25”³⁰² and determined on a “case-by-case basis”.³⁰³ What is abhorrent is that prisoners are considered an entire class or group of disenfranchised individuals, without regard to the nature of their offense

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² MacDonald, *supra* note 3 at 1388.

³⁰³ *Id.*

or the length of their sentence [which is a violation of Article 25, in relation to Article 2 (1), as discussed in part *supra* III(C)(1)].

It must be emphasized that the HRC reiterated its views on the United States as late as 2014 in the *Concluding observations on the fourth periodic report of the United States of America*.³⁰⁴ It stated, in relevant part:

24. While noting with satisfaction the statement by the Attorney General on 11 February 2014, calling for a reform of state laws on felony disenfranchisement, the Committee reiterates its concern about the persistence of state-level felon disenfranchisement laws, its disproportionate impact on minorities and the lengthy and cumbersome voting restoration procedures in states. x x x

The State party **should ensure that all states reinstate voting rights to felons who have fully served their sentences**; provide inmates with information about their voting restoration options; remove or streamline lengthy and cumbersome voting restoration procedures; **as well as review automatic denial of the vote to any imprisoned felon, regardless of the nature of the offence.** [emphasis and underscoring supplied]

The HRC cannot be any clearer that the United States “should” not be disenfranchising ex-convicts and that it must review the “automatic denial of the vote” to persons presently deprived of liberty without considering the “nature of their offense.” Therefore, in two (2) separate instances, the United States was called upon to bring its laws in line with Article 25 of the ICCPR.

iii. Decisions by Regional Human Rights Bodies

Judicial decisions are material but subsidiary sources for the determination of the rules of international law.³⁰⁵ Certainly, not all “jurisprudence” are sources of international law, they ought to “discuss and apply rules of international law”

³⁰⁴ Human Rights Comm., *Concluding Observations on the Fourth Periodic Report of the United States of America*, H.R. Comm., U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014)

³⁰⁵ STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, art. 38 (1)(d). See e.g. IAN BROWLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW*, 19 (7th ed., 2008).

in order to be relevant.³⁰⁶ In respect to the right to vote and the imposition of the penalty of disenfranchisement, there is a rich body of jurisprudence from both regional human rights bodies and municipal courts.

(1) *Hirst v. United Kingdom*³⁰⁷

An excellent starting point is the jurisprudence of the European Court of Human Rights (ECHR) and the seminal case of *Hirst v. United Kingdom*.³⁰⁸ In *Hirst*, a man was sentenced to life imprisonment for manslaughter and was automatically disenfranchised pursuant to Section 3 of the Representation of the People Act of 1983.³⁰⁹ In 2001, Hirst filed a communication before the ECtHR alleging that the United Kingdom violated his rights under Article 3 of Protocol 1³¹⁰ of the European Convention on Human Rights.

The government argued that “under Article 3 of Protocol No. 1 the right to vote was not absolute and that a wide margin of appreciation was to be allowed to Contracting States in determining the conditions under which the right to vote was exercised.”³¹¹

Finding in favor of Hirst, the Grand Chamber found a violation of Article 3 of Protocol 1. It is noteworthy that the Grand Chamber made particular reference

³⁰⁶ See e.g. D.J. HARRIS, *supra* note 203 at 43.

³⁰⁷ *Hirst*, *supra* note 20.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos. 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively, art. 3, protocol 1: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the people in the choice of the legislature.”

³¹¹ *Hirst*, ¶ 3.

to articles 25 and 10 of the ICCPR³¹² and paragraph 14 of the GC25 in the main part of its decision.³¹³ In addition, it cited two (2) municipal court decisions – *Sauvé v. Canada*³¹⁴ and *August and another v. Electoral Commission and others*.³¹⁵ Succinctly, the Grand Chamber ruled that a blanket ban on voting against prisoners is inconsistent with the ECHR. In reaching this conclusion, the ECtHR made several important pronouncements. For one, the Grand Chamber reiterated that the suffrage is no longer a privilege but a right.³¹⁶ For another, the ECtHR held that for any form of disenfranchisement to be valid under Article 3 of Protocol 1, it had to be in pursuance of a “legitimate aim”.³¹⁷

The government argued that the deprivation of the right to vote is in pursuance of legitimate government aims of “preventing crime” and “enhancing civic responsibility and respect for the rule of law” and the ECtHR agreed.³¹⁸ Although explicitly a form of punishment, the ECtHR nonetheless found that “it may nevertheless be considered as implied in the references to the forfeiting of rights that the measure is meant to give an incentive to citizen-like conduct.”³¹⁹

What the ECtHR found inconsistent with Article 3, however, is the disproportionate application of the government’s aims. It upheld the Chamber’s decision, which chided the United Kingdom for the lack of proportionality since its laws was essentially an “automatic blanket ban imposed on all convicted

³¹² *Hirst*, ¶26.

³¹³ *Id.*, ¶27.

³¹⁴ *Sauvé v. Canada* (No. 1) [1992] 2 SCR 438) decided by the Canadian Supreme Court.

³¹⁵ CCT8/99: 1999 (3) SA 1, decided by the Constitutional Court of South Africa.

³¹⁶ *Hirst*, ¶59.

³¹⁷ *Id.*, ¶74.

³¹⁸ *Id.*

³¹⁹ *Id.*

prisoners.”³²⁰ The ECtHR further noted that this “was arbitrary in its effects and could no longer be said to serve the aim of punishing the applicant once his tariff (that period representing retribution and deterrence) had expired.”³²¹ It further noted that the system of disenfranchisement during the sentencing phases of criminal cases in England and Wales does not establish “any direct link between the facts of any individual case and the removal of the right to vote.”³²² In short, the ECtHR established a *nexus* requirement in determining whether the penalty of disenfranchisement is appropriate on a case-by-case basis.

As to whether this determination must be made by parliament or the judge is a matter of controversy. On the one hand, a definition of what crimes may be subject to the penalty of disenfranchisement is wholly under parliament’s purview. On the other hand, even in the cases where the penalty of disenfranchisement has been prescribed by parliament, will it be automatically imposed on any individual found guilty of those crimes? These answers were not categorically answered by the ECtHR in *Hirst* but in *Scoppola v. Italy*.³²³

In the mind of the author (as confirmed in *Scoppola*), this question is properly within the “margin of appreciation” of the European states. The author also suspects that the HRC will not fault a state party if it chooses either option, since neither it nor other interpretative guides provide a consistent answer.

³²⁰ *Id.*, ¶76.

³²¹ *Id.*, ¶76.

³²² *Id.*, ¶77.

³²³ See discussion *infra* part III (B)(2)(v)(6).

As regards the argument of *margin of appreciation*, the ECtHR stated that “while (*sic*) the margin of appreciation is wide, it is not all-embracing.”³²⁴ It also stated that “[s]uch a general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1.”³²⁵ In any case, the *margin of appreciation* doctrine does not apply to the ICCPR as it was specifically rejected in *Lanssman v. Finland* by the HRC.³²⁶

(2) *Greens and M.T. v. The United Kingdom*

This case concerned the United Kingdom’s continued failure to amend the relevant legislation that imposed a blanket voting ban on convicted prisoners despite the ECtHR’s decision in *Hirst (No. 2)*. Consequently, the applicants in this case failed to vote in the general elections in the United Kingdom in May 2010 and the June 2009 elections for the European Parliament.³²⁷ The ECtHR held³²⁸ that Article 3 of Protocol 1 had been violated because of the UK’s failure to amend Section 3 of the 1983 Act (as regards the general elections in the UK) and Section 8 of the 2002 (as regards the elections for the European Parliament).

(3) *Firth and Others vs. the United Kingdom*³²⁹

This case concerned ten (10) British national prisoners who were incarcerated and because of their convictions, they were automatically

³²⁴ *Id.*, ¶82.

³²⁵ *Id.*, ¶82.

³²⁶ *Lanssman v. Finland*, H.R. Comm., U.N. Doc. Comm. No. 511/1992, ¶ 9.4 (June 11, 1992).

³²⁷ *Greens and M.T. v. the United Kingdom*, App nos. 60041/08 and 60054/08, ¶78 (Nov. 23 2010).

³²⁸ *Id.*

³²⁹ *Firth and Others v. the United Kingdom*, App No. 47784/09, [2014]ALL ER (D) 57 (Aug.)

disenfranchised and were thus unable to vote in the 04 June 2009 European Parliament elections.³³⁰

Recalling *Hirst No. 2* and *Greens and M.T.*, the ECtHR recognized the efforts of the United Kingdom in order to bring its laws in conformity with the ECHR.³³¹ These steps include the publication of a draft bill and the report of the Parliamentary Joint Committee appointed to examine the draft legislation. However, since the bill has not been passed into law, and the applicants in this were still disenfranchised, the ECtHR held that the United Kingdom was still in violation of Article 3 of Protocol No. 1 to the Convention.³³²

(4) *McHugh and Others v. the United Kingdom*

On February 10, 2015, the ECtHR released its judgment in *McHugh and Others*. The case was filed by 1,016 prisoners, who by virtue of their convictions and detention, were unable to vote in the European Parliamentary elections.³³³ In its judgment, the ECtHR noted that the case was very identical to previous cases such as *Greens MT* and therefore held that there had been a violation of Article 3 of Protocol No. 1 to the Convention.

(5) *Frodl v. Austria*³³⁴

In *Frodl v. Austria*, the ECtHR dealt with a situation similar to *Sauvé v. Canada (No. 2)*³³⁵ where, although the law does not disenfranchise all prisoners, it

³³⁰ *Id.*, ¶6.

³³¹ *Id.*, ¶14.

³³² *Id.*, ¶15.

³³³ *McHugh and others v United Kingdom*, App. No. 51987/08, 2015 E.C.H.R. 51987/08 (2008).

³³⁴ *Frodl*, *supra* note 28.

³³⁵ [2002] 3 S.C.R. 519

sets a time-bound cut-off as to who will be imposed the penalty.³³⁶ Austria's National Assembly Election Act provided that a prisoner serving a prison term of more than one (1) year would not be allowed to vote.³³⁷

Similar to the Canadian Supreme Court's decision in *Sauve No. 2*, the ECtHR held that although the law was not a blanket imposition of disenfranchisement on all prisoners, Section 22 of the Act failed to meet the criteria the Court had set out for disenfranchisement to be consistent with Article 3 of Protocol 1. The Court stated:

[T]he Court agrees with the applicant that section 22 of the National Assembly Election Act does not meet all the criteria established in *Hirst* (cited above, § 82). Under the *Hirst* test, besides ruling out automatic and blanket restrictions it is an essential element that the decision on disenfranchisement **should be taken by a judge**, taking into account the particular circumstances, and that there must be a link between the offence committed and issues relating to elections and democratic institutions³³⁸

In *Frodl*, the Court seemingly took the position that in order for any penalty of disenfranchisement to be consistent with the provisions of the ECHR, the decision to impose it must be within the judicial discretion of the judge. This is a departure from the ambivalence of the Court in *Hirst*. However, as we will see in the immediately succeeding section, this is not the case and there is such a judicial determination requirement that is not mandated under Article 3, Protocol 1.

Consistent with *Hirst* though, the Court reiterated the *nexus* requirement as discussed in part *supra* III (B)(2)(v)(1), *viz.*:

35. The essential purpose of these criteria is to establish disenfranchisement as an exception even in the case of convicted

³³⁶ *Frodl*, *supra* note 28.

³³⁷ *Id.*

³³⁸ *Id.*, ¶ 34.

prisoners, ensuring that such a measure is accompanied by specific reasoning given in an individual decision explaining why in the circumstances of the specific case disenfranchisement was necessary, taking the above elements into account. **The principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned.** However, no such link exists under the provisions of law which led to the applicant's disenfranchisement.³³⁹ [Emphasis and underscoring supplied]

(6) *Scoppola v. Italy*³⁴⁰

Scoppola was convicted of a murder, attempted murder, ill-treatment of members of his family, and unauthorized possession of firearms.³⁴¹ As a consequence of his conviction, he was imposed a life sentence which included a lifetime ban from public office, which in turn led to the permanent forfeiture of his right to vote.³⁴²

The Court found no violation of Article 3 of Protocol 1 since the Italian system did not possess the “general, automatic and indiscriminate character” that defined the UK system as found in *Hirst No. 2*.³⁴³ The ECtHR held:

In Italy there is no disenfranchisement in connection with minor offences or those which, although more serious in principle, do not attract sentences of three years’ imprisonment or more, regard being had to the circumstances in which they were committed and to the offender’s personal situation. The Court of Cassation rightly pointed this out (see paragraph 28 above). As a result, a large number of convicted prisoners are not deprived of the right to vote in parliamentary elections.³⁴⁴

In reaching this conclusion, the ECtHR found stated in paragraph 106 of the decision, *viz.*:

³³⁹ *Id.*, ¶ 35.

³⁴⁰ *Scoppola v. Italy (No. 3)*, App. no. 126/05, ¶13. (May 22, 2012)

³⁴¹ *Id.*

³⁴² *Id.*, ¶ 21.

³⁴³ *Id.*, ¶ 99.

³⁴⁴ *Id.*, ¶ 108.

106. In the Court’s opinion the legal provisions in Italy defining the circumstances in which individuals may be deprived of the right to vote show the legislature’s concern to adjust the application of the measure to the particular circumstances of the case in hand, taking into account such factors as the gravity of the offence committed and the conduct of the offender. **It is applied only in connection with certain offences against the State or the judicial system, or with offences which the courts consider to warrant a particularly harsh sentence, regard being had to the criteria** listed in Articles 132 and 133 of the Criminal Code (see paragraph 37 above), including the offender’s personal situation, and also to the mitigating and aggravating circumstances. **The measure is not applied, therefore, to all individuals sentenced to a term of imprisonment but only to those sentenced to a prison term of three years or more.** Italian law also adjusts the duration of the measure to the sentence imposed and thus, by the same token, to the gravity of the offence: the disenfranchisement is for five years for sentences of three to five years and permanent for sentences of five years or more.³⁴⁵ [Emphasis and underscoring supplied]

Another important characteristic of *Scoppola* is that it answers the “hanging” question in *Hirst* – and somewhat muddled in *Frodl* – on whether the ECHR imposes the specific obligation that the penalty of disenfranchisement should be ordered by a judge, the Court in rejecting this view held:

99. That reasoning takes a broad view of the principles set out in *Hirst*, which the Grand Chamber does not fully share. The Grand Chamber points out that the *Hirst* judgment makes no explicit mention of the intervention of a judge among the essential criteria for determining the proportionality of a disenfranchisement measure. The relevant criteria relate solely to whether the measure is applicable generally, automatically and indiscriminately within the meaning indicated by the Court (see paragraphs 85, 86 and 96 above). While the intervention of a judge is in principle likely to guarantee the proportionality of restrictions on prisoners’ voting rights, **such restrictions will not necessarily be automatic, general and indiscriminate simply because they were not ordered by a judge.** Indeed, the circumstances in which the right to vote is forfeited may be detailed in the law, making its application conditional on such factors as the nature or the gravity of the offence committed.³⁴⁶ [emphasis and underscoring supplied]

³⁴⁵ *Id.*, ¶ 106.

³⁴⁶ *Id.*, ¶ 109.

In effect, the ECtHR categorically stated that this question is well-within the wide margin of appreciation of the states parties.³⁴⁷ As such, even if the penalty is automatically imposed on certain classes of offenses – without judicial intervention or determination – there would be no violation of the Convention.³⁴⁸ What is relevant and important is that the law is not “general, automatic and indiscriminate” in character.³⁴⁹

(7) *Soyler v. Turkey*³⁵⁰

Another important ECtHR case is that of *Soyler*. In *Soyler*, the applicant was a businessman who was convicted for having drawn a number of cheques without having sufficient funds in his bank account – a violation of Turkish law. He was sentenced to a prison term of four years, eleven months and twenty-six days.³⁵¹ While serving his sentence, Soyler discovered that his name was on the electoral roll for the 22 July 2007 elections.³⁵² Aware of the fact that as a convicted prisoner, he is not able to vote according to Turkish Law, Soyler informed the relevant Turkish authorities. However, he requested - that in view of *Hirst* - he should nonetheless be allowed to vote.³⁵³ The authorities rejected his request, and therefore, he failed to exercise his franchise for the 2007 elections.

³⁴⁷ See generally Edward C. Lang, *A Disproportionate Response: Scoppola v. Italy (No. 3) and Criminal Disenfranchisement in the European Court of Human Rights*, 28 AM. U. INT’L L. REV. 835 (2012).

³⁴⁸ *Id.*

³⁴⁹ *Scoppola v. Italy*, ¶ 99.

³⁵⁰ *Soyler v. Turkey*, App. no. 29411/07, ¶ 6 (Jan. 20, 2014).

³⁵¹ *Id.*

³⁵² *Id.*, ¶ 7.

