

EN BANC

G.R. No. 176830 – SATURNINO C. OCAMPO, Petitioner v. **HON. EPHREM S. ABANDO**, in his capacity as Presiding Judge of the Regional Trial Court of Hilongos, Leyte, Branch 18; **CESAR M. MERIN**, in his capacity as Approving Prosecutor and Officer-in-Charge; **ROSULO U. VIVERO**, in his capacity as Investigating Prosecutor; and **RAUL M. GONZALEZ**, in his capacity as Secretary of the Department of Justice, Respondents.

G.R. No. 185587 – RANDALL B. ECHANIS, Petitioner v. **HON. THELMA BUNYI-MEDINA**, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 32; **HON. EPHREM S. ABANDO**, in his capacity as Presiding Judge of the Regional Trial Court of Hilongos, Leyte, Branch 18; **CESAR M. MERIN**, in his capacity as Approving Prosecutor and Officer-in-Charge; **ROSULO U. VIVERO**, in his capacity as Investigating Prosecutor; and **RAUL M. GONZALEZ**, in his capacity as Secretary of the Department of Justice, Respondents.

G.R. No. 185636 – RAFAEL G. BAYLOSIS, Petitioner v. **HON. THELMA BUNYI-MEDINA**, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 32; **HON. EPHREM S. ABANDO**, in his capacity as Presiding Judge of the Regional Trial Court of Hilongos, Leyte, Branch 18; **CESAR M. MERIN**, in his capacity as Approving Prosecutor and Officer-in-Charge; **ROSULO U. VIVERO**, in his capacity as Investigating Prosecutor; and **RAUL M. GONZALEZ**, in his capacity as Secretary of the Department of Justice, Respondents.

G.R. No. 190005 – VICENTE P. LADLAD, Petitioner v. **HON. THELMA BUNYI-MEDINA**, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 32, and the **PEOPLE OF THE PHILLIPINES**, Respondents.

Promulgated:

FEBRUARY 11, 2014

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CONCURRING OPINION

"Some say freedom is relative. One man's freedom is another man's bondage. We may have been in chains, but we weren't shackled by delusions. Our movements were restrained, but we weren't tied up by myth. Our tormentors thought they were free, but they were blinded by falsehood; their senses were deadened by the mirage of power they clutched and made god. And then they were stunned by their own shadows; paralyzed by fear of the very monsters and demons they fashioned in their heads that stood to

devour them at the end of it all.

. . . Our eventual freedom was truly memorable. The process of unchaining was both literal and symbolic, and not without drama and fanfare. We weren't released all at once, but one or two at a time. Ka Ranel and myself were freed at the same time – around December of 1988. 'Free at last!' we declared, grinning from ear to ear. We were guided through some underbrush, after it we came upon a clearing where the rest of the former captives were waiting. We were greeted with applause. Tearful hugs, handshakes, up-heres, singing, merry-making, even role-playing. Rage and retribution will have to wait. The moment was a celebration."

Robert Francis Garcia
"To Suffer Thy Comrades:
How the Revolution Decimated Its Own" 24 (2001)

LEONEN, J.:

Dissent affirms the dissenter's belief in how human dignity should be shaped. It assumes difference with the status quo. It is this assertion that provides depth and dynamism in our democracy.

However, indignities masquerading as dissent or even brought about by misguided assessments of what is pragmatic do not deserve any legal protection. Such acts cease to become political. These are simply inhuman.

Acts which debase humanity even by the most organized and ardent dissenters do not even deserve the label of rebellion.

I concur with the Chief Justice that this case should be remanded so that the court can properly examine the evidence raised by the defense. I write this separate opinion in the interest of judicial economy. Should it be shown that there are acts committed in violation of Republic Act No. 9851, otherwise known as the Philippine Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, these acts could not be absorbed in the crime of rebellion.

I

For our decision are consolidated petitions for certiorari and prohibition that pray for the declaration of several Informations and Warrants of Arrests as void. The Informations and Warrants were issued for the crime of multiple murder. Petitioners assert that they have a pending criminal charge of rebellion¹ and that the acts raised in their petitions should

¹ However, *see Ladlad v. Velasco*, G.R. Nos. 172070-72, 172074-76, and 175013, June 1, 2007, 523 SCRA 318, wherein this court granted the petitions and ordered the dismissal of Criminal Case Nos.

be dismissed because they are deemed to be affected by the political offense doctrine. The political offense doctrine states that certain crimes, such as murder, are already absorbed by the charge of rebellion when committed as a necessary means and in connection with or in furtherance of rebellion.

I agree that this case should be remanded because there has been no evidence yet to prove that the acts imputed to the petitioners actually happened or are attributable to them. Judicial economy, however, requires that we state that there are certain acts which have been committed on the occasion of a rebellion which should no longer be absorbed in that crime.

Acts committed in violation of Republic Act No. 9851, even in the context of armed conflicts of a non-international character and in view of the declarations of the Communist Party of the Philippines and the National Democratic Front, cannot be deemed to be acts in connection with or in furtherance of rebellion.

II

We survey the evolution of the political offense doctrine to provide better context.

As early as 1903, this court distinguished common crimes from crimes committed in furtherance of a political objective. In *United States v. Lardizabal*,² the accused, Commanding Officer of Filipino insurgents, ordered the execution of an American prisoner before retreating from the enemy. We said in this case that the accused's act falls under the Amnesty Proclamation of 1902, thus:

x x x [the execution] was not an isolated act such as a "political offense committed during the insurrection pursuant to orders issued by the civil or military insurrectionary authorities," but was a measure which, whether necessary or not, was inherent in the military operations for the preservation of the troops commanded by him and of which he was the supreme officer on that island. ***It was an act which, while from the standpoint of military law might be regarded as one of cruelty, was at the same time one depending absolutely upon the discretion of an officer in charge of a command for securing the safety of the troops under his control and constitutes no other offense than that of sedition, within which term the war itself is included by the letter and spirit of the proclamation.***³ (Emphasis provided)

06-452 and 06-944 for rebellion.

² 1 Phil. 729 (1903).

³ Id. at 730.

In *United States. v. Pacheco*,⁴ two men selling English dictionaries within the Dagupan area were abruptly abducted and killed by the accused and his men. Witnesses testified that it was presumed by the accused that the salesmen were American spies because the dictionaries being sold were written in English. This court observed:

It does not appear from the record that the aggressors were impelled to kill the deceased by any motive other than that the latter were suspected of being spies and, therefore, traitors to the revolutionary party to which the defendants belonged. From the foregoing statement of facts, it may therefore be said **that the two murders prosecuted herein were of a political character** and the result of internal political hatreds between Filipinos, the defendants having been insurgents opposed to the constituted government.

The case has to do with two crimes for which, under the penal law, the severest punishment has always been inflicted. However, considering the circumstances under which these crimes were committed and the fact that the sovereign power in these Islands, in view of the extraordinary and radical disturbance which, during the period following the year 1896, prevailed in and convulsed this country, and **prompted by the dictates of humanity and public policy, has deemed it advisable to blot out even the shadow of a certain class of offenses, decreeing full pardon and amnesty to their authors**—an act of elevated statesmanship and timely generosity, more political than judicial in its nature, intended to mitigate the severity of the law—it is incumbent upon us, in deciding this case, to conform our judgment to the requirements and conditions of the decree so promulgated.⁵ (Emphasis provided)

Then in the landmark case of *People v. Hernandez*,⁶ this court defined the term, political offense:

In short, **political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive.** If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government the territory of the Philippines Islands or any part thereof." then **said offense becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter.**⁷ (Emphasis provided)

This court in *Hernandez* first clarified whether common crimes such as murder, arson, and other similar crimes are to be complexed with the main crimes in the Revised Penal Code. Thus:

⁴ 2 Phil. 345 (1903).

⁵ Id. at 346-347.

⁶ 99 Phil. 515 (1956).

⁷ Id. at 535-536.

x x x national, as well as international, laws and jurisprudence overwhelmingly favor the proposition that *common crimes, perpetrated in furtherance of a political offense, are divested of their character as "common" offenses and assume the political complexion of the main crime of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty.*⁸ (Emphasis provided)

Article 48 of the Revised Penal Code covering complex crimes provides:

Art. 48. *Penalty for complex crimes.* — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

The *Hernandez* ruling was then affirmed by this court in subsequent cases, such as *Enrile v. Salazar*.⁹ It is worthy to note, however, that in “affirming” the doctrine in *Hernandez*, this court in *Enrile* said:

It may be that in the light of contemporary events, the act of rebellion has lost that quintessentially quixotic quality that justifies the relative leniency with which it is regarded and punished by law, that present-day rebels are less impelled by love of country than by lust for power and have become no better than mere terrorists to whom nothing, not even the sanctity of human life, is allowed to stand in the way of their ambitions. *Nothing so underscores this aberration as the rash of seemingly senseless killings, bombings, kidnappings and assorted mayhem so much in the news these days, as often perpetrated against innocent civilians as against the military, but by and large attributable to, or even claimed by so-called rebels to be part of, an ongoing rebellion.*