³⁵³ *Id.*

On 09 April 2009, he was released from prison early as he was granted probation, but because of the prevailing law, Soyler's disenfranchisement will continue until 01 April 2012 (his original date of release).³⁵⁴

Ruling in favor of Soyler, the ECtHR held that Turkey's laws falls squarely within the purview of *Hirst* because the ban was indiscriminate and disproportionate.³⁵⁵ In fact, the Court held that the Turkish legal system was harsher than the United Kingdom, Austria and Italy, *viz.*:

36. x x x **Moreover, their disenfranchisement does not come to an end on release from prison on probation, but continues until the end of the period of the original sentence handed down at the time of their conviction.** In fact, pursuant to section 53 § 3 of the Criminal Code, even when a prison sentence which is longer than one year is suspended and the convicted person does not serve any time in the prison, he or she will still be unable to vote for the duration of the suspension of the sentence (see paragraph 14 above).

xxx

38. In light of the above, and **in so far as they are applicable to convicts who do not even serve a prison term, the Court considers that the restrictions placed on convicted prisoners' voting rights in Turkey are harsher and more far-reaching than those applicable in the United Kingdom, Austria and Italy,** which have been the subject matter of examination by the Court in its judgments in the above-mentioned cases of *Hirst* (no. 2) [GC], *Frodl and Scoppola* (no. 3) [GC]. [Emphasis and underscoring supplied]

(8) *Anchugov and Gladkov v. Russia*

This case³⁵⁶ stemmed from the deprivation of the right to vote of two (2) individuals who were convicted of murder and other criminal offenses. They were sentenced to death but their sentences were later reduced to fifteen years'

³⁵⁴ *Id.*, ¶ 11.

³⁵⁵ *Id.*, ¶ 47.

³⁵⁶ *Anchugov v. Gladkov*, *supra* note 29.

imprisonment.³⁵⁷ As a consequence of their conviction and pursuant to Article 32 § 3 of the Russian Constitution, they were prohibited from voting in the elections in the State of Duma on the following occasions: elections for the lower chamber of the Russian parliament – held on 7 December 2003 and 2 December 2007 and in the presidential elections of 26 March 2000, 14 March 2004, and 2 March 2008.³⁵⁸

The applicants challenged the Constitutional provisions before the Russian Constitutional Court, but expectedly, it declined to accept the complaint for examination on the grounds that it had no jurisdiction to check whether certain constitutional provisions were compatible with others.³⁵⁹

As expected, the ECtHR held that there was a violation of Article 3. The Russian Federation argued,³⁶⁰ but failed to convince the Court that the Constitutional nature of the ban distinguished this case from *Hirst* and the subsequent cases.³⁶¹ The ECtHR held that the ECHR does not make a distinction between the type of rule or measure concerned and does not exclude any part of a member State's "jurisdiction" – which is often exercised in the first place through the Constitution – from scrutiny under Convention."³⁶²

As regards the implementation of the judgment, the ECtHR considered the complexity of amending a Constitution, therefore "it is open to the respondent Government to explore all possible ways in that respect and to decide whether their compliance with Article 3 of Protocol No. 1 can be achieved through some

³⁵⁷ *Id.*, ¶ 1-13.

³⁵⁸ *Id.*, ¶ 17.

³⁵⁹ *Id.*, ¶ 21.

³⁶⁰ *Id.*, ¶ 85.

³⁶¹ *Id.*, ¶ 108.

³⁶² *Id.*

form of political process or by interpreting the Russian Constitution by the competent authorities – the Russian Constitutional Court in the first place – in harmony with the Convention in such a way as to coordinate their effects and avoid any conflict between them.”³⁶³

(9) *Delvigne v. Commune de Lesparre-Médoc*³⁶⁴ (European Court of Justice)

This case is different from the eight (8) immediately preceding cases as this case was decided by the Court of Justice of the European Union and not the ECtHR. In *Delvigne*, a man was convicted of a serious crime and was sentenced to 12 years in prison on 30 March 1988.³⁶⁵ Pursuant to the Criminal Court of France, Delvigne was deprived of his civic rights which included the right to vote and to stand for elections.³⁶⁶ This law was replaced by the new Criminal Code, which entered into force on 01 March 1994. The new law now provides “that the total or partial deprivation of civic rights must be the subject of a court ruling and may not exceed 10 years in the case of a conviction for a serious offence.”³⁶⁷ However, since the law was not retroactive, Delvigne continued to be disenfranchised.³⁶⁸ Thereafter, he was removed from the list of voters in the municipality of Lesparre-Médoc in which he resides.³⁶⁹

³⁶³ *Id.*, ¶ 111.

³⁶⁴ *Delvigne v. Commune de Lesparre-Médoc*, C-650/13 (Oct. 6 2015)

³⁶⁵ *Id.*, ¶ 12.

³⁶⁶ *Id.*, ¶ 15.

³⁶⁷ *Id.*, ¶ 16.

³⁶⁸ *Id.*, ¶ 17.

³⁶⁹ *Id.*, ¶ 18.

His request denied, Delvigne filed a case before the Court of Justice alleging violations of Article 39 (among others) of the Charter of Fundamental Rights of the European Union³⁷⁰ which states:

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. **Every citizen of the Union has the right to vote** and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot. [Emphasis and underscoring supplied]

The Court of Justice ruled in favor of France in this case, which in essence, held that the latter was well within its rights to limit the right to vote as long as it is “proportionate in so far as it takes into account the nature and gravity of the criminal offence committed and the duration of the penalty.”³⁷¹ In this case, “the deprivation of the right to vote to which (*sic*) Delvigne is (*sic*) a result of his being sentenced to a term of 12 years’ imprisonment for a serious crime” and the law is only applicable “to persons convicted of an offence punishable by a custodial sentence of between five years and life imprisonment.”³⁷² Hence, there was no disproportionality in the penalty imposed on Delvigne.

iv. Domestic Jurisprudence

(1) Sauvé v. Canada (Canada)³⁷³

³⁷⁰ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02.

³⁷¹ *Delvigne v. Commune de Lesparre-Médoc*, C-650/13, ¶ 49. (Oct. 6, 2015)

³⁷² *Id.*, ¶ 50.

³⁷³ *Sauvé v. Canada (Chief Electoral Officer)*, 2002 3 S.C.R. 519 ¶ 1 (Can.) [hereinafter *Sauvé No. 2*]

The Supreme Court of Canada in the two (2) *Sauvé* cases dealt with the issue of prisoner disenfranchisement. The first case *Sauvé No. 1* was grounded on very similar justifications as the ECtHR Grand Chamber's decision in *Hirst*.³⁷⁴ As in *Hirst*, the Canadian Supreme Court found that Canada's blanket criminal disenfranchisement law – which deprived all incarcerated individuals the right to vote – violated the Canadian Charter of Rights and Freedoms (the Canadian Charter).³⁷⁵ Resembling the “without reasonable restriction” caveat in Article 25 of the ICCPR, Section 1 of the Canadian Charter imposes that rights can only be restricted within a “reasonable limit prescribed by law as can be demonstrably justified under a free and democratic society.”³⁷⁶ It was held that the law failed to meet this proportionality standard.³⁷⁷

In response to the findings in *Sauvé No. 1*, the Canadian Parliament amended the law to impose the penalty of disenfranchisement only to prisoners that are serving at least a two (2) year prison term.³⁷⁸ Despite the amendment and the non-blanket application of the voting ban, the Canadian Supreme Court still struck down the amended law.³⁷⁹ The court found that the prison-term standard of two (2) years fails to distinguish between those who have committed serious

³⁷⁴ MacDonald, *supra* note 3 at 1385. *citing* *Sauvé v. Canada (Chief Electoral Officer)*, 2002 3 S.C.R. 519 ¶ 1 (Can.) [hereinafter *Sauvé No. 2*]

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ *Id.*, *citing* See *Sauvé No. 1* (“in our view [the criminal disenfranchisement law] is drawn too broadly and fails to meet the proportionality test.”)

³⁷⁸ *Id.*, *citing* *Sauvé No. 2*, ¶ 2.

³⁷⁹ *Id.*, *citing* *Sauvé No. 2*, ¶ 1.

offenses from those who did not.³⁸⁰ For clarity, the relevant portion of the Canadian Supreme Court's decision is reproduced here in relevant parts:

The question at this stage of the analysis is not how many citizens are affected, but whether the right is minimally impaired. Even one person whose *Charter* rights are unjustifiably limited is entitled to seek redress under the *Charter*. It follows that this legislation **cannot be saved by the mere fact that it is less restrictive than a blanket exclusion of all inmates from the franchise.** First, it is difficult to substantiate the proposition that a two-year term is a reasonable means of identifying those who have committed "serious", as opposed to "minor", offences. If serious and minor offences are defined by the duration of incarceration, then this is a tautology. If the two-year period is meant to serve as a proxy for something else, then the government must give content to the notion of "serious" vs. "minor" offences, and it must demonstrate the correlation between this distinction and the entitlement to vote. It is no answer to the overbreadth critique to say that the measure is saved because a limited class of people is affected: the question is why individuals in this class are singled out to have their rights restricted, and how their rights are limited. The perceived "seriousness" of the crime is only one of many factors in determining the length of a convicted offender's sentence and the time served. The only real answer the government provides to the question "why two years?" is because it affects a smaller class than would a blanket disenfranchisement.³⁸¹ [Emphasis and underscoring supplied]

To reiterate, the Canadian Supreme Court's ruling in *Sauvé No. 2* echoes the "without unreasonable restrictions" caveat of Article 25 because the two-year threshold has not been shown to be a "reasonable means" of identifying those who have committed "serious" offenses.³⁸² Stated otherwise, the Canadian Parliament failed to establish the *nexus* between the crimes committed that are imposed the penalty of at least 2 years of imprisonment and the policy behind depriving them the right to vote.³⁸³

³⁸⁰ *Id.*, citing *Sauvé No. 2*, ¶ 55.

³⁸¹ *Sauvé No. 2*, ¶ 55.

³⁸² *Id.*

³⁸³ *Id.*

(2) *Hilla Alrai v. Minister of Interior et al. (Israel)*³⁸⁴

In 1996, the Israeli Supreme Court upheld Yigal Amir's citizenship rights, including the right to vote, after he was deprived this rights as a consequence of his conviction in the successful assassination of Prime Minister Yitzhak Rabin.³⁸⁵

The Israeli Supreme Court stated:

"Without the right to elect, the foundation of all other basic rights is undermined . . . Accordingly, every society should take great care not to interfere with the right to elect except in extreme circumstances." In upholding Yigal Amir's citizenship rights, including the right to vote, the court stated, "We must separate our contempt for his act from respect for his right."³⁸⁶

Further, the trial court, addressing the assassination of its head of state, firmly declared: "[Y]ou cannot change leadership with bullets but rather only via free, democratic elections . . . as is customary in a democratic state, this discussion must be conducted firmly yet with mutual respect and tolerance, especially when unpopular opinions are voiced by a minority . . ." ³⁸⁷

(3) *August and Others v. Electoral Commission (South Africa)*

In 1999, the South African Constitutional Court confirmed that the unqualified right for every citizen to vote imposes positive obligations upon the government to make reasonable arrangements for prisoners to vote.³⁸⁸ This case arose against the judgment in the Transvaal High Court, which, in effect held that the Electoral Commission had no obligation to ensure that people awaiting trial and convicted prisoners are registered as voters and actually able to vote in the

³⁸⁴ *Hilla Alrai v. Minister of the Interior*, HC2757/06 P.D. 50(2) 18 (1996).

³⁸⁵ *Hilla Alrai v. Minister of the Interior*, HC2757/06 P.D. 50(2) 18 (1996), *quoted in* https://www.aclu.org/sites/default/files/pdfs/votingrights/outofstep_20060525.pdf

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ *August*, ¶ 1.

general elections slated for 2 June 1999.³⁸⁹ The judge in that case dismissed the application of the petitioners “[b]earing in mind what he regarded as insurmountable logistical, financial and administrative difficulties, and on the basis that special measures to accommodate voters should be reserved for those voters “whose predicament was not of their own making”³⁹⁰

As a background, the Court declared that values of equality must take preference over the concern that inmates would “create trouble,”³⁹¹ viz.:

Universal adult suffrage on a common voters roll is one of the foundational values of our entire constitutional order. The achievement of the franchise has historically been important both for the acquisition of the rights of full and effective citizenship by all South Africans regardless of race, and for the accomplishment of an all-embracing nationhood. The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and of personhood. Quite literally, it says that everybody counts. In a country of great disparities of wealth and power it declares that whoever we are, whether rich or poor, exalted or disgraced, we all belong to the same democratic South African nation; that our destinies are intertwined in a single interactive polity. Rights may not be limited without justification and legislation dealing with the franchise must be interpreted in favour of enfranchisement rather than disenfranchisement.

The South African Constitutional Court therefore rejected the theory that “respondents were the authors of their own misfortune”³⁹² argument proffered by the lower court. The Constitutional Court likewise found that the absence of any provision providing for the mechanism on how to enforce prisoners right to vote is not a valid reason to exclude them from the franchise. It stated:

³⁸⁹ *Id.*, ¶ 1.

³⁹⁰ *Id.*, ¶ 8.

³⁹¹ Alec C. Ewald, *An “Agenda for Demolition”: The Fallacy and the Danger of the “Subversive Voting” Argument for Felony Disenfranchisement*, 36 COLUMBIA HUMAN RIGHTS LAW REVIEW 109, 134 (2005).

³⁹² *August*, ¶ 21.

These views are directly applicable in the present case. In reality no provision has been made either in the 1998 Electoral Act or in the Commission Act or in the regulations of the Commission to enable the prisoners to exercise their constitutional right to register and vote. Nor has the Commission made any arrangements to enable them to register and vote. The Commission accordingly has not complied with its obligation to take reasonable steps to create the opportunity to enable eligible prisoners to register and vote. The consequence has been a system of registration and voting which would effectively disenfranchise all prisoners without constitutional or statutory authority unless some action is taken to prevent that. The applicants have accordingly established a threatened breach of section 19 of the Constitution.³⁹³

Some have argued that *August* does not, in fact, establish a conclusive and strong legal support to the argument that suffrage is universal because the main issue of the case deals with pre-conviction detainees. However, the philosophical underpinnings of the decision rest on the universality of suffrage. Further, *August* is not simply a strong philosophical support to suffrage but is also one of the strongest rebuttals to the contention that prison voting is expensive, time consuming, and a security risk. Thus, states cannot hide behind the cloak of administrative difficulties to disenfranchise any sector of society. This is a pre-emptive case rebuttal to the logistical hurdles that will be further elaborated on in Part *infra* IV(A)(1).

(4) *Roach v. Electoral Commissioner (Australia)*

In 2007, the Australian High Court, in *Roach*³⁹⁴ struck down the provisions of the 2006 Act that excluded all prisoners serving any term of imprisonment from voting.

³⁹³ *August*, ¶ 22.

³⁹⁴ *Roach v. Electoral Commissioner* [2007] HCA 43 (26 September 2007); See also Daniel Guttman, *Before the High Court Roach v. Commonwealth: Is the Blanket Disenfranchisement of Convicted Prisoners Unconstitutional* 29 SYDNEY L. R. 297 (2007).

The factual precedents of the case involved Vicki Roach, an Aboriginal woman who was convicted of burglary, including negligent injury and endangerment.³⁹⁵ She was sentenced to six (6) years in prison and was therefore ineligible to vote by virtue of the 2006 amendments to the Electoral Act of 1918.³⁹⁶ The amendments disqualified all prisoners from voting in the federal elections. Prior to the 1996 amendments, only those serving prison terms of three (3) years or more was disenfranchised.³⁹⁷

On petition, the High Court held that an absolute ban on prisoners was unconstitutional because it was inconsistent with the principles of a representative government. Citing *Sauvé* and *Hirst*, a majority of the members of the High Court held that any measure to punish criminals with disenfranchisement must be done proportionally, with a legitimate aim.³⁹⁸ Unfortunately for Ms. Roach, the original law which disenfranchised only individuals serving a minimum of three (3) years was upheld and she was still ineligible to vote.³⁹⁹

(5) *Richardson v. Ramirez*⁴⁰⁰ (United States)

This case stems from the class action petition, three (3) individuals brought for an on behalf of all ex-felons who are perpetually deprived of their right to vote in the US State of California.⁴⁰¹ The California Supreme Court held that the relevant constitutional provisions and state legislation were in fact a violation of the Equal Protection Clause as enshrined in the Fourteenth Amendment of the US

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ *Id.*

³⁹⁸ *Id.*, ¶¶ 13 – 18.

³⁹⁹ *Id.*, ¶ 19.

⁴⁰⁰ *Richardson v. Ramirez*, 418 U.S. 24 (1974)

⁴⁰¹ *Id.*

Constitution but did issue the peremptory writ.⁴⁰² Voting 6-3, the Court, speaking through then Associate Justice William Rehnquist (later Chief Justice) declared that the law that permanently disenfranchises ex-felons does not violate the Equal Protection Clause. Justice Rehnquist opined that the “exclusion of felons from the vote has an affirmative sanction in (paragraph) 2 of the Fourteenth Amendment.”⁴⁰³ The majority also rejected the contention that the treatment of ex-felons as outmoded and does not conform to the modern view, *viz.*:

Pressed upon us by the respondents, and by amici curiae, are contentions that these notions are outmoded, and that the more modern view is that it is essential to the process of rehabilitating the ex-felon that he be returned to his role in society as a fully participating citizen when he has completed the serving of his term. We would by no means discount these arguments if addressed to the legislative forum which may properly weight and balance them again those advanced in values over the other. If respondents are correct, and the view which they advocate is indeed the more enlightened and sensible one, presumably the people of the State of California will ultimately come around to that view. And if they do not do so, their failure is some evidence, at least, of the fact that there are two sides to the argument.⁴⁰⁴

The minority registered strong dissents to the findings of the majority, however. Justice Marshall, joined by Justice Brennan found that the Equal Protection Clause is an evolving concept,⁴⁰⁵ *viz.*:

⁴⁰² *Id.*

⁴⁰³ U.S. CONST., Amendment XIV, Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, **except for participation in rebellion, or other crime**, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

⁴⁰⁴ *Richardson v. Ramirez.*

⁴⁰⁵ *Id.*

Disenfranchisement for participation in crime, like durational residence requirements, was common at the time of the adoption of the Fourteenth Amendment. But “constitutional concepts of equal protection are not immutably frozen like insects trapped in Devonian Amber.” [Dillenburg v. Kramer, 469 F.2d 1222, 1226 (CA9 1972).] We have repeatedly observed:

“[T]he Equal Protection Clause is not shackled to the political theory of a particular era. In determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality, and any more than we have restricted due process to a fixed catalogue of what was at a give time deemed [418 U.S. 24 77] to be the limits of fundamental rights” [Harper v. Virginia Board of Elections, 383 U.S. 663, 669 (1966)].