It is enough to give anyone pause—and the Court is no exception—that not even the crowded streets of our capital City seem safe from such unsettling violence that is disruptive of the public peace and stymies every effort at national economic recovery. *There is an apparent need to restructure the law on rebellion, either to raise the penalty therefor or to clearly define and delimit the other offenses to be considered as absorbed thereby, so that it cannot be conveniently utilized as the umbrella for every sort of illegal activity undertaken in its name.* The Court has no power to effect such change, for it can only interpret the law as it stands at any given time, and what is needed lies beyond interpretation. Hopefully, Congress will perceive the need for promptly seizing the initiative in this matter, which is properly

⁸ Id. at 541.

⁹ 264 Phil. 593 (1990) [Per J. Narvasa, En Banc].

within its province.¹⁰ (Emphasis provided)

However, other cases declined to rule that all other crimes charged in the Information are absorbed under alleged political offenses.¹¹ In *Misolas v. Panga*,¹² this court ruled:

Neither would the doctrines enunciated by the Court in *Hernandez* and *Geronimo*, [sic] and *People v. Rodriguez* [107 Phil. 659] save the day for petitioner.

In *Hernandez*, the accused were charged with the complex crime of rebellion with murder, arson and robbery while in *Geronimo*, the information was for the complex crime of rebellion with murder, robbery and kidnapping. In those two cases[,] the Court held that aforesaid common crimes cannot be complexed with rebellion as these crimes constituted the means of committing the crime of rebellion. These common crimes constituted the acts of “engaging in war” and “committing serious violence” which are essential elements of the crime of rebellion [See Arts. 134-135, Revised Penal Code] and, hence, are deemed absorbed in the crime of rebellion. Consequently, the accused can be held liable only for the single crime of rebellion.

On the other hand, in *Rodriguez*, the Court ruled that since the accused had already been charged with rebellion, he can no longer be charged for illegal possession of firearms for the same act of unauthorized possession of firearm on which the charge of rebellion was based, as said act constituted the very means for the commission of rebellion. Thus, the illegal possession of the firearm was deemed absorbed in the crime of rebellion.

However, in the present case, petitioner is being charged specifically for the qualified offense of illegal possession of firearms and ammunition under P.D. 1866. HE IS NOT BEING CHARGED WITH THE COMPLEX CRIME OF SUBVERSION WITH ILLEGAL POSSESSION OF FIREARMS. NEITHER IS HE BEING SEPARATELY CHARGED FOR SUBVERSION AND FOR ILLEGAL POSSESSION OF FIREARMS. Thus, the rulings of the Court in *Hernandez*, *Geronimo* and *Rodriguez* find no application in this case.¹³ (Emphasis in the original)

In *Baylosis v. Chavez, Jr.*,¹⁴ this court held that:

x x x The Code allows, for example, separate prosecutions for either murder or rebellion, although not for both where the indictment alleges that the former has been committed in furtherance of or in connection with the latter. **Surely, whether people are killed or injured in connection with a rebellion, or not, the deaths or injuries of the**

¹⁰ Id. at 617-618.

¹¹ See *Office of the Provincial Prosecutor of Zamboanga del Norte v. Court of Appeals*, 401 Phil. 945 (2000).

¹² 260 Phil. 702 (1990) [Per J. Cortes, En Banc].

¹³ Id. at 709-710.

¹⁴ 279 Phil. 448 (1991).

victims are no less real, and the grief of the victims' families no less poignant.

Moreover, it certainly is within the power of the legislature to determine what acts or omissions other than those set out in the Revised Penal Code or other existing statutes are to be condemned as separate, individual crimes and what penalties should be attached thereto. The power is not diluted or improperly wielded simply because at some prior time the act or omission was but an element or ingredient of another offense, or might usually have been connected with another crime.

The interdict laid in *Hernandez, Enrile* and the other cases cited is against attempts to complex rebellion with the so called "common" crimes committed in furtherance, or in the course, thereof; this, on the authority alone of the first sentence of Article 48 of the Revised Penal Code. Stated otherwise, the ratio of said cases is that Article 48 cannot be invoked as the basis for charging and prosecuting the complex crime of rebellion with murder, etc., for the purpose of obtaining imposition of the penalty for the more serious offense in its maximum period (in accordance with said Art. 48). *Said cases did not—indeed they could not and were never meant to—proscribe the legislative authority from validly enacting statutes that would define and punish, as offenses sui generis crimes which, in the context of Hernandez, et al. may be viewed as a complex of rebellion with other offenses. There is no constitutional prohibition against this, and the Court never said there was.* What the Court stated in said cases about rebellion "absorbing" common crimes committed in its course or furtherance must be viewed in light of the fact that at the time they were decided, there were no penal provisions defining and punishing, as specific offenses, crimes like murder, etc. committed in the course or as part of a rebellion. This is no longer true, as far as the present case is concerned, and there being no question that PD 1866 was a valid exercise of the former President's legislative powers.¹⁵ (Emphasis provided)

It is not our intention to wipe out the history of and the policy behind the political offense doctrine. What this separate opinion seeks to accomplish is to qualify the conditions for the application of the doctrine and remove any blanket application whenever political objectives are alleged. The remnants of armed conflict continue. Sooner or later, with a victor that emerges or even with the success of peace negotiations with insurgent groups, some form of transitional justice may need to reckon with different types of crimes committed on the occasion of these armed uprisings. Certainly, crimes that run afoul the basic human dignity of persons must not be tolerated. This is in line with the recent developments in national and international law.¹⁶

III

International humanitarian law¹⁷ (IHL) is the body of international

¹⁵ Id. at 462-463.

¹⁶ In August 30, 2011, the Philippines ratified the Rome Statute of the International Criminal Court.

¹⁷ See Vincent Chetail, 'The contribution of the International Court of Justice to international humanitarian law', 85 IRRC (2003) < http://www.icrc.org/eng/assets/files/other/irrc_850_chetail.pdf>

law that regulates the conduct of armed conflicts, whether of an international or non-international character. This body of law seeks to limit the effects of the conflict on individuals.¹⁸ The 1949 Geneva Conventions and its Additional Protocols are the main instruments that govern IHL.¹⁹ Nevertheless, IHL and the rules and principles contained in the Geneva Conventions are largely regarded in the international sphere as having the character of general or customary international law given the fundamental nature of the rules and “because they constitute intransgressible principles of international customary law.”²⁰

In the Philippines, Republic Act No. 9851 was enacted in view of its policy to “[renounce] war x x x, [adopt] the generally accepted principles of international law as part of the law of the land and [adhere] to a policy of peace, equality, justice, freedom, cooperation and amity with all nations.”²¹ Accordingly, “[t]he most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.”²²

Armed conflict in the law is defined as:

x x x any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized armed groups or between such groups within a State: *Provided*, That such force or armed violence gives rise, or may give rise, to a situation to which the Geneva Conventions of 12 August 1949, including their common Article 3, apply. **Armed conflict may be** international, that is, between two (2) or more States, including belligerent occupation; or **non-international, that is, between governmental authorities and organized armed groups or between such groups within a State. It does not cover internal disturbances or tensions such as riots, isolated and**

accessed on February 5, 2014. Contemporary IHL developed from the early laws of war (*jus in bello*), the Martens Clause and the “elementary considerations of humanity,” and the Hague Conventions of 1907.

¹⁸ See ‘The Geneva Conventions of 1949 and their Additional Protocols’, International Committee of the Red Cross < <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm> > accessed on February 5, 2014. See also C. Greenwood, *Historical Development and Basis* in THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS 9-10 (1995).

¹⁹ The Philippines is a signatory of the 1949 Geneva Conventions. It ratified the conventions on October 10, 1952. The Philippines acceded to Additional Protocol II on December 11, 1986.

²⁰ M. M. MAGALLONA, FUNDAMENTALS OF PUBLIC INTERNATIONAL LAW 297 (2005) citing *Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports, 1996, paras. 79 and 82.

²¹ Rep. Act No. 9851 (2009), “An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, and For Related Purposes,” sec. 2 (a).

²² Rep. Act. No. 9851 (2009), sec. 2 (e).

sporadic acts of violence or other acts of a similar nature.²³
(Emphasis provided)

Article 3 common to the 1949 Geneva Conventions and Additional Protocol II²⁴ are the foundation of the applicable rules in a non-international or internal armed conflict. Common Article 3, which has attained a customary law character,²⁵ prescribes a minimum standard to be applied to persons who are not actively taking part in an internal armed conflict. Common Article 3 provides:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- 1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, **shall in all circumstances be treated humanely**, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- a) **violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;**
 - b) taking of hostages;
 - c) outrages upon personal dignity, in particular humiliating and degrading treatment;
 - d) **the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.**
- 2) The wounded and sick shall be collected and cared for.