Accordingly, neither the fact that several States had ex-felon disenfranchisement laws at the time of the adoption of the Fourteenth Amendment, nor that such disenfranchisement was specifically excepted from the special remedy of 2, can serve to insulate such disenfranchisement from equal protection scrutiny.

As regards ex-felon disenfranchisement, Justice Marshall opined:⁴⁰⁶

To determine that the compelling-state-interest test applies to the challenged classification is, however, to settle only a threshold question. "Compelling state interest" is merely a shorthand description of the difficult process of balancing individual and state interests that the Court must embark upon when faced with a classification touching on fundamental rights. Our other equal protection cases give content to the nature of that balance. **The State has the heavy burden of showing, first, that the challenged disenfranchisement is necessary to a legitimate and substantial state interest;** second, that the classification is drawn with precision - **that it does not exclude too many people who should not and need not be excluded;** and, **third, that there are no other reasonable ways to achieve the State's goal with a lesser burden on the constitutionally protected interest.** E. g., *Dunn v. Blumstein*, *supra*, at 343, f360; *Kramer v. Union Free School District*, 395 U.S. 621, 632 (1969); see *Rosario v. Rockefeller*, 410 U.S. 752, 770 (1973) (POWELL, J., dissenting); cf. *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974); *NAACP v. Button*, 371 U.S. 415, 438 (1963); *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

I think it clear that the State has not met its burden of justifying the blanket disenfranchisement of former felons presented by this case. There is certainly no basis for asserting that ex-felons have any less interest in the democratic process than any other citizen.

⁴⁰⁶ *Id.*

Like everyone else, their daily lives are deeply affected and changed by the decisions of government. [Emphasis and underscoring supplied]

We must recall that the first two (2) standards are substantially the same as the “legitimate aim” and “proportionality” standards enunciated in *Hirst*. What is interesting though, is that US jurisprudence adds a third requirement – that there are no other, less intrusive⁴⁰⁷ alternatives to achieve the goals of the legislature. This is important especially for the Philippines because it also adopts this standard in determining the validity of a government action if the government is relying on the “compelling state interest doctrine.”⁴⁰⁸ Another important consideration is that universal suffrage is not specifically protected under the US Constitution itself,⁴⁰⁹ although there are provisions that guarantee the equality of the right to vote⁴¹⁰ and there have been cases where this right has been recognized.⁴¹¹

C. ADDITIONALLY, ABSOLUTE PRISONER DISFRANCHISEMENT DOES NOT ACHIEVE THE PRIMARY AIM OF REFORMATION AND SOCIAL REHABILITATION AND IS INCONSISTENT WITH ARTICLE 10 OF THE ICCPR

Article 10 of the ICCPR states, in relevant part:⁴¹²

Article 10

⁴⁰⁷ See e.g., *Balacuit v. CFI of Agusan del Norte*, No. L-38429, 30 June 1988, 163 SCRA 182, 191-193, *City of Manila v. Paguio*, G.R. No. 118127, April 12, 2005.

⁴⁰⁸ *Id.*

⁴⁰⁹ See e.g. *Bush v. Gore*, 531 U.S. 98 (2000) where the U.S. Supreme Court held that “[t]he individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college. U. S. Const., Art. II, § 1.”

⁴¹⁰ See Amendments XV (prohibiting discrimination based on race), XIX (prohibiting discrimination based on sex), XXIV (prohibiting the imposition of poll tax) and XXVI (lowering the minimum voting age to 18).

⁴¹¹ See, e. g., *Evans v. Cornman*, 398 U.S. 419, 421 -422, 426 (1970); *Kramer v. Union Free School District*, 395 U.S. 621, 626 -628 (1969); *Cipriano v. City of Houma*, 395 U.S. 701, 706 (1969); *Harper v. Virginia Board of Elections*, 383 U.S. 663, 667 (1966); *Carrington v. Rash*, 380 U.S. 89, 93 -94 (1965); *Reynolds v. Sims*, supra." [418 U.S. 24, 78].

⁴¹² ICCPR, art. 10.

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

x x x

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

35. The Committee is concerned that about five million citizens cannot vote due to a felony conviction, and that this practice has significant racial implications. It also notes with concern that the recommendation made in 2001 by the National Commission on Federal Election Reform that all states restore voting rights to citizens who have fully served their sentences has not been endorsed by all states. The Committee is of the view that articles 25 of 26 of the Covenant, general deprivation of the right vote for persons who have received a felony conviction, and in particular those who are no longer deprived of liberty, do not meet the requirements of nor serves the rehabilitation goals of article 10 (3). [emphasis and underscoring supplied]

Proponents of prisoner disenfranchisement argue that it is a form of punishment. It is common, in the United States, for example – where the discussion on prisoner disenfranchisement has penetrated the public sphere – to “defend disenfranchisement on retributive grounds”⁴¹³ It is argued that prisoners, who are deemed to have breached “the social contract should be excluded”⁴¹⁴ from the public whose trust and confidence they have violated.

D. PRISONERS ENJOY SUBSTANTIAL RESIDUAL RIGHTS UNDER INTERNATIONAL LAW

Despite losing their rights to liberty and the right to choose their abode, they enjoy a “substantial residue of basic rights which they may not be denied.”⁴¹⁵

⁴¹³ Nora V. Demleiter, *U.S. Felon Disenfranchisement: Parting Ways with Western Europe*, in EWALD AND ROTTINGHAUS, *supra* note 180 at 100.

⁴¹⁴ *Id.*

⁴¹⁵ *August*, ¶ 17.

If they are denied these rights, according to the South African Constitutional Court in *August*, “they are entitled to legal redress.”⁴¹⁶

To be sure, many international instruments of both soft law and hard law origins have reiterated the rights of prisoners under international law. One of the earliest instruments to highlight the right of prisoners (*jus ad bellum*) under international law is the *Standard Minimum Rules for the Treatment of Prisoners*.⁴¹⁷ Originally drafted in 1955, the new version of the document was unanimously voted upon by the United Nations General Assembly on 17 December 2015.⁴¹⁸ Now, referred to as the “**Mandela Rules**,”⁴¹⁹ it is perhaps the most comprehensive international instrument to deal with the treatment of prisoners as it takes into consideration all of the *de lege lata* and *de lege ferenda* instruments since 1955.⁴²⁰

⁴¹⁶ *Id.*

⁴¹⁷ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

⁴¹⁸ Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)] 70/175. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), U.N.G.A., U.N. Doc. G.A. Res., A/RES/70/175 (2015).

⁴¹⁹ ¶6: “[T]o honour the legacy of the late President of South Africa, Nelson Rolihlahla Mandela, who spent 27 years in prison in the course of his struggle for global human rights, equality, democracy and the promotion of a culture of peace.”

⁴²⁰ Hard law instruments considered in the “Mandela Rules” include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol.

Among the *de lege ferenda* instruments on specific “standards and norms in crime prevention and criminal justice” are Standard Minimum Rules for the Treatment of Prisoners [adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977)], the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment [G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988)], the Basic Principles for the Treatment of Prisoners [G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990)], the United Nations Standard Minimum

The Mandela Rules reflect the “long-standing concern of the United Nations for the humanization of criminal justice and the protection of human rights, and emphasizing the fundamental importance of human rights in the daily administration of criminal justice and crime prevention.”⁴²¹

As a comprehensive instrument, it reiterates basic human rights obligations as reflected in hard law instruments such as the ICCPR, the ICESCR, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”).⁴²²

Rules for Non-custodial Measures (the Tokyo Rules), and the basic principles on the use of restorative justice programmes in criminal matters.

Likewise, it also considers the instruments relating to other vulnerable sectors such as children, juvenile and women, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

Specific crime prevention instruments were likewise recalled such as Code of Conduct for Law Enforcement Officials, the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

Regional practices on the treatment of prisoners were also considered in the drafting of the Mandela Rules, including Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, the revised European Prison Rules, the Kampala Declaration on Prison Conditions in Africa, the Arusha Declaration on Good Prison Practice and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

⁴²¹ 3rd preambular phrase, “Mandela Rules”

⁴²² See e.g. Rule 1: “All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.”

Proceeding from these basic rights, the Mandela Rules also provide administrative guidance on how to properly handle prisoner files,⁴²³ accommodation,⁴²⁴ restrictions, discipline and sanctions,⁴²⁵ proper instruments of restraint,⁴²⁶ searches of prisoners and cells,⁴²⁷ information to and complaints by prisoners,⁴²⁸ contact with the outside world,⁴²⁹ retention of prisoners' property,⁴³⁰ notifications,⁴³¹ investigations,⁴³² removal of prisoners,⁴³³ internal and external inspections.⁴³⁴ To be sure, even access to personal hygiene,⁴³⁵ food,⁴³⁶ health-care services,⁴³⁷ books,⁴³⁸ exercise and sport,⁴³⁹ and the respect for religious belief and preferences,⁴⁴⁰ and provisions for educations⁴⁴¹ are protected therein.

Further, the second part of the Mandela Rules pertains to the differential treatment of various special categories such as prisoners under sentence,⁴⁴² prisoners with mental disabilities and/or health conditions,⁴⁴³ prisoners under

⁴²³ Mandela Rules, Rules 6 - 10.

⁴²⁴ *Id.*, Rules 12 - 17.

⁴²⁵ *Id.*, Rules 36 - 46.

⁴²⁶ *Id.*, Rules 47 - 49.

⁴²⁷ *Id.*, Rules 50 - 53.

⁴²⁸ *Id.*, Rules 54 - 57.

⁴²⁹ *Id.*, Rules 58 - 63.

⁴³⁰ *Id.*, Rule 67.

⁴³¹ *Id.*, Rules 68 - 70.

⁴³² *Id.*, Rules 71 - 72.

⁴³³ *Id.*, Rule 73.

⁴³⁴ *Id.*, Rules 83 - 85.

⁴³⁵ *Id.*, Rule 18.

⁴³⁶ *Id.*, Rule 22.

⁴³⁷ *Id.*, Rule 24.

⁴³⁸ *Id.*, Rule 64.

⁴³⁹ *Id.*, Rule 23.

⁴⁴⁰ *Id.*, Rule 65.

⁴⁴¹ *Id.*, Rules 104 - 105.

⁴⁴² *Id.*, part II.A.

⁴⁴³ *Id.*, part II.B.

arrest or awaiting trial,⁴⁴⁴ civil prisoners,⁴⁴⁵ and persons arrested or detained without charge.⁴⁴⁶

Certainly, that prisoners enjoy substantial rights is without question. The South African Constitutional Court in *Minister of Justice v Hofmeyr*,⁴⁴⁷ perhaps stated it most eloquently, *viz.*:

“ . . . negate the parsimonious and misconceived notion that upon his admission to goal a prisoner is stripped, as it were, of all his personal rights; and that thereafter, and for so long as his detention lasts, he is able to assert only those rights for which specific provision may be found in the legislation relating to prisons, whether in the form of statutes or regulations. . . [T]he extent and content of a prisoner's rights are to be determined by reference not only to the relevant legislation but also by reference to his inviolable common-law rights.”

E. THERE IS NO CONSTITUTIONAL HURDLE TO REVOKE DISENFRANCHISEMENT LAWS IN THE PHILIPPINES

In response to a possible dissent to the applicability of an international legal principle based on the supremacy of the Philippine constitution over all laws, including treaties and customary international law, it must be noted that prisoner disenfranchisement is not a constitutional dictum. Article V, the basis for prisoner disenfranchisement in the Philippines, only contains a permissive provision, *viz.*: “not otherwise disqualified by law.”⁴⁴⁸ Therefore, the Congress is well within its powers to amend the relevant penal provisions.

⁴⁴⁴ *Id.*, part II.C.

⁴⁴⁵ *Id.*, part II.D.

⁴⁴⁶ *Id.*, part II.E.

⁴⁴⁷ Decided by the South African Constitutional Court [1993] ZASCA 40; 1993 (3) SA 131 (A) at 139J – 140B.

⁴⁴⁸ 1987 PHIL. CONST., art. 5.

Further, it must be noted that although international law is considered in the same level as a domestic statutory law,⁴⁴⁹ the Supreme Court will uphold that which is the latter in time. As such, if a new norm of international law is established, it will supercede any domestic legislation. Furthermore, the value of *Anchugov and Gladkov*⁴⁵⁰ is that the mere fact that the Constitution prescribes a certain course of action, does not excuse the enforceability of an international legal obligation. In any case, Article 27 of the VCLT states that: “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”⁴⁵¹

⁴⁴⁹ See e.g. *Wigberto Tañada v. Edgardo Angara*, G.R. No. 118295. May 2, 1997.

⁴⁵⁰ See generally *Anchugov v. Gladkov*, *supra* note 29.

⁴⁵¹ VCLT, art. 27.

IV. BEYOND THE LAW: THE DOMESTIC IMPLEMENTATION OF THE PHILIPPINES' INTERNATIONAL HUMAN RIGHTS LAW OBLIGATIONS TO EXTEND THE RIGHT TO VOTE TO PRISONERS

Having established the legal obligations of the Philippines, the logical next step is to determine how the Philippines ought to domestically implement it.

As this is a primarily legal thesis and since there is an abundance of research on the public policy considerations of prisoner voting (*Manza and Uggan*,⁴⁵² *Ewald and Rottinghaus*⁴⁵³), this part of the thesis will not pretend to add anything substantial to their research. In turn, this part of the thesis will contextualize the public policy concerns to the Philippine situation, to serve as a guide to public policy makers in the Philippines.

This part will be divided into two (2) parts. The first part will address the logistical concerns of prisoner voting while the second part will address the more philosophical questions.

A. LOGISTICAL HURDLES

1. Expensive

One of the most obvious drawbacks that opponents of prisoner voting raise is the budgetary constraints on their respective jurisdictions. However, as we have seen in the example of *August and Others*, administrative constraints are not excuses to refuse to extend a basic human right to citizens. While a certain degree of latitude is extended to states when it comes to the full implementation of second generation human rights (as expressed in the ICESCR), that degree of latitude does not extend to civil and political rights expressed in the ICCPR.

⁴⁵² MANZA AND UGGEN, *supra* note 34

⁴⁵³ EWALD AND ROTTINGHAUS, *supra* note 180

Further, and perhaps more practically, prisoner voting is generally implemented in most jurisdictions without incident.⁴⁵⁴ According to *Ispahani*, prisoner voting is relatively cheap and easy to administer because the inmate population is constantly supervised and is subject to inexpensive administrative control.⁴⁵⁵ As the South African court observed in *August*, prisoners are “literally a captive population, living in a disciplined and closely monitored environment, regularly being counted and recounted.”⁴⁵⁶

In the Philippines, this “audience” theory finds strong real-life application because there are only seven (7) prison facilities,⁴⁵⁷ namely: Bilibid Prison, Iwahig Penal Colony, Correctional Institution for Women, Davao Prison and Penal Farm, Ramon Prison and Penal Farm, Sablayan Prison and Penal Farm, and the Leyte Regional Prison.

In fact, most of these facilities (which are under the jurisdiction of the Bureau of Corrections, “BUCOR”) are already included in the detainee voting coverage of the COMELEC.⁴⁵⁸ This is due to the fact that convicted prisoners whose cases are still pending appeal are still allowed by law to vote but are already transferred to the prison facilities during the pendency of their appeal.⁴⁵⁹ This means that if and when the right to vote is extended to the other “occupants” of aforementioned prison facilities, i.e. those whose cases are final and executory, there will be no additional administrative burden on the Philippine government

⁴⁵⁴ Laleh Ispahani, *Voting Rights and Human Rights: A Comparative Analysis of Criminal Disenfranchisement Laws in* EWALD AND ROTTINGHAUS, *supra* note 180 at 51.

⁴⁵⁵ *Id.*

⁴⁵⁶ *Id.*, at 51 citing *August*, ¶26.

⁴⁵⁷ <http://www.bucor.gov.ph/facilities.html> (last visited 26 April 2016).

⁴⁵⁸ See discussion *supra* part II (A)(7)(b).

⁴⁵⁹ See R.A. 8189, Sec. 11, in relation to COMELEC Resolution 9371, Rule 2.

because the administrative and logistical facilities are already in place. Additional expenses will be miniscule, if any.

Just to reiterate, during the 2013 National and Local Elections, 2,489 inmates⁴⁶⁰ at BUCOR facilities were registered to vote in their respective facilities and, therefore, localities. As the total population of prison inmate facilities is only around 110,000⁴⁶¹ there is no substantial additional burden to the election budget.

Also, the Commission on Elections for the 2013 National and Local Elections allocated more than Php30,457,727.62⁴⁶² (or USD650,952.301) for the Detainee Voting Committee. Of this amount, a total of only Php118,691.93 was actually

⁴⁶⁰ Figure no. 1. Number of registered detainee voters

REGION	BJMP	PROVINCIAL AND SUB-PROVINCIAL JAILS	BUCOR	TOTAL
NCR	4,899	0	1,984	6,883
I	649	39	0	688
II	627	158	0	785
III	1,780	814	0	2,594
IV-A	5,142	963	0	6,105
IV-B	386	1,267	0	1,653
V	808	555	0	1,363
VI	3,113	233	0	3,346
VII	2,873	1,032	0	3,905
VIII	851	1,156	117	2,124
IX	1,777	541	38	2,356
X	1,506	513	0	2,019
XI	1,092	182	350	1,624
XII	681	631	0	1,312
XIII	691	160	0	851
CAR	221	1	0	222
ARMM	9	9	0	18
TOTAL	27,105	8,254	2,489	37,848

⁴⁶¹ Numbers are constantly changing because prisoners are constantly being sentenced and released.

⁴⁶² Commission En Banc in Minute Resolution 13-0503, 19 April 2013.

disbursed because the Committee found ways to coordinate its activities with the normal elections procedures in the localities.

Furthermore, because of the close coordination with the relevant government agencies such as the Philippine National Police, which provided the extra security needed in the facilities, no money had to be disbursed for those activities.

2. Prisoner voting does not pose serious security concerns for prison facilities and authorities

Perhaps a more convincing argument against prison voting is the substantial security concerns that may arise. This is of particular concern in the Philippines, which has had a history of electoral violence. However, due to the combined efforts of the relevant stakeholders, no major incident has been reported in the three (3) elections⁴⁶³ since Detainee Voting has been introduced in the Philippines.

3. Registration/Residency issues

Unlike the problems faced by other jurisdictions with respect to the issue of residency, Philippine jurisprudence has been relatively lax. As established, prisoners may adopt their detention facilities as their temporary residence “for the purpose of voting.”⁴⁶⁴

With regard to registration, the current system of off-site registration being conducted by the COMELEC under the existing Detainee Voting mechanisms of

⁴⁶³ 2010 and 2013 National and Local Elections, and the 2013 Barangay Elections.

⁴⁶⁴ As discussed in Part *infra* II (A)(6)(b)(i); *Alcantara, supra* note 99 in relation to *Macalintal Macalintal, supra* note 98.

the Commission may also be utilized if and when prisoner voting is approved for execution.⁴⁶⁵

B. PHILOSOPHICAL TUSSLE BETWEEN THE ENFRANCHISEMENT AND THE DISENFRANCHISEMENT MOVEMENTS

The exhaustive discussions on the evolution of suffrage rights in the Philippines in Part *supra* II (A) is not designed to give a background for its sake alone. Rather, these discussions perfectly frame and contextualize the following discussions.

Initially, we must remember that the Philippines, like its democratic ancestors (the United States and the United Kingdom), treated suffrage as a privilege.⁴⁶⁶ Through the gradual expiration of time, this began to include “universal” suffrage to all rich men, then to men of color, then eventually to women. As it stands today, suffrage is enjoyed by a little over half of the total population of the Philippines.⁴⁶⁷ This evolution is proof that the conception of who is to be or not to be enfranchised is not a static concept and that the Philippines has always been looking for ways to expand the voting population.⁴⁶⁸ Likewise, the Philippines has always prided itself as a responsible member of the international community, especially in regard to the protection of human rights as evidenced by its adoption of the ICCPR and the positive strides it has made in protecting the rights of pre-conviction detainees. Perhaps, the only true barrier to the Philippines’ further expansion of the franchise to prisoners is public opinion

⁴⁶⁵ COMELEC Resolution 9371, Rule 2. *See also* discussion *supra* part II (A)(6)(c).

⁴⁶⁶ *See* discussion *supra* Part II (A)(1)-(5).

⁴⁶⁷ 52,014,648 registered voters during the 2013 National and Local Elections, with almost 100,000,000 people according to the latest estimates.

⁴⁶⁸ *See* discussion *supra* II(A)(6)

and the prevailing notion that a convicted person is somewhat less Filipino for having violated the *social contract*.

In this section, the author will try to address, albeit less extensive than the legal section, the public policy considerations of the prisoner disenfranchisement.

On this regard, there have been several arguments – both partially legal and fully philosophical – advanced in favor and against the principal thrust of this academic work. These shall be discussed in turn below.

1. Arguments in favor of maintaining the disenfranchisement of prisoners and rebuttals to these arguments

Based on the jurisprudence discussed previously, the author determined that there are two (2) prevalent classes of justifications. The first class of objectives is how the United States and the Philippines justifies disenfranchisement – preserving the sanctity and purity of the ballot. The second class of justifications – those prevalent among the European decisions (especially *Hirst*) – are a little more comprehensive. The justifications in the latter include: disenfranchisement as a deterrent, punishment for offenders, enhancement of civil responsibility and the respect for the Rule of Law, and breach of the social contract.

Since the Philippines does not subscribe to the latter justifications, it would be expedient for the author to dispense with them in a roundabout manner; however, for purposes of an exhaustive discussion of all the principles involved, the author will discuss them.

a. The “Subversive Voting” theory⁴⁶⁹ or the “purity of the ballot box” argument

As we discussed in part *supra* II (C)(1), the Philippines, as expressed in *People v. Corral*,⁴⁷⁰ imposes disenfranchisement “for protection and not for punishment,” the “manifest purpose” of which is “to preserve the purity of elections.”⁴⁷¹

The Philippine Supreme Court’s pronouncements in *People v. Corral* echo the non-punishment arguments that were and are still prevalent in the United States. For example, in 1884, the Alabama Supreme Court in *Washington v. State* declared that “the manifest purpose” of denying suffrage to ex-convicts is not to punish but instead “to preserve the purity of the ballot box, which is the only sure foundation of republican liberty...”⁴⁷² The wording in *Washington* is eerily echoed in *People v. Corral*, where the Philippine Supreme Court famously held: “[t]he manifest purpose of such restrictions upon this right is to preserve the purity of elections.”⁴⁷³ Thus, the Philippines views disenfranchisement as a “mere disqualification” which, like other disqualifications such as age, are “imposed for protection and not for punishment.”⁴⁷⁴

Notably, this “theory” has been further justified as a means of defending democracy in general since voting is “so important to a democracy, a conviction

⁴⁶⁹ See generally Alec C. Ewald, *supra* note 391.

⁴⁷⁰ 62 Phil. 945 (1936).

⁴⁷¹ *Id.*

⁴⁷² *Washington v. State*, 585 (1884) cited in Alec C. Ewald, *Collateral Consequences and the Perils of Categorical Ambiguity*, in *LAW AS PUNISHMENT/LAW AS REGULATION* (Sarat, Douglas, Umphrey, eds., 2011); Jason Schall, *supra* note 38 at 87 – 88.

⁴⁷³ *Supra* note 408.

⁴⁷⁴ *Id.*

justifies disenfranchisement; that offenders cannot be assumed to act in the best interests of the community, they must be excluded from the franchise."⁴⁷⁵

In the United States, where prisoner disenfranchisement has a foothold on criminal justice policy, opponents of prisoner enfranchisement argue what others like *Ewald* have referred to as the "subversive voting" argument. In essence, the argument proceeds as such: if criminals are allowed the right to vote, they could create voting bloc that would eschew public policy in favor of criminality.⁴⁷⁶ More of a "practical" argument, proponents argue that "convicts and former inmates must be barred from the polls because they might vote x x x to weaken the criminal law, forming an anti-law enforcement voting bloc."⁴⁷⁷

Responding to these arguments, *Ewald* raises the point that "disenfranchisement today undercuts the modern universal suffrage rule itself and endorses the most fundamental premise of a limited electorate."⁴⁷⁸ As we saw in the development of Philippine suffrage laws in Part *supra* II(A)(1), enfranchisement was first limited to the educated males from the landed classes. There is it were in the United States, a general consensus that the right to vote must be limited to those with properties because "the ruling class convictions of the time, that government is, and ought to be, founded on property, and that those only who have sufficient property to ensure their support of the established order

⁴⁷⁵ Susan E. Marquardt, *Deprivation of a Felon's Rights to Vote: Constitutional Concerns, Policy Issues, and Suggest Reform for Felony Disenfranchisement Laws*, 82 U. DET. MERCY L. REV. 279, 285 (2005); EWALD, CIVIL DEATH, 1079 - 80 in Nora V. Demleitner, *U.S. Felon Disenfranchisement: Parting Ways with Western Europe*, in EWALD AND ROTTINGHAUS, *supra* note 180 at 87.

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.*, ¶ 111.

⁴⁷⁸ *Id.*, ¶ 119.

can with safety be allowed to vote.”⁴⁷⁹ This conclusion is supported by John Adam’s letter⁴⁸⁰ to James Madison when he wrote:

The questions concerning universal suffrage, and those concerning the necessary limitations of the power of suffrage, are among the most difficult. It is hard to say that every man has not an equal right; but, admit this equal right and equal power, and **an immediate revolution would ensue**. In all the nations of Europe, the number of persons, who have not a penny, is double those who have a groat; admit all these to an equality of power, and you would soon see how the groats would be divided. . . . There is in these United States a majority of persons, who have no property, over those who have any.”⁴⁸¹ [Emphasis and underscoring supplied]

The argument against universal suffrage to include those without property echoes the arguments against prisoners under the *subversive voting* theory. In its essence, it relies on a distrustful view of an entire class of people because of their status: the poor in pre-1855 United States and the prisoners in present day Philippines and United States.⁴⁸² There is and was an unfounded fear that these people will control the public discourse and in turn, public policy.⁴⁸³ The arguments gave a “permanent structure to the arguments of all opponents of universal suffrage, and to all who saw it as a threat to property, and who feared men who had no stake in their country.”⁴⁸⁴ But according to *Ewald*, “[g]eneration after generation, century after century, that “threat” has proven nonexistent, but

⁴⁷⁹ J. ALLEN SMITH, THE GROWTH AND DECADENCE OF CONSTITUTIONAL GOVERNMENT 29 (1930) *cited in* Alec C. Ewald, *supra* note 391 at 119.

⁴⁸⁰ Letter from John Adams to James Madison (June 17, 1817) *cited in* J. ALLEN SMITH, THE GROWTH AND DECADENCE OF CONSTITUTIONAL GOVERNMENT 29 (1930) *cited in* Alec C. Ewald, *supra* note 391 at 119 – 120.

⁴⁸¹ *Id.*, also *cited in* Alec C. Ewald, *supra* note 391 at 119 – 120.

⁴⁸² *Id.*

⁴⁸³ *Id.*

⁴⁸⁴ JUDITH SHKLAR, AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION 46 (1991) *quoted in* Alec C. Ewald, *supra* note 391 at ¶123.

the argument seems too strong to die.”⁴⁸⁵ *Ewald* further suggests that one of the reasons these arguments have survived are the arguments of the prisoner enfranchisement movement itself. He cites, for example Mary Katzenstein and Kate Rubin, who have “identified a recurring idea in reform arguments,” and what they refer to as the “trope of the meritorious ex-felon.”⁴⁸⁶ *Ewald* notes:

Arguments built on this theme typically make the case for former inmates’ right to vote by describing a former felon who is many years out of prison, married, paying as many taxes as possible, and productively employed – perhaps as an entrepreneur or religious leader – but nonetheless cannot vote.

Aside from the fact that the argument only addresses the removal of post-sentence disenfranchisement and not prison disenfranchisement in general, *Ewald* makes an excellent point, viz.:

“[t]he powerful implication is that the former felon’s good works have redeemed him and made him worthy of the ballot.”⁴⁸⁷ But there is an inherent problem with the argument, it assumes “that citizens must qualify for the vote: this individual deserves to vote because he participates in social institutions and contributes visibly to our material well-being.”⁴⁸⁸ Additionally, it seems to implicitly concede that the “offender’s sentence alone was not sufficient “payment” to society.”⁴⁸⁹ It runs counter to the true nature of universal suffrage which grants the right under no other requirement than what is minimally required – citizenship, capacity of discernment as reflected in the minimum age requirements, etc.⁴⁹⁰

⁴⁸⁵ *Id.*

⁴⁸⁶ Mart Fainsod Katzenstein and Katherin Davison Rubin, *How Different? A Comparison of the Movement Challenging Ex-Felon Disenfranchisement with Suffrage Politics of an Earlier Time* 19 – 22 (2002) (unpublished paper presented at the Annual Meeting of the American Political Science Association in Boston) (on file with *Ewald*) cited in Alec C. *Ewald*, *supra* note 391 at ¶123.

⁴⁸⁷ *Id.*

⁴⁸⁸ *Id.*

⁴⁸⁹ See Kyle Whitmire, *To: Governor Bob Riley, Re: Vetoes, Voting Rights and the Great Compromise*, *Birmingham Weekly*, August 7 – August 14, 2003 at 4 cited in Alec C. *Ewald*, *supra* note 391 at ¶123.

⁴⁹⁰ See also Nora V. Demleitner, *U.S. Felon Disenfranchisement: Parting Ways with Western Europe*, in *EWALD AND ROTTINGHAUS*, *supra* note 180 at 87: “[t]his perspective views full

Further, we cannot disenfranchise an entire class of people simply because they might have a different agenda.⁴⁹¹ Every single citizen would rather not than pay taxes, they would rather be able to cross the street anywhere they want. But that people have a tendency to be selfish does not mean we remove the franchise from them.⁴⁹²

In any case, however, the argument that allowing prisoners to vote would tilt government policy in favor of crime is not supported by the numbers. As of September 2014, there are 40,531 convicted prisoners in the Philippines.⁴⁹³ Assuming all 40,531 prisoners choose to register as voters, that only represents .078% of the entire voting population on the Philippines.⁴⁹⁴ Assuming all these prisoners will have a “criminality agenda,” their numbers will hardly eschew public policy towards criminality in the Philippines. At its most selfish, prisoners will be clamoring for better prison facilities, lower sentences, more comprehensive probation rules. At its most selfless, prisoners will clamor for better public attorney representation and better court systems and processes.

b. *Disenfranchisement as a deterrent, punishment for a violation of the law and enhances civic responsibility.*

The discussions in the immediately succeeding sections shall focus on the arguments of the United Kingdom in *Hirst*, viz.:

50. The Government argued that the disqualification in this case pursued the intertwined legitimate aims of preventing crime and punishing offenders and enhancing civic responsibility and

citizenship as a reward for having served one’s sentence and conformed to social norms, at least for a limited period of time.”

⁴⁹¹ Eli L. Levine, *Does the Social Contract Justify Felony Disenfranchisement*, 1 WASH. U. JUR. REV. 193, 215 (2009) citing *Cipriano v. City of Houma*, 395 U.S. 701 (1969)

⁴⁹² Jason Schall, *supra* note 38 at 216.

⁴⁹³ <http://www.prisonstudies.org/country/philippines>

⁴⁹⁴ 52,014,648 registered voters during the 2013 National and Local Elections.

respect for the rule of law by depriving those who had breached the basic rules of society of the right to have a say in the way such rules were made for the duration of their sentence. Convicted prisoners had breached the social contract and so could be regarded as (temporarily) forfeiting the right to take part in the government of the country.⁴⁹⁵

The difficulty faced by the author in respect to these arguments is that the ECtHR in *Hirst* and all succeeding cases on violations of Article 3, Protocol 1 of the ECHR accepted these to be “legitimate aims” of the government.⁴⁹⁶ These findings must be taken with a grain of salt; however, and a deeper analysis of why the ECtHR ruled in this manner must be taken into account.

First, the ECtHR’s findings were more of an accommodation than it was a stamp of approval to the UK’s legitimate aims argument. In paragraph 75 of the Grand Chamber’s judgment, the ECtHR⁴⁹⁷ stated:

75. Although rejecting the notion that imprisonment after conviction involves the forfeiture of rights beyond the right to liberty, and especially the assertion that voting is a privilege not a right (see paragraph 59 above), **the Court accepts that section 3 may be regarded as pursuing the aims identified by the Government.** [Emphasis and underscoring supplied]

Further, it must be noted that the Chamber in *Hirst* “expressed reservations as to the validity” of the purported aims of the UK government “citing the majority opinion of the Canadian Supreme Court in *Sauvé No. 2*.”⁴⁹⁸ Instead of directly addressing the arguments of both the Chamber and *Sauvé No. 2*, the Grand Chamber merely dismissed them without any exposition.⁴⁹⁹ It can hardly be said

⁴⁹⁵ *Hirst*, ¶ 50.

⁴⁹⁶ *Id.*, ¶ 75.

⁴⁹⁷ *Id.*

⁴⁹⁸ *Hirst* (Chamber), ¶¶ 44 - 27

⁴⁹⁹ *Hirst*, ¶ 75: “However, whatever doubt there may be as to the efficacy of achieving these aims through a bar on voting, the Court finds no reason in the circumstances of this application to exclude these aims as untenable or per se incompatible with the right guaranteed under Article 3 of Protocol No. 1.”

that the Grand Chamber's mere dismissal of these arguments trump the logic and reasoning of the Chamber's decision. This is especially true in light of the Canadian Supreme Court's decision in *Sauvé No. 2* which the ECtHR considered in deciding *Hirst*.

Second, an analysis of *Sauvé No. 2* reveals cogent and convincing reasons for denying the legitimacy of the aims stated. The Canadian Supreme Court stated that the "rhetorical nature of the government objectives (*sic*) renders them suspect."⁵⁰⁰ While admitting that respect for the rule of law is important, the Court bemoaned its generic nature that "could be asserted of virtually every criminal law and many non-criminal measures."⁵⁰¹ The Supreme Court found wanting "the context necessary to assist (*sic*) in determining whether the infringement (*sic*) is demonstrably justifiable in a free and democratic society."⁵⁰² The Court therefore could not ascertain the validity of the argument because the government failed to establish the *nexus* between the supposed aim and the measure being proposed.