This portion of the provision is substantially reproduced in Section 4, paragraph (b) of Republic Act No. 9851, which provides:

²³ Rep. Act. No. 9851 (2009), sec. 3 (c). *See also The Prosecutor v. Dusko Tadic* (Jurisdiction of the Tribunal), Case No. IT-94-1-AR72 (1995).

²⁴ Protocol Additional To The Geneva Conventions of 12 August 1949, And Relating To The Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977.

²⁵ *See* J. M. Henckaerts & L. Doswald-Beck, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW 1-2 (vol. I [reprinted with corrections], 2009).

In case of a non-international armed conflict, serious violations of common Article 3 to the four (4) Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

- (1) Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;
- (2) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (3) Taking of hostages; and
- (4) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

Additional Protocol II supplements Common Article 3 in terms of the rules applicable to internal armed conflict.²⁶ Additional Protocol II specifies: 1) the guarantees afforded to persons involved in the internal armed conflict; and 2) the obligations of the parties to the internal armed conflict. These rights and duties are seen in Articles 4 to 6, to wit:

Article 4 — Fundamental guarantees

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.
2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

²⁶ *Article 1 — Material field of application*

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.
2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature, as not being armed conflicts.

- a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- b) collective punishments;
- c) taking of hostages;
- d) acts of terrorism;
- e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- f) slavery and the slave trade in all their forms;
- g) pillage;
- h) threats to commit any of the foregoing acts.

x x x x

Article 5 — Persons whose liberty has been restricted

1. In addition to the provisions of Article 4, the **following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained:**
 - a) the wounded and the sick shall be treated in accordance with Article 7;
 - b) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;
 - c) they shall be allowed to receive individual or collective relief;
 - d) they shall be allowed to practice their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;
 - e) they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.
2. Those who are **responsible for the internment or detention of the persons referred to in paragraph 1** shall also, within the limits of their capabilities, respect the following provisions relating to such persons:

- a) except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women;
 - b) they shall be allowed to send and receive letters and cards, the number of which may be limited by competent authority if it deems necessary;
 - c) places of internment and detention shall not be located close to the combat zone. The persons referred to in paragraph 1 shall be evacuated when the places where they are interned or detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out under adequate conditions of safety;
 - d) they shall have the benefit of medical examinations;
 - e) their physical or mental health and integrity shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances.
3. **Persons who are not covered by paragraph 1 but whose liberty has been restricted in any way whatsoever for reasons related to the armed conflict shall be treated humanely in accordance with Article 4 and with paragraphs 1 a), c) and d), and 2 b) of this Article.**
4. If it is decided to release persons deprived of their liberty, necessary measures to ensure their safety shall be taken by those so deciding.

Article 6 — Penal prosecutions

This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.

No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality. In particular:

- a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;
- b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
- c) no one shall be held guilty of any criminal offence on

account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

- d) anyone charged with an offence is presumed innocent until proved guilty according to law;
- e) anyone charged with an offence shall have the right to be tried in his presence;
- f) no one shall be compelled to testify against himself or to confess guilt.

A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained. (Emphasis provided)

Furthermore, protection for the civilian population is expressly provided for in Additional Protocol II:

Article 13 — Protection of the civilian population

The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

Some have asserted that Common Article 3 of the Geneva

Conventions belongs to the body of *jus cogens* norms.²⁷ *Jus cogens* norms under the Vienna Convention of Law of the Treaties are “norm[s] accepted and recognized by the international community of States as a whole as [norms] **from which no derogation is permitted** and which can be modified only by a subsequent norm of general international law having the same character.”²⁸

The principles embedded in Common Article 3 have been held to apply even to international armed conflict, thus, depicting a universal character.

It lays down fundamental standards which are applicable at all times, in all circumstances and to all States and from which no derogation at any time is permitted. As was stated, it “sets forth a minimum core of mandatory rules [and], reflects the fundamental humanitarian principles which underlie international humanitarian law as a whole, and upon which the Geneva Conventions in their entirety are based. **These principles, the object of which is the respect for the dignity of the human person, developed as a result of centuries of warfare and had already become customary law at the time of the adoption of the Geneva Conventions because they reflect the most universally recognized humanitarian principles.**”²⁹ (Emphasis provided)

Hence, non-observance of the minimum standard provided for in Common Article 3 triggers a violation of well-accepted principles of international law.