Third, the Supreme Court in *Sauvé No. 2* also denied the "educative message" of the respect for the law to inmates and the public at large. The Court found:

The government gets this connection exactly backwards when it attempts to argue that depriving people of a voice in government teaches them to obey the law. The "educative message" that the government purports to send by disenfranchising inmates is both **anti-democratic and internally self-contradictory**. Denying a citizen the right to vote denies the basis of democratic legitimacy. **It says that delegates elected by the citizens can then bar those very citizens, or a portion of them, from participating in future elections**. But if we accept that governmental power in a democracy flows from the citizens, it is difficult to see how that

⁵⁰⁰ *Sauvé No. 2*, ¶ 24.

⁵⁰¹ *Id.*

⁵⁰² *Id.*

power can legitimately be used to disenfranchise the very citizens from whom the government's power flows. [emphasis and underscoring supplied]⁵⁰³

The Court noted the history of “progressive enfranchisement” in Canadian history. Similar to the Philippines, the vote was limited to “a few meritorious people” but it “gradually evolved” to the present-day “precept that all citizens are entitled to vote as members of a self-governing citizenry.”⁵⁰⁴ It is likewise doubtful that the “educative message” will likely achieve its intended goals, according to the Canadian Supreme Court, *viz.*:

“... it is not apparent that denying penitentiary inmates the right to vote actually sends the intended message to prisoners, or to the rest of society. People may be sentenced to imprisonment for two years or more for a wide variety of crimes, ranging from motor vehicle and regulatory offences to the most serious cases of murder. **The variety of offences and offenders covered by the prohibition suggests that the educative message is, at best, a mixed and diffuse one.**”⁵⁰⁵ [emphasis and underscoring supplied]

In addition to the pronouncements in *Sauvé No. 2*, enfranchisement is consistent with how the international community treats prisoners as a vulnerable sector. As discussed in Part *supra* III (E), prisoners enjoys substantial residual rights, then the more that enfranchisement should be part of their rehabilitation. What better way to teach an individual about civic responsibility and citizenship than by exposing them to the electoral process of electing their leaders and choosing the policies they want for the country.⁵⁰⁶ Expressed in more eloquent terms, the Canadian Supreme Court in *Sauvé*⁵⁰⁷ held:

⁵⁰³ *Id.*, ¶ 32.

⁵⁰⁴ *Id.*, ¶ 33.

⁵⁰⁵ *Sauvé No. 2*, ¶ 39.

⁵⁰⁶ See *e.g.*, Howard Itzkowitz & Lauren Oldak, *Note, Restoring the Ex Offender's Right to Vote: Background and Developments*, 11 AM. CRIM. L. REV. 721, 736 39 (Spring 1972/1973)

[D]enying citizens the right to vote runs counter to our constitutional commitment to the inherent worth and dignity of every individual. As the South African Constitutional Court said in *August v. Electoral Commission*, 1999 (3) SALR 1, at para. 17, “[t]he vote of each and every citizen is a badge of dignity and of personhood. **Quite literally, it says that everybody counts.**” The fact that the disenfranchisement law at issue applies to a discrete group of persons should make us more, not less, wary of its potential to violate the principles of equal rights and equal membership embodied in and protected by the *Charter*.

Also, the supposed educative effects of disenfranchisement is particularly absent in the Philippines because the right to vote is “automatically” restored in the Philippines five (5) years after a convict is released from prison. Since re-enfranchisement is not conditioned on some form of good behavior as a form of positive reinforcement,⁵⁰⁸ it is difficult to conceive of disenfranchisement as somehow “educating” the criminal.

Fourth. On deterrence. Even on the assumption that the imposition of disenfranchisement *per se* deters crime *per se*, it is unlikely that it will have any “deterrence” effect to the fear of being imprisoned. It is not as if a would be murderer would frustrate his attempt to kill someone due to a fear of not being able to vote in the next elections. To be sure, “few potential offenders would possess very specific knowledge about the nature of possible political penalties at the time of the crime.”⁵⁰⁹

cited in Eli L. Levine, *Does the Social Contract Justify Felony Disenfranchisement*, 1 WASH. U. JUR. REV. 193, 223 (2009)

⁵⁰⁷ *Sauvé* No. 2, ¶ 17.

⁵⁰⁸ MANZA AND UGGEN, *supra* note 34 at 36.

⁵⁰⁹ *Id.*, at 36.

In any case, research suggests that long sentences barely deter offenders from committing crimes.⁵¹⁰ How much more for an activity that they perform every couple of years? Disenfranchisement therefore, is “extremely unlikely to deter offenders.”⁵¹¹ In any case, any “marginal” deterrent value of disenfranchisement – over and above that of more immediate and severe penalties – would hardly seem sufficient to alter the criminal calculus.”⁵¹²

Further, with respect to the educative value of the “deterrence argument” versus the post-conviction enfranchisement of prisoners, *Sauvé No. 2* found that instead of the former achieving the intended purpose of instilling the respect for the rule of law in its citizens, it might cause the opposite effect, *viz.*:

“[D]isenfranchisement is more likely to become a self-fulfilling prophecy than a spur to reintegration. Depriving at-risk individuals of their sense of collective identity and membership in the community is unlikely to instill a sense of responsibility and community identity, **while the right to participate in voting helps teach democratic values and social responsibility**”⁵¹³ [Emphasis and underscoring supplied]

Citing *J.S. Mills*,⁵¹⁴ Chief Justice McLachlin concluded that: “[t]o deny prisoners the right to vote is to lose an important means of teaching them democratic values and social responsibility.”⁵¹⁵

⁵¹⁰ M. CAVADINO AND J. DIGNAN, *THE PENAL SYSTEM: AN INTRODUCTION* 34 – 36 (2002) cited in Claire Hamilton and Rick Lines, *The Campaign for Prisoner Voting Rights in Ireland*, in EWALD AND ROTTINGHAUS, *supra* note 180 at 213.

⁵¹¹ *Id.*

⁵¹² MANZA AND UGGEN, *supra* note 34 at 36.

⁵¹³ Citing the testimony of Professor Jackson, Appellant’s record at pp. 2001- 2002.

⁵¹⁴ J. S. Mill, “Thoughts on Parliamentary Reform” (1859), in J. M. Robson, ed., *Essays on Politics and Society*, vol. XIX, 1977, 311, at pp. 322-23: “To take an active interest in politics is, in modern times, the first thing which elevates the mind to large interests and contemplations; the first step out of the narrow bounds of individual and family selfishness, the first opening in the contracted round of daily occupations. . . . The possession and the exercise of political, and among others of electoral, rights, is one of the chief instruments both of moral and of intellectual training for the popular mind

⁵¹⁵ *Sauvé No. 2*, ¶ 38.

In other words, the deterrence argument does not work because the public psyche in general is not consumed by the thought of losing one's right to vote. People do not go about their lives fearing that if they commit a crime, that they will lose the right. Conversely, for a person in the custody of the state, where their liberty, as well as their rights and privileges are limited, **the educative effect of enfranchisement is magnified**. They are, as it were, a "captive audience" to the values training and education opportunities of the prison system. The magnification effect was best expressed by Malcolm X himself, "where else but in a prison could I have attacked my ignorance by being able to study intensely sometimes as much as fifteen hours a day?"⁵¹⁶ Thus, incarceration may encourage or enable some inmates to develop political knowledge and interests.⁵¹⁷ Succinctly, since there is little else to do in prison, the consciousness of the prisoner can be easier enveloped by thoughts of political participation.

In fact, *Manza and Uggen*,⁵¹⁸ using data analysis, concluded that those who vote are less likely to be arrested or incarcerated, *viz.*:

"[t]hose who vote are less likely to be arrested and incarcerated, and less likely to report committing a range of property and violent offenses. Moreover, this relationship cannot be solely attributed to criminal history; voting is negatively related to subsequent crime among those with and without a prior criminal history."

Further, in terms of their desire to actually participate in the elections, the research by *Manza and Uggen* concluded that a significant share of the disenfranchised felon population would vote if they were given the opportunity.⁵¹⁹

⁵¹⁶ MANZA AND UGGEN, *supra* note 34 at 116.

⁵¹⁷ *Id.*, ¶ 116.

⁵¹⁸ *Id.*, ¶ 133.

⁵¹⁹ *Id.*, ¶ 179.

Manza and *Uggen* also stated that the voter turnout rates for prisoners “would fall below those of the rest of the electorate.”⁵²⁰ Statistically, we have proven this among the detention prisoners in the Philippines where the turnout rate is 10% higher than the total voting population [*See* discussion Part *infra* II (A)(7)(C)(i)]

Furthermore, a research by the American Civil Liberties Union (“ACLU”), “[has] shown that, among those who have been arrested, people who vote are only half as likely to be re-arrested as those who don’t; that is, voters recidivate one-half as often as non-voters.”⁵²¹ This view is widely shared in many European states who believe “access to voting rights (*sic*) [is] a foundation for successful rehabilitation.”⁵²² In fact, some European correctional officials have argued publicly that enfranchisement “may increase public safety by enhancing the formative, rehabilitative effects of incarceration.”⁵²³

Fifth. On punishment. The argument goes that prisoners violated the law and must therefore be punished for the crime they committed. Based on the premise of retribution, it is founded on the “notion that those who have committed crimes should suffer for the harm they have caused others.”⁵²⁴

The problematic⁵²⁵ conclusion is that the denial of a constitutional right is a legitimate tool in a government’s “arsenal of punitive implements.”⁵²⁶ This is problematic because unlike the length of the deprivation of the right to liberty

⁵²⁰ *Id.*, ¶ 180.

⁵²¹ *Id.*, quoted in American Civil Liberties Union, *Out of Step with the World: An Analysis of Felony Disenfranchisement in the US and Other Democracies*, p. 6 (New York: ACLU, 2006) cited in *Cheney*, *supra* note 37 at 139

⁵²² *Id.*

⁵²³ Laleh Ispahani, *Voting Rights and Human Rights: A Comparative Analysis of Criminal Disenfranchisement Laws*, in EWALD AND ROTTINGHAUS, *supra* note 180 at 35.

⁵²⁴ MANZA AND UGGEN, *supra* note 34 at 35.

⁵²⁵ *Sauvé* No. 2, ¶ 46.

⁵²⁶ *Id.*, ¶ 46.

(which depends on the nature and the gravity of the offense committed), the deprivation of the right to vote to all prisoners is imposed without qualification.⁵²⁷ Further, other punitive sanctions such as imprisonment are palpably related to its intended goal of segregating a person who has committed a crime against the social order from the rest of society. A murderer should not be allowed to roam the streets scot free as he needs to be isolated and reformed, at the risk of him committing the same violation. However, it does not appear why the right to vote, like any other constitutional right achieves the purpose of a penitentiary environment. The concern has likewise been raised that if lawmakers can pass a law depriving prisoners of their constitutional right to vote, what could stop them from removing other constitutional rights such as the prohibition against cruel and unusual punishment? *Sauve No. 2* asks, “[w]hy (*sic*) is the right to vote different?”

Additionally, since the Philippines imposes a blanket disenfranchisement of prisoners, there is certainly a violation of the principle of proportionality as universally (except the cases in the United States) held in all cases pertaining to prisoner disenfranchisement.⁵²⁸

c. *Prisoners and the breach of the social contract*

Perhaps the most theoretical of the support for disenfranchisement is the notion of the social contract. The most extreme form of the argument would impose disenfranchisement on all prisoners since all of them have broken the contract and therefore “considered unworthy of participation in modern civil

⁵²⁷ See *Id.*, ¶ 46.

⁵²⁸ MANZA AND UGGEN, *supra* note 34 at 35.

society and are therefore excluded from the democratic process.”⁵²⁹ But this simplistic argument forgets an important consideration – that the social contract is what we define it to be. Given the status of the present social sphere, a blanket invocation of the “social contract” will not suffice because it appears that the social contract as it stands frowns upon discrimination against prisoners and celebrates universal suffrage.

Those who rely on the *social contract* theory often look to John Locke who famously argued that if a criminal is a murderer, he has “renounced reason, the common rule and measure God hath given to mankind.”⁵³⁰ They also make reference to Jean Jacques-Rousseau who argued that criminals are not to remain free citizens and that:

[E]very offender who attacks the social right becomes through his crimes a rebel and traitor to his homeland; he ceases to be one of its members by violating its laws, and he even wages war against it.... The proceedings and judgment are the proofs and declaration that his has broken the social treaty, and consequently is not longer a member of the state.⁵³¹

The author is tempted to rely on the significant passage of time between the present and the Rousseau’s time.⁵³² However, instead of engaging in a temporal rebuttal, the author would simply point to the status of international human rights law and prisoners in general in *status quo*.

⁵²⁹ Planinc, Zdravko, *Should Imprisoned Criminals Have a Constitutional Right to Vote?* 2 CANADIAN J. LAW & SOCIETY 153, 153-64 (1987).

⁵³⁰ JOHN LOCKE, SECOND TREATISE OF CIVIL GOVERNMENT Section 11

⁵³¹ JEAN-JACQUES ROUSSEAU, BASIC POLITICAL WRITINGS 159 (Donald A. Cress ed. & trans., Hackett Publ’g 1987) (1762) cited in Alec C. Ewald, “Civil Death”: *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WIS. L. REV. 1045, 1074 (2002)

⁵³² See also Christopher P. Manfredi, In Defense of Prisoner Disenfranchisement, in EWALD AND ROTTINGHAUS, *supra* note 180 at 271 quoting JOHN D. RAWLS, A THEORY OF JUSTICE 453 - 454 (1971) (“in order for a just social and political system to function properly in the context of equal political liberty, its members must be confident that “everyone accepts and knows that the other accept the same principle of justice.”)

Prisoners are no longer completely devoid of their rights; they no longer suffer “civil death”,⁵³³ as it were. They are no longer deprived of their citizenship rights and have significantly more protections such as protections against cruel, inhumane and degrading treatment, even enjoying the right to education and self-improvement within the prison facilities. This is the contract that we have metaphorically signed. The social contract, as it stands, no longer views prisoners with disdain but as a vulnerable sector in need of protection. Today, [t]he reality to be faced by the government of today is that ‘Human Rights come with true democracy, whether the government wants them or not.’⁵³⁴

At most, the author concedes that the social contract in John Stuart Mill’s conception, that, “it might be expedient that in the case of crimes evincing a high degree of insensitivity to social obligation, the deprivation of this and other civic rights should form part of the sentence.”⁵³⁵ We see this alive and well, and it forms part of the universal notion of proportionality and the *nexus* requirement espoused here.

In *Hirst*, the UK argued that the Chamber “overlooked the fact that the applicant would have remained barred from voting even if the government had restricted a ban to those sentenced for the most serious offences. Such a finding was, in their view, “offensive to many people.”⁵³⁶ In *Hirst*, the government relied upon the traditional moral argument of moral authority, asserting that the right to

⁵³³ See discussion *supra* part II and III (E)

⁵³⁴ Cheney, *supra* note 37 at 140 *citing* WOOLF, LORD CHIEF JUSTICE, HUMAN RIGHTS AND MINORITIES p. 3 (Melbourne, Australia: The B’nai B’rith Anti-Defamation Commission, Inc., 2003).

⁵³⁵ Jean Jacques Rousseau, *On the Social Contract* 65 (translated by R.D. and J.R. Masters, 1978). See also *Planinc* (1987).

⁵³⁶ Cheney, *supra* note 37 at 138.

vote was part of the social contract.⁵³⁷ Failure to abide by the social contract by committing a crime means that a criminal “should not benefit by having a voice in the government of that contract.”⁵³⁸ Although the majority did not specifically deal with this contention, Judge Caflisch in his Concurring Opinion debunked this contention, *viz.*:

8. The measures of disenfranchisement that may be taken must be prescribed by law.

a. The latter cannot be a blanket law: it may not, simply, disenfranchise the author of every violation sanctioned by a prison term. It must, in other words, be restricted to major crimes, as rightly pointed out by the Venice Commission in its Code of Good Practice in Electoral Matters (judgment, § 32). **It cannot simply be assumed that whoever serves a sentence has breached the social contract.**⁵³⁹

The response here is telling because Judge Caflisch did not entirely cull the possibility of a person violating the social contract, but emphasized the same line adopted by the majority – that the government must be discrete in applying disenfranchisement as a penalty.

2. Additional positive arguments in favor of enfranchisement

Beyond the legal modalities, the public policy and human rights implications of the right to vote cannot be understated. It is the foundation of all fundamental human rights.⁵⁴⁰ It is the most direct expression of your consent to the existence of your government and the policies they undertake. Without it, politicians have no stake in ensuring that your rights are protected.

⁵³⁷ *Id.*

⁵³⁸ *Id.*

⁵³⁹ *Hirst*, ¶ 8 (concurring opinion of J. Caflisch).

⁵⁴⁰ H.C. 2757/96, *Hilla Alrai v. Minister of Interior et al.*, 50(2) P.D. 18, 26 (1996) *quoted in* MANZA AND UGGEN, *supra* note 34 at 232.

Anecdotally, there is strong support to the extension of the right to vote prisoners as was demonstrated in the immediately preceding section. However, it must be noted that some researches have found positive correlations between the right to vote and the overall democratic status of a country.

In a 2007 study, Rottinghaus and Baldwin⁵⁴¹ concluded that nations that allow access to voting for prisoners tend to be countries that “are more willing to extend the franchise as widely as possible through permissive electoral laws,” and “have had no colonial legacy or (sic) have moved past this hegemonic heritage.”⁵⁴² More importantly, the study statistically concluded that countries that allow prisoner voting are “more democratic in origin or willing to extend more political rights”⁵⁴³ in general.

Another empirical support to this conclusion, albeit, more logically distant are the findings of Prof. McElwain of the University of Tokyo where he computed the number of specified rights in a constitution before and after the grant of universal suffrage.⁵⁴⁴

Pre-suffrage	After the grant of Male Suffrage	After the grant of Female Suffrage
30.2%	50.8%	52.1%

This confirms the hypothesis of Keith Banting and Richard Simeon who asserted that the adoption of universal suffrage is the “most important factor

⁵⁴¹ Brandon Rottinghaus and Gina Baldwin, *Voting Behind Bars: Explaining variation in international enfranchisement practices*, 26 ELECTORAL STUDIES 688(2007).

⁵⁴² *Id.*, ¶ 696.

⁵⁴³ *Id.*

⁵⁴⁴ With Prof. McElwain’s approval, using his powerpoint for the class “Constitutional Design” taught at the University of Tokyo, A1A2 (Academic Year 2015 – 2016).

influencing a constitution's specificity."⁵⁴⁵ For example, the granting the franchise to poor citizens increased demands on the government to provide more public goods such as social welfare and education programs, according to Prof. McElwain.⁵⁴⁶

Admittedly, these figures do not directly correlate to an analysis of prisoner voting and its net benefit to prisoners in general. However, we cannot deny that prisoners, if they are included in the franchise will be able to demand for better prison facilities, better treatment, perhaps a better prison environment conducive to rehabilitation. At a minimum, "[t]he main good that can come out of giving prisoners this right is that it may make the government more aware of the existence of prisoners."⁵⁴⁷ In short, the benefits outweigh the phantom harms that anti-enfranchisement activists have been raising.

⁵⁴⁵ Keith G. Banting and Richard Simeon, *Introduction: The Politics of Constitutional Change*, in *THE POLITICS OF CONSTITUTIONAL CHANGE IN INDUSTRIAL NATIONS: REDESIGNING THE STATE*, pp. 1-29 (Banting and Simeon, eds., 1985) cited in Kenneth Mori McElwain and Christian G. Winkler, *What's Unique About the Japanese Constitution?: A Comparative and Historical Analysis*, 41 *THE J. OF JAPANESE STUDIES* 250, 265 (2015).

⁵⁴⁶ Kenneth Mori McElwain and Christian G. Winkler, *What's Unique About the Japanese Constitution?: A Comparative and Historical Analysis*, 41 *THE J. OF JAPANESE STUDIES* 250, 265 (2015).

⁵⁴⁷ Cormac Behan, *'Still Entitled to Our Say': Prisoners' Perspectives on Politics*, 51 *THE HOWARD J. OF CRIM. JUSTICE* 16, 18 (2012)

V. RECOMMENDATIONS

A. THE GOALS

1. **Best-Case Scenario: The Philippines should allow all prisoners to vote regardless of the nature of the crime and the length of their sentence**

Prefatorily, this part of the thesis will be a positive rather than a normative attempt to define the future of the Philippine *franchise*. This is what the law, as envisioned by the author, ought to be.

The Philippines Congress is not constitutionally-beholden to maintain criminal disenfranchisement as a punishment.⁵⁴⁸ In fact, it is defensible to argue that it is constitutionally-mandated to revoke laws that do not comply with the international legal obligations of the Philippines. The discussions in Part II, in relation to Part III, sufficiently establishes the fact that international human rights law encourages the lifting of any disenfranchisement penalties on prisoners. The statements of the HRC in the *Concluding Observations on the United States* reveal as much.

While this is not mandated by international law, the Philippines will be in the wise to continue enfranchising as many of its people as possible. Consistent with the evolution of the right to vote in its constitutional framework and its status as a responsible member of the international community, it would be politically expedient for Congress to embrace the full rehabilitative benefits of the franchise. As a captive audience to the political discourse in the country, prisoners are in a distinctive position to fully imbibe the true meaning of the term democracy. These individuals possess a lot of idle time inside prisons, and in an attempt to prepare

⁵⁴⁸ See discussion *supra* part III (F).

them for reintegration from the society they have been culled from, prison officials force them to engage in various activities. Whether this be through arts and crafts, education, religious services, or whatnot, there is not just a tendency but a trend towards a more holistic prison experience. Voting is the next logical step.

The Philippines, through the COMELEC, had initiated the democracy project within the detention facilities. However, the activity offered in this thesis is beyond the constitutionally-granted powers of the Commission; Congressional fiat is necessary to lift the decades of prisoner discrimination on voting. As of the time of this writing, the author is unaware of any pending or proposed legislation on this issue.

2. Alternatively, and in minimum compliance with International Law

First, as a state that automatically incorporates customary international law as part of the law of the land, the Philippines has an obligation to extend universal and equal suffrage to its citizens. That universal suffrage is a norm of customary status is beyond doubt. The totality of evidence - including Universal Declaration of Human Rights, the ICCPR, the regional human rights instruments, jurisprudence and commentaries by highly-qualified publicists – shows that every person in the Philippines must enjoy the right to elect its leaders.

For clarity's sake, the conclusion made in the thesis is that universal suffrage *without discrimination* is customary. It does not seek to prove that all prisoners must enjoy the franchise, rather, States are prohibited from wholly disenfranchising them just because of their status. The thesis showed⁵⁴⁹ that being a prisoner falls under the definition "other status" in the ICCPR and the ICESCR,

⁵⁴⁹ See discussion part *supra* III (C)(1).

and therefore, they cannot be discriminated as a whole. Specific protections afforded to them in both hard law and soft law instruments (such as the *Mandela Rules*) show that they are a (vulnerable) sector in need of some form of special protection in the law. As such, since they are group of people, the Philippines cannot exclude all prisoners from the franchise as it is inconsistent with the content of the customary right of suffrage.

Second, the discussions on the customary status of universal suffrage *without discrimination* are interlinked with the provisions of the ICCPR since the latter is a treaty that reflects custom. With respect to the provisions of the ICCPR and the Philippines' compliance thereto, this is easily discernible. The anti-discriminatory nature of Article 25 is explicit, therefore, the treaty content and customary content of this aspect of suffrage is the same. With respect to the *without unreasonable restrictions* prong of Article 25, it is clear that the Philippines is guilty of non-compliance. The Philippines automatically disenfranchises all individuals suffering the penalty of at least one (1) year in prison based on the Continuing Registration Act. Therefore, even crimes that do not specifically impose the penalty of disenfranchisement⁵⁵⁰ are automatically disenfranchised as well. In many cases, especially for those crimes punished under the RPC, even those who have been imposed the penalty of at least one (1) day in prison is automatically disenfranchised as well. Further, all prisoners suffer a post-service disenfranchisement of five (5) years.

In practice, the Philippine Commission on Elections enfranchises individuals who are only suffering custodial penalties of a maximum of one (1)

⁵⁵⁰ See discussion *supra* Part II (C)(3)(c).

year. However, this is based on a tenuous interpretation of the latent inconsistencies between the relevant penal laws and the Continuing Registration Act.⁵⁵¹ This interpretation, if challenged before the courts of law, will (in the analysis of the author) be overruled.⁵⁵² In any case, none of the cases discussed supports the validity of this because it is still indiscriminate and since it is not even a criminal justice measure, it fails to meet the legitimate aim criteria under Article 25 of the ICCPR.

- a. *Revise the penal code to identify what classes of crimes will be imposed the penalty of disenfranchisement*

The Philippines is currently in the process of revising the Revised Penal Code. This would be an opportune time for the Philippines to overhaul its prisoner disenfranchisement system, which admittedly, is a hodgepodge of laws that are confusing at best and unconstitutional at worst.

This will take a bit of soul searching on the part of the Congress, but with its indulgence, it is recommended that the penalty of disenfranchisement be only applied to political crimes, election offenses and those that amount to capital offenses, i.e., those that impose the penalty of *reclusion perpetua* under the RPC or life imprisonment.

As regards political crimes, i.e., denominated as “Crimes Against Public Order,” and “Crimes Against National Security” in the RPC, it is recommended that the penalty of disenfranchisement is an appropriate penalty. Crimes Against

⁵⁵¹ See discussion *supra* part II (D)(2),

⁵⁵² See discussion *supra* II (D)(2).

Public Order include: rebellion,⁵⁵³ *coup d'etat*,⁵⁵⁴ conspiracy or proposal to commit *coup d'etat*, rebellion or insurrection,⁵⁵⁵ disloyalty of public officers or employees,⁵⁵⁶ inciting to rebellion or insurrection,⁵⁵⁷ sedition.⁵⁵⁸

Crimes Against National Security include: treason,⁵⁵⁹ espionage,⁵⁶⁰ inciting to war or giving motives to war,⁵⁶¹ violation of neutrality,⁵⁶² correspondence with

⁵⁵³ Art. 134. Rebellion or insurrection; How committed. — The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives. (As amended by R.A. 6968).

⁵⁵⁴ Article 134-A. Coup d'etat; How committed. — The crime of coup d'etat is a swift attack accompanied by violence, intimidation, threat, strategy or stealth, directed against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications network, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines by any person or persons, belonging to the military or police or holding any public office of employment with or without civilian support or participation for the purpose of seizing or diminishing state power. (As amended by R.A. 6968).

⁵⁵⁵ Art. 136. Conspiracy and proposal to commit coup d'etat, rebellion or insurrection. — The conspiracy and proposal to commit coup d'etat shall be punished by prison mayor in minimum period and a fine which shall not exceed eight thousand pesos (P8,000.00).

⁵⁵⁶ Art. 137. Disloyalty of public officers or employees. — The penalty of prison correccional in its minimum period shall be imposed upon public officers or employees who have failed to resist a rebellion by all the means in their power, or shall continue to discharge the duties of their offices under the control of the rebels or shall accept appointment to office under them. (Reinstated by E.O. No. 187).

⁵⁵⁷ Art. 138. Inciting a rebellion or insurrection. — The penalty of prison mayor in its minimum period shall be imposed upon any person who, without taking arms or being in open hostility against the Government, shall incite others to the execution of any of the acts specified in article 134 of this Code, by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end. (Reinstated by E.O. No. 187).

⁵⁵⁸ Art. 139. Sedition; How committed. — The crime of sedition is committed by persons who rise publicly and tumultuously in order to attain by force, intimidation, or by other means outside of legal methods, any of the following objects: 1. To prevent the promulgation or execution of any law or the holding of any popular election; 2. To prevent the National Government, or any provincial or municipal government or any public officer thereof from freely exercising its or his functions, or prevent the execution of any administrative order; 3. To inflict any act of hate or revenge upon the person or property of any public officer or employee; 4. To commit, for any political or social end, any act of hate or revenge against private persons or any social class; and

hostile country,⁵⁶³ flight to enemy country,⁵⁶⁴ piracy on the high seas,⁵⁶⁵ and qualified piracy.⁵⁶⁶

⁵⁵⁹ Art. 114. Treason. — Any person who, owing allegiance to (the United States or) the Government of the Philippine Islands, not being a foreigner, levies war against them or adheres to their enemies, giving them aid or comfort within the Philippine Islands or elsewhere, shall be punished by reclusion temporal to death and shall pay a fine not to exceed P20,000 pesos. No person shall be convicted of treason unless on the testimony of two witnesses at least to the same overt act or on confession of the accused in open court. Likewise, an alien, residing in the Philippine Islands, who commits acts of treason as defined in paragraph 1 of this Article shall be punished by prision mayor to death and shall pay a fine not to exceed P20,000 pesos. (As amended by E.O. No. 44, May 31, 1945).

Art. 115. Conspiracy and proposal to commit treason; Penalty. — The conspiracy or proposal to commit the crime of treason shall be punished respectively, by prision mayor and a fine not exceeding P10,000 pesos, and prision correccional and a fine not exceeding P5,000 pesos. Art. 116. Misprision of treason. — Every person owing allegiance to (the United States) the Government of the Philippine Islands, without being a foreigner, and having knowledge of any conspiracy against them, conceals or does not disclose and make known the same, as soon as possible to the governor or fiscal of the province, or the mayor or fiscal of the city in which he resides, as the case may be, shall be punished as an accessory to the crime of treason.

⁵⁶⁰ Art. 117. Espionage. — The penalty of prision correccional shall be inflicted upon any person who:

1. Without authority therefor, enters a warship, fort, or naval or military establishment or reservation to obtain any information, plans, photographs, or other data of a confidential nature relative to the defense of the Philippine Archipelago; or
2. Being in possession, by reason of the public office he holds, of the articles, data, or information referred to in the preceding paragraph, discloses their contents to a representative of a foreign nation.

⁵⁶¹ Art. 118. Inciting to war or giving motives for reprisals. — The penalty of reclusion temporal shall be imposed upon any public officer or employee, and that of prision mayor upon any private individual, who, by unlawful or unauthorized acts provokes or gives occasion for a war involving or liable to involve the Philippine Islands or exposes Filipino citizens to reprisals on their persons or property.

⁵⁶² Art. 119. Violation of neutrality. — The penalty of prision correccional shall be inflicted upon anyone who, on the occasion of a war in which the Government is not involved, violates any regulation issued by competent authority for the purpose of enforcing neutrality.

⁵⁶³ Art. 120. Correspondence with hostile country. — Any person who in time of war, shall have correspondence with an enemy country or territory occupied by enemy troops shall be punished: 1. By prision correccional, if the correspondence has been prohibited by the Government; 2. By prision mayor, if such correspondence be carried on in ciphers or conventional signs; and 3. By reclusion temporal, if notice or information be given thereby which might be useful to the enemy. If the offender intended to aid the enemy by giving such notice or information, he shall suffer the penalty of reclusion temporal to death.

⁵⁶⁴ Art. 121. Flight to enemy country. — The penalty of arresto mayor shall be inflicted upon any person who, owing allegiance to the Government, attempts to flee or go to an enemy country when prohibited by competent authority.

For these classes of crimes, the violation is committed against the state itself; the state is the victim. Treason, for example, is committed by a Filipino that “levies war against them or adheres to” the enemies of the Philippines, “giving aid or comfort within the Philippine Islands or elsewhere.”⁵⁶⁷ The simple import of this crime is to compromise the territorial integrity and sovereignty of the Philippines. In short, the perpetrator’s intent is to undermine the very existence of the Philippines. Surely, those found guilty of these crimes have gone against the “social contract” because these individuals no longer consent to be bound by its nation and state. Thus, the state is justified in those guilty of treason from the franchise. It sends a message that the franchise is only for citizens who agree to be bound by the authority of that state.

With regard to election offenses, these crimes include: vote-buying and vote-selling, conspiracy to bribe voters, coercion of subordinates, and threats, intimidation, terrorism, use of fraudulent device or other forms of coercion.⁵⁶⁸ Contrary to the legitimate state interests in the previous class of crimes mentioned, the state intent in imposing the penalty of disenfranchisement is to educate the people not to trifle with the franchise. While it is true that there is a general

⁵⁶⁵ Art. 122. Piracy in general and mutiny on the high seas. — The penalty of reclusion temporal shall be inflicted upon any person who, on the high seas, shall attack or seize a vessel or, not being a member of its complement nor a passenger, shall seize the whole or part of the cargo of said vessel, its equipment, or personal belongings of its complement or passengers. The same penalty shall be inflicted in case of mutiny on the high seas.

⁵⁶⁶ Art. 123. Qualified piracy. — The penalty of reclusion temporal to death shall be imposed upon those who commit any of the crimes referred to in the preceding article, under any of the following circumstances: 1. Whenever they have seized a vessel by boarding or firing upon the same; 2. Whenever the pirates have abandoned their victims without means of saving themselves; or 3. Whenever the crime is accompanied by murder, homicide, physical injuries or rape.

⁵⁶⁷ RPC, art. 114.

⁵⁶⁸ See Omnibus Election Code, Sec. 261. Prohibited Acts.

rehabilitative benefit to suffrage,⁵⁶⁹ the reverse may be true as regards individuals who commit election-related crimes. This is the likely scenario because while their co-prisoners are voting, they are not; hence, the deprivation will force them to re-think the importance of the right to vote and make them realize that philandering with it causes you lose it.

Finally, there are crimes that are imposed the penalty of *reclusion perpetua* such as: murder,⁵⁷⁰ malversation of public funds,⁵⁷¹ kidnapping and serious illegal detention,⁵⁷² rape;⁵⁷³ and crimes that are imposed the penalty of life imprisonment

⁵⁶⁹ See discussion *supra* part IV (B)(b).

⁵⁷⁰ Art. 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward, or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

⁵⁷¹ Art. 217. Malversation of public funds or property; Presumption of malversation. — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

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4. The penalty of reclusion temporal, in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its maximum period to a.

⁵⁷² Art. 267. Kidnapping and serious illegal detention. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

1. If the kidnapping or detention shall have lasted more than five days.

such as plunder⁵⁷⁴ and qualified trafficking in persons.⁵⁷⁵ These classes of crimes are of the most serious concern to the Philippines which is why they are imposed the maximum penalty. It would be legally and morally defensible to disenfranchise individuals convicted of these crimes. Also, the perpetual disqualification from public office, including the suspension of the right to vote, could be legitimate and proportional penalty for violations of the Anti-Graft and Corrupt Practices Act.⁵⁷⁶

At the end of the day, regardless of which crimes Congress consider merits the imposition of franchise deprivation, the operative consideration is that it is done by examining the nature of the offenses and that it is not imposed on all prisoners.

- b. *Amend Section 11 of the Continuing Registration Act to reflect the changes made to the RPC and special penal laws*

The Continuing Registration Act must be amended to prohibit the automatic disenfranchisement of all convicts. Section 11 should be amended to read as follows:

-
2. If it shall have been committed simulating public authority.
 3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
 4. If the person kidnapped or detained shall be a minor, female or a public officer
- ⁵⁷³ Art. 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
1. By using force or intimidation;
 2. When the woman is deprived of reason or otherwise unconscious; and
 3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.
- The crime of rape shall be punished by reclusion perpetua.