In a similar vein, there exist international human rights laws or IHRL (not necessarily belonging to *international humanitarian law*) that are of *jus cogens* nature. Thus:

There is a consensus x x x about the *jus cogens* nature of a number of prohibitions formulated in international human rights law x x x. **These include at a minimum the prohibition of aggression,**

²⁷ See Rafael Nieto-Navia, ‘International Peremptory Norms (*Jus Cogens*) and International Humanitarian Law’ (2001) < <http://www.iccnw.org/documents/WritingColombiaEng.pdf> > pp. 24-26, accessed on February 6, 2014. See also Ulf Linderfalk, ‘The Effect of *Jus Cogens* Norms: Whoever Opened Pandora’s Box, Did You Ever Think About the Consequences?’, vol. 18, no. 5 European Journal of International Law (2007) < <http://www.ejil.org/pdfs/18/5/248.pdf> > pp. 853–871, accessed on February 6, 2014. Consider Ulf’s discussion on the proposition that IHL, in relation to the right to self-defense and the right to use of force, has *jus cogens* character, pp. 865-867.

²⁸ Article 53. Treaties conflicting with a peremptory norm of general international law (“*jus cogens*”) A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

²⁹ See Rafael Nieto-Navia, ‘International Peremptory Norms (*Jus Cogens*) and International Humanitarian Law’ (2001) < <http://www.iccnw.org/documents/WritingColombiaEng.pdf> > p. 26, accessed on February 6, 2014.

slavery and the slave trade, genocide x x x, racial discrimination, apartheid and torture x x x, as well as basic rules of international humanitarian law applicable in armed conflict, and the right to self-determination.³⁰ (Emphasis provided)

International humanitarian law and international human rights law are two sets of regimes in international law. The two regimes have been compared and contrasted with each other, to wit:

The two sets of rules certainly have a different history and often a different field of application, both *ratione personae* and *ratione temporis*. Human rights thus apply to *all* people and humanitarian law applies to *certain* groups of persons (for example, to the wounded, to prisoners o[f] war, to civilians) and, furthermore, humanitarian law applies only in times of armed conflict. On the other hand, ‘human rights’ and ‘humanitarian law’ regulate, *ratione materiae*, similar rights at least insofar that they all intend to increase the protection of individuals, alleviate pain and suffering and secure the minimum standard of persons in various situations.³¹ (Emphasis in the original)

Thus, all persons are protected in both times of war and peace. The protection accorded by human rights laws does not cease to apply when armed conflict ensues.³² Still, some “human rights” are allowed to be derogated in times of “emergency which threatens the life of the nation.”³³ Nevertheless, provisions on the right to life, prohibition from torture, inhuman and degrading treatment, and slavery remain free from any derogation whatsoever, having acquired a *jus cogens* character.³⁴

We do not need to go further to determine whether these norms form part of “generally accepted principles of international law” to determine whether they are “part of the law of the land.”³⁵ At minimum, they have been incorporated through statutory provisions.

Rep. Act No. 9851 defines and provides for the penalties of crimes against humanity, serious violations of IHL, genocide, and other crimes against humanity.³⁶ This law provides for the non-prescription of the

³⁰ O. DE SCHUTTER, INTERNATIONAL HUMAN RIGHTS LAW: CASES, MATERIALS, COMMENTARY 65 (2010).

³¹ I. DETTER, THE LAW OF WAR 160-161 (2nd edition, 2000).

³² See M. M. MAGALLONA, FUNDAMENTALS OF PUBLIC INTERNATIONAL LAW 311-312 (2005) citing the advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Reports, 2004, par. 106.

³³ See Art. 4, International Covenant on Civil and Political Rights or ICCPR.

³⁴ I. DETTER, THE LAW OF WAR 162 (2nd edition, 2000) citing Articles 6, 7, and 8 of the ICCPR.

³⁵ Consti., art II, sec. 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 provided)

³⁶ Rep. Act No. 9851 (2009), sec. 4 (b). In case of a non-international armed conflict, serious violations of common Article 3 to the four (4) Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of

prosecution of and execution of sentences imposed with regard to the crimes defined in the Act.³⁷ It also provides for the jurisdiction of the Regional Trial Court over the crimes defined in the Act.³⁸

These crimes are, therefore, separate from or independent from the crime of rebellion even if they occur on the occasion of or argued to be connected with the armed uprisings.

Not only does the statute exist. Relevant to these cases are the Declarations made by the Communist Party of the Philippines/New People's Army/National Democratic Front or CPP/NPA/NDF invoking the Geneva Conventions and its 1977 Additional Protocols.