⁵⁷⁴ R.A. No. 7080, Section 2.

⁵⁷⁵ R.A. No. 9208, Section 10 (e):

(e) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) but not more than Five million pesos (P5,000,000.00);

⁵⁷⁶ R.A. No. 3019, "Anti-Graft and Corrupt Practices Act", August 17, 1960.

Sec. 11. Disqualification. - The following shall be disqualified from registering:

- (1) **Any person who has been sentenced by final judgment upon whom the penalty of deprivation of the right to vote was specifically imposed by the judge in that case.**
- (2) Insane or incompetent persons declared as such by competent authority unless subsequently declared by proper authority that such person is no longer insane or incompetent.

c. *Remove post-sentence disenfranchisement*

Finally, the five (5) year post-conviction disenfranchisement imposed in Section 11 of the Continuing Registration Act must be expunged as it is clearly inconsistent with the Article 25 as expressed in the *Concluding Observations of the Human Rights Committee to the United States*.⁵⁷⁷

B. HOW TO FORCE THE PHILIPPINE GOVERNMENT TO RECOGNIZE THE RIGHT TO VOTE OF PRISONERS

1. Best-case scenario: Congressional Action.

Ideally, the Philippine Congress – both upper and lower houses – should act on its own accord and/or suffragist movements should lobby for the same. This is consistent with the constitutionally allocated powers of the tripartite system of the Philippine government.⁵⁷⁸

2. In the alternative, file a Petition for *Certiorari* and *Mandamus* before the Supreme Court

The Supreme Court of the Philippines has jurisdiction to determine the constitutionality of laws.⁵⁷⁹ This includes the determination that a law or regulation is inconsistent with the principles of international law.

⁵⁷⁷ See discussion *supra* part III (B)(2)(b)(ii)(2)

⁵⁷⁸ 1987 PHIL. CONST., art. VI (1).

⁵⁷⁹ 1987 PHIL. CONST., art. VIII (5):

Section 5. The Supreme Court shall have the following powers:

For example, in *Ang Ladlad – LGBT Partylist v. the Commission on Elections*,⁵⁸⁰ the Supreme Court had an opportunity to determine that a decision of the Commission on Elections disqualify Ang Ladlad – LGBT Partylist. The Court held that in disqualifying the party – which represented members of the Lesbian, Gay, Bisexual and Transexual Community – the COMELEC was discriminating against the rights of the LGBT community to be represented in the political affairs of the state.⁵⁸¹ This is clearly in contravention of the UDHR and the ICCPR, which proscribes discrimination⁵⁸² and everyone’s right to participate in the political life of the nation.⁵⁸³ Notably, the Supreme Court even made reference to General Comment No. 25, which shows its proclivity to put evidentiary weight to the comments of the HRC.⁵⁸⁴

In the case of prisoner’s rights to vote, a case before the Supreme Court to challenge the system of disenfranchisement in the Philippine legal system is a viable alternative in enforcing the right. The Supreme Court could hold these legal provisions unconstitutional and direct Congress to amend them in conformity to the prescriptions of international law.

2. Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

a. All cases in which the constitutionality or validity of any treaty, international or executive agreement, **law**, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

⁵⁸⁰ *Ang Ladlad – LGBT Party v. Commission on Elections*, G.R. No. 190582, 08 April 2010.

⁵⁸¹ *Id.*

⁵⁸² ICCPR, art. 26.

⁵⁸³ UDHR, art. 21; ICCPR, art. 25.

⁵⁸⁴ See also *Leo Echegaray v. Secretary of Justice*, G.R. No. 132601. October 12, 1998; *Central Bank Employees Association v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004; *Gen. Avelino I. Razon et al. v. Mary Jean V. Tagitis*, G.R. No. 182498, December 3, 2009; *People of the Philippines v. Elpidio Mercado*, G.R. No. 116239, November 29, 2000 (where the Supreme Court referred to General Comments prepared by the HRC).

3. File a communication with the Human Rights Committee on behalf all prisoners who were deprived their right to vote

An alternative way of forcing the Philippine government is to file an individual communication with the HRC under the Optional Protocol.⁵⁸⁵ This procedure was already utilized to challenge the Philippines' libel laws, which netted a positive result in favor of the individual. In *Alexander Adonis v. the Philippines*,⁵⁸⁶ Alexander Adonis filed a communication before the Human Rights Committee, alleging that the Philippines violated Article 19 of the ICCPR⁵⁸⁷ because of his criminal conviction for libel. Judging in Adonis' favor, the HRC ruled that his imprisonment pursuant to the provisions of the Revised Penal Code was "incompatible with Article 19, paragraph three of the International Covenant on Civil and Political Rights."⁵⁸⁸ The HRC also stated that the Philippines is "also under an obligation to take steps to prevent similar violations occurring in the future, including by reviewing the relevant libel legislation."⁵⁸⁹

⁵⁸⁵ G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976.

⁵⁸⁶ *Alexander Adonis v. The Philippines*, Communication No. 1815/2008, U.N. Doc. CCPR/C/103/D/1815/2008/Rev.1 (2012).

⁵⁸⁷ ICCPR, art. 19:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

⁵⁸⁸ *Adonis v. The Philippines*, at ¶ 7.10.

⁵⁸⁹ *Id.*, ¶ 9.

VI. CONCLUSION

The democratic project is one that does not have a climax; it is in a constant state of flux. Leaders are always in search of how to improve the life of its people. To believe that there is a utopic form is not only hubristic, but also preposterous.

There is universal agreement that the right to vote is the bedrock of democracy. Sovereignty resides in the people and all government authority emanates from them.⁵⁹⁰ If we truly believe in this adage, we must believe that everyone, even those considered undesirable must be given a voice. Once we allow legislatures to indiscriminately exclude an entire group of people, we not only offend the constitution, we prevent the progress of the democratic project.

Indeed, some exceptions and limitations are legally and morally sound. That, however, does not apply in the universal exclusion of prisoners. Ideally, the bar on prisoners should be removed without exceptions. Minimally, a bar on them must be based on legitimate state interests and imposed on a proportionate manner. Outside of this, the Philippines, and indeed any country, would be committing an indefensible assault on the source of all government power and authority.

It is hoped that the Philippines would abide by its international obligations as a responsible member of the international community. But more than legalities, the Philippines must be impelled by its deep sense of love and respect for the democracy it seeks defend.

⁵⁹⁰ 1987 PHIL. CONST., art. 1 (1).

BIBLIOGRAPHY

TREATIES AND CONVENTIONS

- African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986
- American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992);
- American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], *entered into force* June 26, 1987, 1465 U.N.T.S. 85.
- Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, *as amended by* Protocols Nos 3, 5, 8, and 11 *which entered into force* on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 *respectively*.
- International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.
- STATUTE OF THE INTERNATIONAL COURT OF JUSTICE
- Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 955, U.N. SCOR, 49th Sess., U.N. Doc. S/RES/955 (1994).
- Statute of the International Criminal Tribunal for the Former Yugoslavia, S.C. Res. 827, U.N. Doc. S/RES/827 (1993).
- U.N. CHARTER.
- Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. Doc. A/810 (1948).
- Vienna Convention on the Law of Treaties art. 26, May 13, 1969, 1155 U.N.T.S. 331
- Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, *entered into force* March 23, 1976

JUDICIAL DECISIONS

International Cases and Arbitral Decisions

- Adonis v. Philippines, Human Rights Comm., U.N. Doc. Comm. No. 1815/2008, CCPR/C/103/D/1815/2008/Rev.1, 26 April 2012.
- Anchugov and Gladkov v. Russia, App. nos. 11157/04 and 15162/05 (Sept. 12, 2013)
- Anglo-Norwegian Fisheries Case, 1951 I.C.J. 8.
- Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.), 2007 I.C.J. 91.
- Arrest Warrant of April 11, 2000 (Dem. Rep. Congo v. Belg.), 2002 I.C.J. 3.
- Asylum (Colom. v. Peru), 1950 I.C.J. 266.
- August and Another v. Electoral Commission and Others, ¶ 28 (CCT8/99) [1999] ZACC 3; 1999 (3) SA 1; 1999 (4) BCLR 363 (1 April 1999).

Barcelona Traction, Light & Power Co., Ltd., 1970 I.C.J. 3.
 Bosnia & Herzegovina v. Serbia & Montenegro, 2007 I.C.J. 91.
 Certain German Interests in Polish Upper Silesia, 1926 P.C.I.J. (Ser. A) No.7.
 Congo v. Uganda, 2005 I.C.J. 116.
 Corfu Channel (U.K. v. Alb.), 1949 I.C.J. 4.
 Delvigne v. Commune de Lesparre-Médoc, C-650/13 (Oct. 6 2015)
 Diplomatic and Consular Staff in Tehran, 1980 I.C.J. 3.
 Firth and Others v. the United Kingdom, App No. 47784/09, [2014]ALL ER (D) 57
 (Aug.)
 Firth and Others v. United Kingdom, Application No. 47784/09, 12 August 2014
 Frodl v. Austria, App. No. 20201/04 (Apr. 8, 2010).
 Frodl v. Austria, Application No. 20201/04, 08 April 2010.
 Greens and M.T. v. the United Kingdom, App nos. 60041/08 and 60054/08, ¶78
 Greens and M.T. v. United Kingdom, Application Nos. 60041/08 & 60054/08,
 23 November 2010.
 Hirst v. UK (No. 2), App No. 74025/01, 42 EHRR 41 (2006)
 Hirst v. UK (No. 2), App No. 74025/01, 42 EHRR 41 (2006) (concurring opinion of J.
 Cafilisch)
 Ireland v. United Kingdom, 2 E.H.R.R. 25 (1978).
 Lansman v. Finland, H.R. Comm., Human Rights Comm., U.N. Doc. Comm. No.
 511/1992, ¶ 9.4 (June 11, 1992).
 Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226.
 McHugh and others v United Kingdom, App. No. 51987/08, 2015 E.C.H.R. 51987/08
 (2008).
 Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), 1986
 I.C.J. 14.
 North Sea Continental Shelf Cases (F.R.G. v. Den., F.R.G. v. Neth.), 1969 I.C.J. 4 (Feb.
 20)
 S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (Ser.A) No. 10.
 Scoppola v. Italy (No. 3), App. no. 126/05, ¶13. (May 22, 2012)
 Soyler v. Turkey, App. no. 29411/07, ¶ 6. (Jan. 20, 2014).
 The Namibia Case (The Legal Consequences for States of the Continued Presence of
 South Africa in Namibia (South West Africa) Notwithstanding Security Council
 Resolution 276 (1970)) Advisory Opinion, 1971 ICJ Report 16
 The Palestinian Wall Advisory Opinion, 2004 I.C.J. 136, 172.
 Denis Yevdokimov and Artiom Rezanov v. the Russian Federation, H.R. Comm., U.N.
 Doc. Comm. CCPR/C/101/D/1410 (2005)

National Case Law

August v. The Electoral Commissioner, CCT8/99: 1999 (3) SA 1
Avery v. Everett, 110 N.Y. 317, 324 (1888)
Bush v. Gore, 531 U.S. 98 (2000)
Bush v. Gore, 531 U.S. 98 (2000)
Carrington v. Rash, 380 U.S. 89, 93 (1965)
Cipriano v. City of Houma, 395 U.S. 701 (1969)
Cipriano v. City of Houma, 395 U.S. 701, 706 (1969)
Evans v. Cornman, 398 U.S. 419, 421 (1970)
Harper v. Virginia Board of Elections, 383 U.S. 663, 667 (1966)
Hilla Alrai v. Minister of the Interior, HC2757/06 P.D. 50(2) 18 (1996),

Kramer v. Union Free School District, 395 U.S. 621, 626 (1969);
Minister of Justice v Hofmeyr, [1993] ZASCA 40; 1993 (3) SA 131 (A) at 139J – 140B.
Reynolds v. Sims, 418 U.S. 24, 78 (1964)
Richardson v. Ramirez, 418 U.S. 24 (1974)
Roach v. Electoral Commissioner [2007] HCA 43 (26 September 2007)
Sauvé v. Canada (No. 1), [1992] 2 SCR 438)
Washington v. State, 585 (1884)
Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886)

BOOKS

2 HYDE, INTERNATIONAL LAW (1945)
 AMERICAN CIVIL LIBERTIES UNION, OUT OF STEP WITH THE WORLD: AN ANALYSIS OF FELONY DISENFRANCHISEMENT IN THE US AND OTHER DEMOCRACIES (New York: ACLU, 2006)
 BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURT AND TRIBUNALS (1953)
 BOGDANOR AND BUTLER, DEMOCRACY AND ELECTIONS: ELECTORAL SYSTEMS AND THEIR POLITICAL CONSEQUENCES 1 (1983)
 BRIAN D. LEPARD, CUSTOMARY INTERNATIONAL LAW: A NEW THEORY WITH PRACTICAL APPLICATIONS (2010)
 BRIERLY, THE LAW OF NATIONS 61 (1978).
 BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (2003).
 DAMROSCH, ET AL., INTERNATIONAL LAW: CASES AND MATERIALS (2001).
 DAVID BROWNE AND MEREDITH WILKIE, PRISONERS AS CITIZENS: HUMAN RIGHTS IN AUSTRALIAN PRISONS 296 (2002).
 DEMOCRATIC CONSTITUTIONAL DESIGN AND PUBLIC POLICY: ANALYSIS AND EVIDENCE (Roger D. Congleton and Birgitta Swedenborg, eds., 2005)
 • Bjorn Erik Rasch and Roger D. Congleton, Amendment Procedures and Constitutional Stability
 DEMOCRATIC CONSTITUTIONAL DESIGN AND PUBLIC POLICY: ANALYSIS AND EVIDENCE 541 (Roger D. Congleton and Birgitta Swedenborg, eds., 2005).
 • Bjorn Erik Rasch and Roger D. Congleton, Amendment Procedures and Constitutional Stability
 DIXON & MCCORQUODALE, CASES AND MATERIALS ON INTERNATIONAL LAW (2003).
 EWALD AND ROTTINGHAUS, CRIMINAL DISENFRANCHISEMENT IN AN INTERNATIONAL PERSPECTIVE (eds., 2004)
 • Richard J. Wilson, *The Right to Universal, Equal and Nondiscriminatory Suffrage as a norm of Customary International Law: Protective the Prisoner's Right to Vote*
 • Christopher Uggen, et al., *Punishment and Social Exclusion: National Differences in Prisoner Disenfranchisement in CRIMINAL DISENFRANCHISEMENT IN AN INTERNATIONAL PERSPECTIVE* 59 (Ewald and Rottinghaus, eds., 2014).
 • Nora V. Demleiter, *U.S. Felon Disenfranchisement: Parting Ways with Western Europe*
 • Claire Hamilton and Rick Lines, *The Campaign for Prisoner Voting Rights in Ireland*
 • Christopher P. Manfredi, *In Defense of Prisoner Disenfranchisement*
 HARRIS, CASES AND MATERIALS ON INTERNATIONAL LAW (2004).
 HENKIN, INTERNATIONAL LAW CASES AND MATERIALS (1993).
 HIGGINS, PROBLEMS AND PROCESS (1994).
 I ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 217 (1936)

- J. ALLEN SMITH, *THE GROWTH AND DECADENCE OF CONSTITUTIONAL GOVERNMENT* (1930)
- J. S. MILL, *THOUGHTS ON PARLIAMENTARY REFORM* (1859),
- JEAN JACQUES ROUSSEAU, *ON THE SOCIAL CONTRACT* (translated by R.D. and J.R. Masters, 1978).
- JEAN-JACQUES ROUSSEAU, *BASIC POLITICAL WRITINGS* 159 (Donald A. Cress ed., 1987)
- JEFF MANZA AND CHRISTOPHER UGGEN, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY* 25 (2006).
- JOHN D. RAWLS, *A THEORY OF JUSTICE* (1971)
- JOSEPH, ET AL., *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS AND COMMENTARY* (2004).
- JUDITH SHKLAR, *AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION* (1991)
- KAROL WOLFKE, *CUSTOM IN PRESENT INTERNATIONAL LAW* (1993)
- KELSEN, *PRINCIPLES OF INTERNATIONAL LAW* (1966)
- LAW AS PUNISHMENT/LAW AS REGULATION (Sarat, Douglas, Umphrey, eds., 2011)
- Alec C. Ewald, *Collateral Consequences and the Preils of Categorical Ambiguity*
- LOUIS HENKIN, *INTERNATIONAL LAW: POLITICS AND VALUES* (1995)
- M. CAVADINO AND J. DIGNAN, *THE PENAL SYSTEM: AN INTRODUCTION* (2002)
- MANFRED NOWAK, *U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY* (1st ed., 1993)
- MARC BOSSUYT, *GUIDE TO THE "TRAVAUX PREPARATOIRES" OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* 474 (1987)
- MARK VILLINGER, *CUSTOMARY INTERNATIONAL LAW AND TREATIES* (1985).
- RHONA KM SMITH, *TEXTBOOK ON INTERNATIONAL HUMAN RIGHTS* 36 (2004).
- SARAH JOSEPH ET AL., *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS AND COMMENTARY* (2004).
- SCHACTER, *INTERNATIONAL LAW IN THEORY AND PRACTICE* (1993).
- SCHWELB, *HUMAN RIGHTS AND THE INTERNATIONAL COMMUNITY* 70 (1964).
- SHAW, *INTERNATIONAL LAW* (2003).
- STEPHEN KINZER, *OVERTHROW: AMERICA'S CENTURY OF REGIME CHANGE FROM HAWAII TO IRAQ 94* (2006).
- STEPHEN KINZER, *OVERTHROW: AMERICA'S CENTURY OF REGIME CHANGE FROM HAWAII TO IRAQ 94* (2006).
- THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS 72, 77 (Louis Henkin ed., 1981).
- Thomas Buergenthal, *To Respect and to Ensure: State Obligations and Permissible Derogations*
 - Karl Josef Partsch, *Freedom of Conscience and Expression, and Political Freedoms*
- THE POLITICS OF CONSTITUTIONAL CHANGE IN INDUSTRIAL NATIONS: REDESIGNING THE STATE, pp. 1-29 (Banting and Simeon, eds., 1985)
- Keith G. Banting and Richard Simeon, *Introduction: The Politics of Constitutional Change*
- VALLAT, *INTERNATIONAL LAW AND THE PRACTITIONER* (1966)
- WALLACE, *INTERNATIONAL LAW* (1997).
- WOOLF, LORD CHIEF JUSTICE, *HUMAN RIGHTS AND MINORITIES* (Melbourne, Australia: The B'nai B'rith Anti-Defamation Commission, Inc., 2003).

ESSAYS, ARTICLES AND JOURNALS

- Alec C. Ewald, *"Civil Death": The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WIS. L. REV. 1045 (2002)

- Alec C. Ewald, An "Agenda for Demolition": The Fallacy and the Danger of the "Subversive Voting" Argument for Felony Disenfranchisement", 36 COLUMBIA HUMAN RIGHTS LAW REVIEW 109, 134 (2005).
- Aloysius P. Llamzon, *The Generally Accepted Principles of International Law as Philippine Law: Towards a Structurally Consistent Use of Customary International Law in Philippines Courts*, 47 ATENEO L.J. 243, 256 – 257 (2002).
- Brandon Rottinghaus and Gina Baldwin, *Voting Behind Bars: Explaining variation in international enfranchisement practices*, 26 ELECTORAL STUDIES 688(2007).
- C.R.G. Murray, *Playing for Time: Prisoner Disenfranchisement under the ECHR after Hirst v. United Kingdom*, 22 KING L. J. 309 (2011).
- Cormac Behan, *'Still Entitled to Our Say': Prisoners' Perspectives on Politics*, 51 THE HOWARD J. OF CRIM. JUSTICE 16, 18 (2012)
- Daniel Guttman, *Before the High Court Roach v. Commonwealth: Is the Blanket Disenfranchisement of Convicted Prisoners Unconstitutional* 29 SYDNEY L. R. 297 (2007).
- Deborah Cheney, *Prisoners as Citizens in a Democracy*, 47 THE HOWARD JOURNAL 136, p. 134 (2008)
- Edward C. Lang, *A Disproportionate Response: Scoppola v. Italy (No. 3) and Criminal Disenfranchisement in the European Court of Human Rights*, 28 AM. U. INT'L L. REV. 835 (2012).
- Eli L. Levine, *Does the Social Contract Justify Felony Disenfranchisement*, 1 WASH. U. JUR. REV. 193, 215 (2009)
- Howard Itzkowitz & Lauren Oldak, *Note, Restoring the Ex Offender's Right to Vote: Background and Developments*, 11 AM. CRIM. L. REV. 721, 736 39 (Spring 1972/1973)
- Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law* 25 G.A. J. INT'L & COMP. L. 287
- Jason Schall, *The Consistency of Felon Disenfranchisement with Citizenship Theory*, 22 HARV. BLACKLETTER L.J. 53 (2006).
- Jason Schall, *The Consistency of Felon Disenfranchisement with Citizenship Theory*, 22 HARV. BLACKLETTER L.J. 53 (2006)
- Kenneth Mori Mcelwain and Christian G. Winkler, *What's Unique About the Japanese Constitution?: A Comparative and Historical Analysis*, 41 THE J. OF JAPANESE STUDIES 250, 265 (2015).
- Morgan MacDonald, *Disproportionate Punishment: The Legality of Criminal Disenfranchisement under the International Covenant on Civil and Political Rights*, 40 GEORGE WASHINGTON INT'L L. REV. 1385 (2009).
- Morgan MacDonald, *Disproportionate Punishment: The Legality of Criminal Disenfranchisement under the International Covenant on Civil and Political Rights*, 40 GEORGE WASHINGTON INT'L L. REV. 1385 (2009).
- Peter Wagner, *Pennsylvania Voting Rules Explain Prisoner Residence*, in <http://www.prisonersofthecensus.org/news/2005/04/18/pennsylvania/>
- Planinc, Zdravko, *Should Imprisoned Criminals Have a Constitutional Right to Vote?* 2 CANADIAN J. LAW & SOCIETY 153 (1987).
- Rottinghaus, Brandon, *Incarceration and Enfranchisement: International Practices, Impact and Recommendations for Reform*, p. 4, available at: http://ifes.org/sites/default/files/08_18_03_manatt_brandon_rottinghaus.pdf (last visited 07 January 2016)
- Susan E. Marquardt, *Deprivation of a Felon's Rights to Vote: Constitutional Concerns, Policy Issues, and Suggest Reform for Felony Disenfranchisement Laws*, 82 U. DET. MERCY L. REV. 279, 285 (2005)
- Thomas Buergenthal, *The U.N. Human Rights Committee*, MAX PLANCK UNITED NATIONS

U.N. DOCUMENTS

- Articles on State Responsibility*, G.A. Res. 56/83, U.N. GAOR, 56th Sess., Annex, Agenda Item 162, U.N. Doc. A/RES/56/83 (2001).
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment [G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988
- Code of Conduct for Law Enforcement Officials, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979).
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 3452 (XXX), U.N. GAOR, 30th Sess., U.N. Doc. A/10034 (1975).
- H.R. Comm., General Comment 25 (57), General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, Adopted by the Committee at its 1510th meeting, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).
- Human Rights Comm. [HRC], *Concluding Observations of the Human Rights Committee: United States of America*, ¶35, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (July 28, 2006)[hereinafter *HRC United States Observations*].
- Human Rights Comm. General Comment 20 (Non-Discrimination in Economic, Social and Culture Rights (article 2, para. 2), U.N. Doc. E/C.12/GC/20 (10 June 2009)
- Human Rights Comm., *Concluding Observation of the Human Rights Committee: United States of America*, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (July 28, 2006)
- Human Rights Comm., *Concluding Observations of the Human Rights Committee: Luxembourg*, ¶8, U.N. Doc. CCPR/CO/77/LUX (Apr. 15, 2003)
- Human Rights Comm., *Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Island (Hong Kong)*, ¶19, U.N. Doc. CCPR/C/79/Add.57 (Nov. 9, 1995)
- Human Rights Comm., *Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland*, ¶10, U.N. Doc. CCPR/CO/73/UK (Dec. 6, 2001)
- Human Rights Comm., *Concluding Observations on the Fourth Periodic Report of the United States of America*, CCPR/C/USA/CO/4 (Apr. 23, 2014)
- Human Rights Comm., General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant on Civil and Political Rights, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004)
- Human Rights Comm., *Report of the Human Rights Committee*, ¶132, U.N. Doc. A/48/40 (Part I)(Oct. 7, 1993).
- Human Rights Comm., *Report of the Human Rights Committee*, ¶132, U.N. Doc. A/48/40 (Part I)(Oct. 7, 1993).
- Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)] 70/175. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), U.N. Doc. G.A. Res., A/RES/70/175
- Standard Minimum Rules for the Treatment of Prisoners [adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N.

ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977)],
 The Basic Principles for the Treatment of Prisoners [G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990)],
 The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).
 The Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, G.A. Res. 37/194 (18 December 1982).
 Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 37/194, annex, 37 U.N. GAOR Supp. (No. 51) at 211, U.N. Doc. A/37/51 (1982).
 The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), G.A. res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990).
 The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.
 The United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), reproduced in E.S.C. Res. 2010/16, Annex, U.N. Doc. E/RES/2010/16 (July 22, 2010).
 The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), G.A. res. 45/110, annex, 45 U.N. GAOR Supp. (No. 49A) at 197, U.N. Doc. A/45/49 (1990).
 U.N. General Assembly, "Promoting and consolidating democracy," U.N. Doc. A/RES/55/96 (28 February 2001)
 U.N. General Assembly, "Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization," U.N. Doc. A/RES/60/162 (February 28, 2006).
 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

PHILIPPINE DOCUMENTS AND INSTRUMENTS

1935 PHIL. CONSTITUTION

1973 PHIL. CONSTITUTION

1987 PHIL. CONSTITUTION

Act No. 3815, "The Revised Penal Code of the Philippines," December 8, 1930.

Act No. 3815, "The Revised Penal Code of the Philippines," December 8, 1930.

Batas Pambansa Blg. 881, The Omnibus Election Code.

CIVIL CODE OF THE PHILIPPINES

COMELEC Resolution 9371, "Rules and Regulations on Detainee Registration and Voting in Connection with the May 13, 2013 National and Local Elections and Subsequent Elections Thereafter.

Commission on Elections En Banc in Minute Resolution 13-0503, 19 April 2013.

Executive Order No. 7166, "Providing for Absentee Voting By Officers and Employees of Government Who Are Away From the Place of Their Registration by Reason for Official

Functions on Election Day, March 30, 1987

In Re: Petition for the Issuance of a COMELEC Resolution Implementing the Right to Vote of Persons Deprived of their Liberty (Detainees/Prisoners) in National Prisons, Provincial, City and Municipal Jails and Other Government Detention Facilities in the May 10, 2010 National and Local Elections.

R.A. NO. 10175, "The Cybercrime Prevention Act of 2012," September 12, 2012.

R.A. No. 10590, An Act Amending Republic Act No. 9189, entitled "An Act Providing For a System of Overseas Absentee Voting by Qualified Citizens of the Philippines Abroad, Appropriating Funds Therefor and for Other Purposes, May 27, 2013.

R.A. No. 3019, "Anti-Graft and Corrupt Practices Act", August 17, 1960.

R.A. No. 4200, "The Anti-Wiretapping," June 19, 1965.

R.A. No. 7080, "The Anti-Plunder Law" July 12, 1991.

R.A. No. 7166, "An Act Providing For Synchronized National and Local Elections and For Electoral Reforms, Authorizing Appropriations Therefore, and for Other Purposes,

R.A. No. 8189, "An Act Providing For a General Registration of Voters, Adopting a System of Continuing Registration, Prescribing the Procedures Thereof and Authorizing the Appropriation of Funds Therefor,"

R.A. No. 8189, "An Act Providing For a General Registration of Voters, Adopting a System of Continuing Registration, Prescribing the Procedures Thereof and Authorizing the Appropriation of Funds Therefor,

R.A. No. 9160, "Anti-Money Laundering Law of 2001," September 29, 2001.

R.A. No. 9165, An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, repealing Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, providing funds therefor, and for other purposes. June 07, 2002.

R.A. No. 9208, "Anti-Trafficking of Persons Act of 2003," May 26, 2003.

R.A. No. 9231, "An Act Providing For The Elimination Of The Worst Forms Of Child Labor And Affording Stronger Protection For The Working Child, Amending For This Purpose Republic Act No. 7610, As Amended, Otherwise Known as the "Special Protection Of Children Against Child Abuse, Exploitation And Discrimination Act", : December 19, 2003.

R.A. No. 9231, "Anti-Child Labor Act of 2003", December 19, 2003.

Report submitted to the COMELEC *En Banc* by the Committee on Detainee Voting (on file with the author).

Resolution No. 10045, Rules on the Constitution, Composition, Appointments of Special Board of Election Inspectors, Special Ballot Reception and Custody Group, Special Board of Canvassers, and Other Matters Related Thereto in the Conduct of Voting, Counting And Canvassing of Votes Under Republic Act No. 9189, otherwise knows as "The Overseas Absentee Voting Act of 2003" as amended by Republic Act No. 10590 for purposes of the May 9, 2016 National and Local Elections, January 27, 2016.

PHILIPPINE COURT DECISIONS

Akbayan – Youth v. Commission on Elections, 355 SCRA 318, 359 (2001) (Dissenting Opinion of Justice Pardo)

Alcantara v. Secretary of the Interior, G .R. No. L-43592, May 17, 1935.

Ang Ladlad LGBT Party v. Commission on Elections, G.R. No. 190582, 08 April 2010.

Arturo M. Tolentino v. Commission on Elections, G.R. No. 148334, January 21, 2004 (Dissenting Opinion of Justice Reynato Puno)

Atty. Romulo B. Macalintal v. Commission on Elections, G.R. No. 157013, 10 July 2003 (Concurring and Dissenting Op., J. Puno).

Balacuit v. CFI of Agusan del Norte, No. L-38429, 30 June 1988, 163 SCRA 182, 191-193

Bayan Muna v. Romulo, G.R. No. 159618, February 1, 2011.

Borja v. Roxas, G.R. No. L-36131, February 4, 1931

Borovsky v. Commission of Immigration, 90 Phil. 107 (1951).

Castillo v. Sandiganbayan, 427 Phil. 785, 793 (2002)

Central Bank Employees Association v. Bangko Sentral ng Pilipinas, G.R. No. 148208, December 15, 2004

Chriskoff v. Commissioner of Immigration and Director of Prisons, 90 Phil. 347 (1951).

City of Manila v. Paguio, G.R. No. 118127, April 12, 2005.

De Guzman v. Provincial Board of Canvassers of La Union, G.R. No. L-24721, November 3, 1925

Fermin v. People, G.R. No. 157643, 550 SCRA 132, March 28, 2008,

Gen. Avelino I. Razon et al. v. Mary Jean V. Tagitis, G.R. No. 182498, December 3, 2009

Government of Hong Kong Special Administrative Region v. Olalia, G.R. No. 153675, April 19, 2007.

Lambonao v. Tero and Vestal et al., G.R. No. L-23240, December 31, 1965

Leo Echegaray v. Secretary of Justice, G.R. No. 132601. October 12, 1998

Luna v. Rodriguez, G.R. No. L-13744, November 29, 1918

Marcos v. Manglapus, 177 SCRA 668 (1989)

Mejoff v. Director of Prisons 90 Phil. 70 (1951)

Mijares v. Ranada, G.R. No. 139325, April 12, 2005.

Paulino v. Cailles, G.R. No. L-12753, March 15, 1918

People of the Philippines v. Corral, 62 Phil. 945 (1936).

People of the Philippines v. Elpidio Mercado, G.R. No. 116239, November 29, 2000

People of the Philippines v. Joseph Estrada, et al., Sandiganbayan Criminal Case No. 26558, 12 September 2007.

Pharmaceutical and Health Care Association of the Philippines vs. Health Secretary Duque, G.R. NO. 173034, October 9, 2007.

Relampagos v. Cumba and COMELEC, G.R. No. 118861, April 27, 1995.

Saya-Ang, Sr. v. COMELEC, G.R. No. 155087, November 28, 2003.

Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc., G.R. No. 159938, March 31, 2006, 486 SCRA 405.

Tanada v. Angara, 338 Phil. 546, 592 (1997).

US v. Navarro, G.R. No. L-6160, March 21, 1911

MISCELLANEOUS

A DREAM COME TRUE (COMMISSION ON ELECTIONS)

<http://nhcp.gov.ph/the-history-of-the-first-philippine-assembly-1907-1916/>

<http://www.bucor.gov.ph/facilities.html>

<http://www.idea.int/vt/countryview.cfm?CountryCode=PH>

<http://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>

<http://www.prisonstudies.org/country/philippines>

<http://www.prisonstudies.org/country/philippines>

https://www.aclu.org/sites/default/files/pdfs/votingrights/outofstep_20060525.pdf

IFES 2010 Annual Report, available at:
http://www.ifes.org/sites/default/files/ifes_2010_annual_report.pdf

In Re: Petition for the Issuance of a COMELEC Resolution Implementing the Right to Vote of Persons Deprived of their Liberty (Detainees/Prisoners) in National Prisons, Provincial, City and Municipal Jails and Other Government Detention Facilities in the May 10, 2010 National and Local Elections.

Kyle Whitmire, *To: Governor Bob Riley, Re: Vetoes, Voting Rights and the Great Compromise*, Birmingham Weekly, August 7 – August 14, 2003

Mart Fainsod Katzenstein and Katherin Davison Rubin, *How Different? A Comparison of the Movement Challenging Ex-Felon Disenfranchisement with Suffrage Politics of an Earlier Time* 19 – 22 (2002) (unpublished paper presented at the Annual Meeting of the American Political Science Association in Boston) (on file with Ewald)

Peter Wagner, *Pennsylvania Voting Rules Explain Prisoner Residence*, in <http://www.prisonersofthecensus.org/news/2005/04/18/pennsylvania/> (last visited 21 April 2016)

Powerpoint Presentation, Prof. McElwain's class "Constitutional Design" taught at the University of Tokyo, A1A2 (Academic Year 2015 – 2016).

Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas

Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa
RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW

ROTTINGHAUS, BRANDON, INCARCERATION AND ENFRANCHISEMENT: INTERNATIONAL PRACTICES, IMPACT AND RECOMMENDATIONS FOR REFORM, 31 available at: http://ifes.org/sites/default/files/08_18_03_manatt_brandon_rottinghaus.pdf

The Arusha Declaration on Good Prison Practice

The Kampala Declaration on Prison Conditions in Africa

The Revised European Prison Rules, Council of Europe, Comm., Recommendation on European Prison Rules (Jan. 11, 2006), COE Doc. Rec(2006)2.

U.S. CONSTITUTION

UNDERSTANDING ELECTORAL VIOLENCE IN ASIA (United Nations Development Program, 2011).`

Voter Turnout Data for the Philippines, International Institute for Democracy and Electoral Assistance (International IDEA), available at <http://www.idea.int/vt/countryview.cfm?CountryCode=PH> (last accessed on 07 May 2016)