One of these documents is the Declaration of Adherence to International Humanitarian Law dated August 15, 1991, whereby the National Democratic Front **“formally declare[d] its adherence to international humanitarian law, especially Article 3 common to the Geneva Conventions as well as Protocol II additional to said conventions, in the conduct of armed conflict in the Philippines.”**³⁹

We may take judicial notice that on July 5, 1996, the National

the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

- (1) Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;
- (2) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (3) Taking of hostages; and
- (4) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

³⁷ Rep. Act No. 9851 (2009), sec. 11. *Non-prescription*. - The crimes defined and penalized under this Act, their prosecution, and the execution of sentences imposed on their account, shall not be subject to any prescription.

³⁸ Rep. Act No. 9851 (2009), sec. 18. *Philippine Courts, Prosecutors and Investigators*. - The Regional Trial Courts of the Philippines shall have original and exclusive jurisdiction over the crimes punishable under this Act. Their judgments may be appealed or elevated to the Court of Appeals and to the Supreme Court as provided by law.

The Supreme Court shall designate special courts to try cases involving crimes punishable under this Act. For these cases, the Commission on Human Rights, the Department of Justice, the Philippine National Police or other concerned law enforcement agencies shall designate prosecutors or investigators as the case may be.

The State shall ensure that judges, prosecutors and investigators, especially those designated for purposes of this Act, receive effective training in human rights, International Humanitarian Law and International Criminal Law.

See also the Rome Statute which the Philippines ratified on August 30, 2011. *See* par. 10 of the Preamble, Article 1, and Article 17 of the Rome Statute regarding the International Criminal Court's complementary jurisdiction over a case when a State party is unwilling or unable to carry out an investigation or prosecution.

³⁹ Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977, National Democratic Front of the Philippines Human Rights Monitoring Committee, Annex D, 98 (Booklet Number 6, 2005).

Democratic Front issued the Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977. The National Democratic Front stated that:

Being a party to the armed conflict, civil war or war of national liberation and authorized by the revolutionary people and forces to represent them in diplomatic and other international relations in the ongoing peace negotiations with the GRP, we the National Democratic Front of the Philippines hereby solemnly declare in good faith to undertake to apply the Geneva Conventions and Protocol I to the armed conflict in accordance with Article 96, paragraph 3 in relation to Article 1, paragraph 4 of Protocol I.

The NDFP is rightfully and dutifully cognizant that this declaration x x x shall have in relation to the armed conflict with the GRP, the following effects:

- a. the Geneva Conventions and Protocol I are brought into force for the NDFP as a Party to the conflict with immediate effect;**
- b. the NDFP assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Geneva Conventions and Protocol I; and**
- c. the Geneva Conventions and this Protocol are equally binding upon all Parties to the conflict.⁴⁰ (Emphasis in the original)**

In addition, in the context of peace negotiations, it appears that there is a Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) executed by the Government of the Republic of the Philippines (GRP) and the CPP/NPA/NDF. This agreement establishes the recognition of the existence, protection, and application of human rights and principles of international humanitarian law as well as provides the following rights and protections to individuals by the CPP/NPA/NDF. The agreement partly provides:

PART III RESPECT FOR HUMAN RIGHTS

Article 1. In the exercise of their inherent rights, the Parties shall adhere to and be bound by the principles and standards embodied in international instruments on human rights.

Article 2. This Agreement seeks to confront, remedy and prevent the most serious human rights violations in terms of civil and political rights, as well as to uphold, protect and promote the full

⁴⁰ Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977, National Democratic Front of the Philippines Human Rights Monitoring Committee, Annex D, 12-13 (Booklet Number 6, 2005).

scope of human rights and fundamental freedoms, including:

1. The right to self-determination of the Filipino nation by virtue of which the people should fully and freely determine their political status, pursue their economic, social and cultural development, and dispose of their natural wealth and resources for their own welfare and benefit towards genuine national independence, democracy, social justice and development.

x x x x

3. The right of the victims and their families to seek justice for violations of human rights, including adequate compensation or indemnification, restitution and rehabilitation, and effective sanctions and guarantees against repetition and impunity.

4. **The right to life, especially against summary executions (*salvagings*), involuntary disappearances, massacres and indiscriminate bombardments of communities, and the right not to be subjected to campaigns of incitement to violence against one's person.**

x x x x

7. **The right not to be subjected to physical or mental torture, solitary confinement, rape and sexual abuse, and other inhuman, cruel or degrading treatment, detention and punishment.**

x x x x

9. The right to substantive and procedural due process, to be presumed innocent until proven guilty, and against self-incrimination.

x x x x

PART IV RESPECT FOR INTERNATIONAL HUMANITARIAN LAW

Article 1. In the exercise of their inherent rights, the Parties to the armed conflict shall adhere to and be bound by the generally accepted principles and standards of international humanitarian law.

Article 2. These principles and standards apply to the following persons:

1. **civilians or those taking no active part in the hostilities;**
2. members of armed forces who have surrendered or laid down their arms;
3. those placed hors de combat by sickness, wounds or any

other cause;

4. **persons deprived of their liberty for reasons related to the armed conflict;** and,
5. relatives and duly authorized representatives of above-named persons.

Article 3. The following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the persons enumerated in the preceding Article 2:

1. **violence to life and person, particularly killing or causing injury, being subjected to physical or mental torture, mutilation, corporal punishment, cruel or degrading treatment and all acts of violence and reprisals, including hostage-taking, and acts against the physical well-being, dignity, political convictions and other human rights;**
2. holding anyone responsible for an act that she/he has not committed and punishing anyone without complying with all the requisites of due process;
3. **requiring persons deprived of their liberty for reasons related to the armed conflict to disclose information other than their identity;**
4. **desecration of the remains of those who have died in the course of the armed conflict or while under detention, and breach of duty to tender immediately such remains to their families or to give them decent burial;**
5. **failure to report the identity, personal condition and circumstances of a person deprived of his/her liberty for reasons related to the armed conflict to the Parties to enable them to perform their duties and responsibilities under this Agreement and under international humanitarian law;**

x x x x (Emphasis provided)

The CARHRIHL has provided a clear list of rights and duties that the parties must observe in recognizing the application of human rights and international humanitarian laws. The CPP/NPA/NDF, parties to an ongoing armed conflict and to which petitioners allegedly belong, are required to observe, at the minimum, the humane treatment of persons involved in the conflict, whether *hors de combat* or a civilian.

In all these instruments, even spies are accorded protection under Common Article 3 of the Geneva Conventions. Common Article 3 and Additional Protocol II are broad enough to secure fundamental guarantees to

persons not granted prisoner of war or civilian status, such as protection from summary execution and right to fair trial.⁴¹ These fundamental guarantees are also found in Article 75, in relation to Articles 45 and 46 of Additional Protocol I.⁴² Spies and civilians suspected of being spies are also

⁴¹ See J. M. Henckaerts & L. Doswald-Beck, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW* 2363 (vol. II, 2005).

⁴² Additional Protocol I, however, pertains to the protection of victims of international armed conflicts. Article 75 on Fundamental guarantees provides:

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.
2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:
 - (a) violence to the life, health, or physical or mental well-being of persons, in particular:
 - (i) murder;
 - (ii) torture of all kinds, whether physical or mental;
 - (iii) corporal punishment; and
 - (iv) mutilation;
 - (b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
 - (c) the taking of hostages;
 - (d) collective punishments; and
 - (e) threats to commit any of the foregoing acts.
3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.
4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:
 - (a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;
 - (b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
 - (c) no one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;
 - (d) anyone charged with an offence is presumed innocent until proved guilty according to law;
 - (e) anyone charged with an offence shall have the right to be tried in his presence;
 - (f) no one shall be compelled to testify against himself or to confess guilt;
 - (g) anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (h) no one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;
 - (i) anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and
 - (j) a convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

accorded protection under Rep. Act No. 9851.

IV

Concomitantly, persons committing crimes against humanity or serious violations of international humanitarian law, international human rights laws, and Rep. Act No. 9851 must not be allowed to hide behind a doctrine crafted to recognize the different nature of armed uprisings as a result of political dissent. The contemporary view is that these can never be considered as acts in furtherance of armed conflict no matter what the motive. Incidentally, this is the view also apparently shared by the CPP/NPA/NDF and major insurgent groups that are part of the present government's peace process.

We, therefore, should nuance our interpretation of what will constitute rebellion.

The rebel, in his or her effort to assert a better view of humanity, cannot negate himself or herself. Torture and summary execution of enemies or allies are never acts of courage. They demean those who sacrificed and those who gave their lives so that others may live justly and enjoy the blessings of more meaningful freedoms.

Torture and summary execution — in any context — are shameful, naked brutal acts of those who may have simply been transformed into desperate cowards. Those who may have suffered or may have died because of these acts deserve better than to be told that they did so in the hands of a rebel.

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5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.
 6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this Article until their final release, repatriation or re-establishment, even after the end of the armed conflict.
 7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:
 - (a) persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and
 - (b) any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this Article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.
 8. No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1.

ACCORDINGLY, I concur that these petitions be dismissed and the Regional Trial Courts be directed to hear the cases with due and deliberate dispatch taking these views into consideration should the evidence so warrant.

A handwritten signature in black ink, appearing to read 'Marvic Leonen', with a long, sweeping horizontal line extending to the right.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice