
# PHILIPPINE REPORTS

# VOL. 798

## NOVEMBER 7, 2016 TO NOVEMBER 8, 2016

**VOLUME 798**

# REPORTS OF CASES

DETERMINED IN THE

# SUPREME COURT

OF THE

# PHILIPPINES

FROM

NOVEMBER 7, 2016 TO NOVEMBER 8, 2016

SUPREME COURT
MANILA
2017

*Prepared*
*by*

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# REPORT OF CASES

**DETERMINED IN THE**

**SUPREME COURT OF THE PHILIPPINES**


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**THIRD DIVISION**

[A.C. No. 7387. November 7, 2016]

**MANUEL ENRIQUE L. ZALAMEA and MANUEL JOSE L. ZALAMEA,** *petitioners, vs.* **ATTY. RODOLFO P. DE GUZMAN, JR. and PERLAS DE GUZMAN, ANTONIO, VENTURANZA, QUIZON-VENTURANZA, and HERBOSA LAW FIRM,** *respondents.*

**SYLLABUS**

**LEGAL ETHICS; ATTORNEYS; A LAWYER IS DISQUALIFIED FROM ACQUIRING BY PURCHASE THE PROPERTY AND RIGHTS IN LITIGATION BECAUSE OF HIS FIDUCIARY RELATIONSHIP WITH SUCH PROPERTY AND RIGHTS, AS WELL AS WITH THE CLIENT; NOT APPLICABLE IN CASE AT BAR.—** An attorney may be disbarred or suspended for any violation of his oath or of his duties as an attorney and counselor, which include statutory grounds enumerated in Section 27, Rule 138 of the Rules of Court. Under Article 1491 of the Civil Code, lawyers are prohibited to acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another, their client's property and rights in litigation, x x x Indeed, the purchase by a lawyer of his client's property or interest in litigation is a breach of professional ethics and constitutes malpractice. The persons mentioned in Article 1491 are prohibited from purchasing said property because of an existing trust relationship. A lawyer is disqualified from acquiring by purchase the property and rights in litigation

> because of his fiduciary relationship with such property and rights, as well as with the client. x x x However, the prohibition which the Zalameas invoke does not apply where the property purchased was not involved in litigation. De Guzman clearly never acquired any of his client's properties or interests involved in litigation in which he may take part by virtue of his profession. There exists not even an iota of proof indicating that said property has ever been involved in any litigation in which De Guzman took part by virtue of his profession. x x x The prohibition which rests on considerations of public policy and interests is intended to curtail any undue influence of the lawyer upon his client on account of his fiduciary and confidential relationship with him. x x x Clearly, the relationship between the Spouses De Guzman and the Zalamea brothers is actually one of business partners rather than that of a lawyer and client.

**APPEARANCES OF COUNSEL**

*Delloro Espino & Saulog Law Offices* for complainants.
*Antonio & Revilla Law Firm* for the PDAH LAW FIRM.
*Contacto Nievales And Associates* for respondent Atty. Rodolfo De Guzman, Jr.

**D E C I S I O N**

**PERALTA,[*] *J.*:**

This is a Petition for Disbarment which petitioners Manuel Enrique L. Zalamea and Manuel Jose L. Zalamea filed against their lawyer, Atty. Rodolfo P. de Guzman, Jr., for acquiring their property by virtue of their lawyer-client relationship, in violation of the Lawyer's Oath and the Code of Professional Responsibility.

The following are the factual antecedents of the case:

In 2000, petitioners Manuel Enrique Zalamea and Manuel Jose Zalamea (*the Zalamea brothers*) sought respondent Atty.

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[*] Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

Rodolfo P. de Guzman, Jr.'s advice on the properties of their ailing mother, Merlinda L. Zalamea, who had a property situated at Scout Limbaga, Quezon City under her name. When Merlinda passed away, De Guzman then prepared a letter for a possible tax-free transfer of the Scout Limbaga property to the Merlinda Holding Corporation which was sought to be incorporated to handle Merlinda's estate, and notarized the incorporation papers of said corporation.

In September 2001, the Zalameas put up EMZEE FOODS INC., (*EMZEE*) a corporation engaged in *lechon* business, with De Guzman providing the capital and operational funds. Sometime in 2002, Manuel Enrique informed De Guzman about the property located at Speaker Perez St. (*Speaker Perez property*) which was then under the name of Elarfoods, Inc. (*Elarfoods*), a corporation owned and run by the Zalamea brothers' aunts and uncles. Since said property had been mortgaged to Banco de Oro (*BDO*), the bank foreclosed it when Elarfoods failed to pay the loan. Elarfoods likewise failed to redeem the property, resulting in the consolidation of the ownership over the property in BDO's name.

Later, Manuel Enrique approached De Guzman and convinced him to help in the reacquisition of the Speaker Perez property from BDO. De Guzman thus negotiated with BDO and was able to secure a deal over the property for ₱20 Million. The bank required 10% downpayment of the total price or ₱2 Million, to be paid in thirty-six (36) monthly installments, without interest. Due to lack of funds on Manuel Enrique's part, De Guzman's wife, Angel, agreed to shoulder the ₱2 Million downpayment in order not to lose the good opportunity, but under the condition that the Speaker Perez property would later be transferred in the name of a new corporation they had agreed to form, the EMZALDEK Venture Corporation, a combination of the names EMZEE Foods, Zalamea, and Dek de Guzman. By this time, EMZEE had also relocated to Speaker Perez.

Subsequently, Angel was forced to pay the monthly installments and the additional 20% required for EMZEE to be

able to transfer its office to the Speaker Perez property, since Manuel Enrique still could not produce sufficient funds and EMZEE continued to incur losses. All in all, Angel paid ₱13,082,500.00.

Not long after, the relationship between the Zalamea brothers and the Spouses De Guzman turned sour. The Spouses De Guzman wanted reimbursement of the amounts which they had advanced for the corporation, while the Zalamea brothers claimed sole ownership over the Speaker Perez property. Hence, the brothers filed a disbarment case against De Guzman for allegedly buying a client's property which was subject of litigation.

After a careful review and evaluation of the case, the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) recommended the dismissal of the complaint against De Guzman for lack of merit on October 12, 2011.[1] On December 29, 2012, the IBP Board of Governors passed a Resolution[2] adopting and approving the recommended dismissal of the complaint, thus:

*RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that the complaint is without merit, the same is hereby* ***DISMISSED****.*

### *The Court's Ruling*

The Court finds no cogent reason to depart from the findings and recommendations of the IBP.

An attorney may be disbarred or suspended for any violation of his oath or of his duties as an attorney and counselor,

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[1] Report and Recommendation submitted by Commissioner Oliver A. Cachapero, dated October 12, 2011; *rollo*, Vol. III, pp. 3-6.

[2] *Rollo*, Vol. III, pp. 1-2.

which include statutory grounds enumerated in Section 27,[3] Rule 138 of the Rules of Court.[4]

Under Article 1491 of the Civil Code, lawyers are prohibited to acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another, their client's property and rights in litigation, hence:

> ART. 1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:
>
> x x x x x x x x x
>
> 5. Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.
>
> 6. Any others specially disqualified by law.

Indeed, the purchase by a lawyer of his client's property or interest in litigation is a breach of professional ethics and constitutes malpractice. The persons mentioned in Article 1491 are prohibited from purchasing said property because of an existing trust relationship. A lawyer is disqualified from acquiring

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[3] **Section 27.** *Attorneys removed or suspended by Supreme Court on what grounds.* — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilfull disobedience of any lawful order of a superior court, or for corruptly or wilfull appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. x x x

[4] *Atty. Alcantara, et al. v. Atty. De Vera*, 650 Phil. 214, 221 (2010).

by purchase the property and rights in litigation because of his fiduciary relationship with such property and rights, as well as with the client. The very first Canon of the Code of Professional Responsibility[5] provides that "a lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal process." Canon 17 states that "a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him, while Canon 16 provides that "a lawyer shall hold in trust all moneys and properties of his client that may come into his possession." Further, Section 3, Rule 138 of the Revised Rules of Court requires every lawyer to take an oath to obey the laws as well as the legal orders of the duly constituted authorities. And for any violation of this oath, a lawyer may be suspended or disbarred by the Court. All of these underscore the role of the lawyer as the vanguard of our legal system. The transgression of any provision of law by a lawyer is a repulsive and reprehensible act which the Court will never countenance.[6]

Here, the accusation against De Guzman stemmed from his wife's purchase of the Speaker Perez property from BDO when Manuel Enrique did not have the means to buy it. The Zalameas claim that De Guzman, as their counsel, could not acquire the property, either personally or through his wife, without violating his ethical duties. De Guzman therefore has breached the same when his wife purchased the subject property.

However, the prohibition which the Zalameas invoke does not apply where the property purchased was not involved in litigation. De Guzman clearly never acquired any of his client's properties or interests involved in litigation in which he may take part by virtue of his profession. There exists not even an iota of proof indicating that said property has ever been involved in any litigation in which De Guzman took part by virtue of his profession. True, they had previously sought legal advice from De Guzman but only on how to handle their mother's

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[5] Promulgated by the Supreme Court on June 21, 1988.

[6] *Bautista v. Atty. Gonzales*, 261 Phil. 266, 277 (1990).

estate, which likewise did not involve the contested property. Neither was it shown that De Guzman's law firm had taken part in any litigation involving the Speaker Perez property.

The prohibition which rests on considerations of public policy and interests is intended to curtail any undue influence of the lawyer upon his client on account of his fiduciary and confidential relationship with him. De Guzman could not have possibly exerted such undue influence, as a lawyer, upon the Zalameas, as his clients. In fact, it was Manuel Enrique who approached the Spouses De Guzman and asked them if they would be willing to become business partners in a *lechon* business. It was also Manuel Enrique who turned to De Guzman for help in order to reacquire the already foreclosed Speaker Perez property. They had agreed that De Guzman would simply pay the required downpayment to BDO and EMZEE would pay the remaining balance in installment. And when EMZEE continued suffering losses, Angel took care of the monthly amortizations so as not to lose the property.

Clearly, the relationship between the Spouses De Guzman and the Zalamea brothers is actually one of business partners rather than that of a lawyer and client. Atty. De Guzman's acquisition of the Speaker Perez property was a valid consequence of a business deal, not by reason of a lawyer-client relationship, for which he could not be penalized by the Court. De Guzman and his wife are very well allowed by law to enter into such a transaction and their conduct in this regard was not borne out to have been attended by any undue influence, deceit, or misrepresentation.

**WHEREFORE**, **PREMISES CONSIDERED,** the Court **DISMISSES** the Petition for Disbarment against Atty. Rodolfo P. de Guzman, Jr. for utter lack of merit.

**SO ORDERED**.

*Perez, Reyes,* and *Jardeleza, JJ.,* concur.

*Velasco, Jr., J.,* on official leave.

**THIRD DIVISION**

[G.R. No. 190203. November 7, 2016]

**POWERHOUSE STAFFBUILDERS INTERNATIONAL, INC.,** *petitioner, vs.* **ROMELIA REY, LIZA CABAD, EVANGELINE NICMIC, EVA LAMEYRA, ROSARIO ABORDAJE, LILYBETH MAGALANG, VENIA BUYAG, JAYNALYN NOLLEDO, IREN NICOLAS, AILEEN SAMALEA, SUSAN YBAÑEZ,[*] CHERYL ANN ORIA, MA. LIZA SERASPI, KATHERINE ORACION, and JEJ INTERNATIONAL MANPOWER SERVICES CORPORATION,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION AND CERTIFICATION; OFFICIALS AND EMPLOYEES OF THE COMPANY WHO CAN SIGN VERIFICATION AND CERTIFICATION WITHOUT NEED OF BOARD RESOLUTION, CITED.—** In previous cases, we held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors; **(2) the President of a corporation; (3) the General Manager or Acting General Manager;** (4) Personnel Officer; and (5) an Employment Specialist in a labor case. The rationale applied in these cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being "in a position to verify the truthfulness and correctness of the allegations in the petition."

**2. ID.; ID.; APPEALS; FINDINGS OF FACT OF QUASI-JUDICIAL BODIES; IN LABOR CASES, FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) ARE ACCORDED WITH RESPECT, EVEN FINALITY, IF SUPPORTED BY SUBSTANTIAL EVIDENCE.—** The well-entrenched rule, especially in labor

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[*] Also referred to as Susan Ybanez in other parts of the record.

cases, is that findings of fact of quasi-judicial bodies, like the NLRC, are accorded with respect, even finality, if supported by substantial evidence. Particularly when passed upon and upheld by the CA, they are binding and conclusive upon the Supreme Court and will not normally be disturbed.

**3. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; THE ONUS OF PROVING THAT AN EMPLOYEE WAS NOT DISMISSED OR, IF DISMISSED, HIS DISMISSAL WAS NOT ILLEGAL, FULLY RESTS ON THE EMPLOYER.—** The *onus* of proving that an employee was not dismissed or, if dismissed, his dismissal was not illegal, fully rests on the employer, and the failure to discharge the *onus* would mean that the dismissal was not justified and was illegal. The burden of proving the allegations rests upon the party alleging and the proof must be clear, positive, and convincing. x x x The filing of complaints for illegal dismissal immediately after repatriation belies the claim that respondent employees voluntarily chose to be separated and repatriated. Voluntary repatriation, much like resignation, is inconsistent with the filing of the complaints.

**4. ID.; REPUBLIC ACT NO. 8042 (MIGRANT WORKERS AND OVERSEAS FILIPINO ACT OF 1995); THE SOLIDARY LIABILITY OF THE PRINCIPAL AND THE RECRUITMENT AGENCY TO THE EMPLOYEES SHALL NOT BE AFFECTED BY ANY SUBSTITUTION, AMENDMENT OR MODIFICATION FOR THE ENTIRE DURATION OF THE EMPLOYMENT CONTRACT; CASE AT BAR.—** The terms of Section 10 of R.A. No. 8042 clearly states the solidary liability of the principal and the recruitment agency to the employees and this liability shall not be affected by any substitution, amendment or modification for the entire duration of the employment contract, x x x In this case, even if there was transfer of accreditation by Catcher from Powerhouse to JEJ, Powerhouse's liability to respondent employees remained intact because respondent employees are not privy to such contract, and in their overseas employment contract approved by POEA, Powerhouse is the recruitment agency of Catcher. To relieve Powerhouse from liability arising from the approved overseas employment contract is to change the contract without the consent from the other contracting party, respondent

> employees in this case. x x x However, the local agency that is held to answer for the overseas worker's money claims is not left without remedy. The law does not preclude it from going after the foreign employer for reimbursement of whatever payment it has made to the employee to answer for the money claims against the foreign employer.

**APPEARANCES OF COUNSEL**

*Pangan Law Office* for petitioner.
*Lameyra Law Office* for respondents Romelia Rey, *et al.*
*Urbano Palamos and Fabros Law Offices* for respondent JEJ International Manpower Services Corporation.

**D E C I S I O N**

**JARDELEZA, *J.*:**

Before us is a petition for review on *certiorari*[1] under Rule 45 of the Revised Rules of Court filed by petitioner Powerhouse Staffbuilders International, Inc. (Powerhouse), seeking the review and reversal of the Decision[2] dated March 24, 2009 and the Resolution[3] dated November 10, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 100196 which dismissed its petition for *certiorari*.

**Facts**

Powerhouse hired respondents Romelia Rey, Liza Cabad, Evangeline Nicmic, Eva Lameyra, Rosario Abordaje, Lilybeth Magalang, Venia Buyag, Jaynalyn Nolledo, Iren Nicolas, Aileen Samalea, Susan Ybañez, Cheryl Ann Oria, Ma. Liza Seraspi and Katherine Oracion (respondent employees) as operators for its foreign principal, Catcher Technical Co. Ltd./Catcher

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[1] *Rollo,* pp. 21-61.

[2] *Id.* at 65-84; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Lucas P. Bersamin (now Member of this Court) and Sixto C. Marella, Jr. (Special Fifteenth Division).

[3] *Id.* at 86-89.

Industrial Co. Ltd. (Catcher), based in Taiwan, each with a monthly salary of NT$15,840.00 for the duration of two years commencing upon their arrival at the jobsite. They were deployed on June 2, 2000. Sometime in February 2001, Catcher informed respondent employees that they would be reducing their working days due to low orders and financial difficulties. The respondent employees were repatriated to the Philippines on March 11, 2001.[4]

On March 22, 2001, respondent employees filed separate complaints for illegal dismissal, refund of placement fees, moral and exemplary damages, as well as attorney's fees, against Powerhouse and Catcher before the Labor Arbiter[5] (LA) which were later consolidated upon their motion.[6] They alleged that on March 2, 2001, Catcher informed them that they would all be repatriated due to low orders of Catcher. Initially, they refused to be repatriated but they eventually gave in because Catcher stopped providing them food and they had to live by the donations/dole outs from sympathetic friends and the church.[7] Furthermore, during their employment with Catcher, the amount of NT$10,000.00 was unjustifiably deducted every month for eight to nine months from their individual salaries.[8]

On the other hand, Powerhouse maintained that respondent employees voluntarily gave up their jobs following their rejection of Catcher's proposal to reduce their working days. It contended that before their repatriation, each of the respondents accepted payments by way of settlement, with the assistance of Labor Attaché Romulo Salud.[9]

During the proceedings before the LA, Powerhouse moved to implead JEJ International Manpower Services (JEJ) as respondent on account of the alleged transfer to the latter of

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[4] *Id.* at 175-176.

[5] *Id.* at 176.

[6] NLRC records, pp. 26-27; 52.

[7] *Id.* at 66-67.

[8] *Id.* at 66.

[9] *Id.* at 99-100.

Catcher's accreditation.[10] The motion was granted and JEJ submitted its position paper, arguing that the supposed transfer of accreditation to it did not affect the joint and solidary liability of Powerhouse in favor of respondent employees. It averred that any contract between JEJ and Powerhouse could not be enforced in the case as it involved no employer-employee relationship and is therefore outside the jurisdiction of the labor arbiter.[11]

The LA, in a Decision[12] dated September 27, 2002, ruled in favor of the respondents, finding the respondent employees' dismissal and/or pre-termination of their employment contracts illegal. The dispositive portion of the LA's Decision reads:

WHEREFORE, judgment is hereby rendered ordering [Powerhouse], William Go, [Catcher], Chen Wei, [JEJ] and Benedicto Javier to jointly and severally pay complainants the following amounts corresponding to the unexpired term of their employment contracts or three (3) months salaries whichever is less and refund of illegally deducted amounts in their wages:

| NAME | REFUND OF DEDUCTED AMOUNTS IN WAGES IN NT$ | UNEXPIRED[ ] TERM/ 3 MONTHS WAGES IN NT$ |
|---|---|---|
| 1. ROMELIA REY | NT$80,000.00 | NT$47,520.00 |
| 2. LIZA CABAD | NT$80,000.00 | NT$47,520.00 |
| 3. EVANGELINE NICMIC | NT$80,000.00 | NT$47,520.00 |
| 4. EVA LAMEYRA | NT$80,000.00 | NT$47,520.00 |
| 5. ROSARIO ABORDAJE | NT$80,000.00 | NT$47,520.00 |
| 6. LILYBETH MAGALANG | NT$80,000.00 | NT$47,520.00 |
| 7. VENIA BUYAG | NT$80,000.00 | NT$47,520.00 |
| 8. JAYNALYN NOLLEDO | NT$80,000.00 | NT$47,520.00 |
| 9. IREN NICOLAS | NT$80,000.00 | NT$47,520.00 |
| 10. AILEEN SAMALEA | NT$80,000.00 | NT$47,520.00 |
| 11. SUSAN YBA[Ñ]EZ | NT$80,000.00 | NT$47,520.00 |
| 12. CHERYL ANN ORIA | NT$80,000.00 | NT$47,520.00 |
| 13. MA. LIZA SERASPI | NT$80,000.00 | NT$47,520.00 |
| 14. KATHERINE ORACION | NT$80,000.00 | NT$47,520.00 |

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[10] *Id*. at 32-34.

[11] *Id.* at 163-164.

[12] *Rollo,* pp. 174-187.

Respondents are further ordered to pay 10% attorney's fees.

The complaint for moral damages, exemplary damages and other money claims are hereby disallowed for lack of merit.

SO ORDERED.[13]

The LA found that Powerhouse failed to substantiate its allegations that the respondent employees voluntarily pre-terminated their respective contracts of employment and received payments in consideration thereof and it was also unable to rebut respondents' alleged entitlement to refund of the amounts illegally deducted from their salaries. However, the LA also ruled that in accordance with Section 10 of Republic Act (R.A.) No. 8042,[14] the amount of wages the respondent employees are entitled to by reason of the illegal dismissal/pre-termination of their employment contracts is equivalent to the unexpired term thereof or to three months for every year of service whichever is less.[15]

All the parties appealed to the National Labor Relations Commission (NLRC).

On appeal, the NLRC, in its Decision[16] dated July 31, 2006, affirmed the LA's Decision with modification. The NLRC absolved JEJ from liability, upon the NLRC's findings that it was not privy to the respondents' deployment.[17] It also held Powerhouse jointly and severally liable with William Go, Catcher, and Chen Wei to reimburse to respondents Magalang, Nicolas, Ybañez and Oria their placement fee of ₱19,000.00 each and ₱17,000.00 each to respondents Rey, Cabad, Nicmic, Lameyra, Abordaje, Buyag, Nolledo, Samalea, Seraspi and Oracion.[18]

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[13] *Id.* at 185-187.

[14] Migrant Workers and Overseas Filipinos Act of 1995.

[15] *Rollo*, pp. 182-183.

[16] *Id.* at 291-299.

[17] *Id.* at 297-298.

[18] *Id.* at 298.

Powerhouse moved for reconsideration but its motion was denied by the NLRC in its Resolution[19] dated May 31, 2007.

Aggrieved, Powerhouse elevated the matter to the CA via a Petition for *Certiorari*[20] imputing grave abuse of discretion on the part of the NLRC in declaring the repatriation of respondent employees as an act of illegal dismissal, awarding reimbursement of alleged salary deduction without factual basis or concrete and direct evidence, ordering the refund of the placement fees which is subject to the jurisdiction of the POEA, and dropping JEJ as a party respondent in total disregard of the POEA rules.[21]

On March 24, 2009, the CA rendered a Decision[22] dismissing Powerhouse's petition. The CA ruled that Powerhouse failed to comply with the 60-day period within which to file a petition for *certiorari* under Rule 65 of the Rules of Court. As alleged by Powerhouse itself, it received a copy of the May 31, 2007 Order of the NLRC on June 21, 2007; thus, the Rule 65 petition filed before the CA on August 21, 2007 was filed a day late, warranting its dismissal.[23] The CA ruled that Powerhouse's failure to perfect its appeal is not a mere technicality as it raises a jurisdictional problem, depriving it of jurisdiction.[24] The CA also found that Powerhouse failed to substantially comply with the requirements of certificate of forum shopping in its petition and ruled that the belated submission of the Secretary's Certificate in compliance with the CA's resolution did not cure the defect of Powerhouse's petition.[25]

Even on the merits, the CA found the petition deficient. It ruled that Powerhouse failed to prove that respondent employees

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[19] *Id.* at 327.

[20] *Id.* at 328-351.

[21] *Id.* at 333.

[22] *Id.* at 65-84.

[23] *Id.* at 73-74.

[24] *Id.* at 74.

[25] *Id.* at 72.

were not illegally dismissed, or that they voluntarily resigned. The CA found that respondent employees were made to resign against their will as they were forced to sign resignation letters prepared by Catcher as an act of self-preservation, since Catcher stopped providing them food for their subsistence nine days before they were finally repatriated on March 11, 2001.[26] Respondent employees' intention to leave their work, as well as their act of relinquishment, is not present in this case. On the contrary, they vigorously pursued their complaint against Powerhouse and resignation is inconsistent with the filing of a complaint for illegal dismissal.[27] Furthermore, the photocopy of the undated and unsigned list supposedly furnished by Catcher to Powerhouse as proof that respondent employees received the amounts stated therein was not considered by the CA because these were not authenticated and are devoid of probative value.[28]

The CA likewise ruled that JEJ's liability for the monetary claims of respondent employees on account of the alleged transfer of accreditation to it has not been established absent any substantial evidence to show that such transfer had in fact been effected. Nothing in the letters attached by Powerhouse in its motion for reconsideration before the NLRC shows or even remotely suggests that the transfer pushed through with POEA's *imprimatur*. Powerhouse presented the Affidavit of Assumption of Responsibility executed by the president of respondent JEJ to the CA, but the CA ruled that it could not consider the same without running afoul with the requirements of due process, as it would deprive the respondents of the opportunity to examine and controvert the same.[29]

Powerhouse moved for reconsideration of the CA Decision but the same was denied in a Resolution[30] dated November 10, 2009.

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[26] *Id.* at 75-77.

[27] *Id.* at 78.

[28] *Id.* at 78-80.

[29] *Id.* at 82-84.

[30] *Supra* note 3.

Powerhouse's Omnibus Motion for Leave of Court to Present Additional Evidence and to Set Case for Oral Arguments was denied in the same resolution.

Hence, Powerhouse filed this petition for review on *certiorari,* under Rule 45 of the Revised Rules of Court, challenging the CA Decision. Powerhouse likewise sought injunctive relief in its petition which was granted by this Court through the issuance of a Temporary Restraining Order[31] on March 3, 2010, enjoining the CA, the NLRC, the LA and the respondents from enforcing the assailed Decision and Resolution.

**Issues**

In assailing the CA Decision, the petition raises three issues:

I. WHETHER OR NOT THERE IS ILLEGAL DISMISSAL IF WORKERS CHOOSE TO LEAVE THEIR PLACE OF WORK.

II. WHETHER OR NOT MONETARY AWARDS IN LABOR CASES MAY BE AWARDED BASED ON MERE ALLEGATIONS.

III. WHETHER OR NOT THE TRANSFER OF ACCREDITATION TO ANOTHER RECRUITMENT AND PLACEMENT AGENCY, AS WELL AS THE ASSUMPTION OF ANY LIABILITY AS A CONSEQUENCE OF THIS TRANSFER, RELIEVED THE ORIGINAL RECRUITMENT AND PLACEMENT AGENCY FROM ANY LIABILITY.[32]

Powerhouse, in questioning the appellate court's ruling, also calls the attention of this Court to their substantial compliance with all the procedural requirements in filing their Petition for *Certiorari* before the CA and prays for a liberal interpretation of the rules in the interest of substantial justice.

**The Court's Ruling**

Before going into the substantive merits of the case, we shall first resolve the procedural issues raised by respondents in their respective Comments.

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[31] *Rollo*, pp. 441-443.

[32] *Id.* at 30.

In their Comment,[33] respondent employees assert that Powerhouse failed to show any justifiable reason why it should be excused from the operation of the rules.[34] Moreover, the CA actually resolved the petition on the merits but Powerhouse showed nothing to earn a favorable ruling.[35]

On the other hand, JEJ, in its Comment,[36] avers that Powerhouse failed to raise as an issue the dismissal of Powerhouse's petition due to its gross and blatant violations of the requirements of Rule 65. Instead, Powerhouse made assignments of errors, or what it called "novel questions of law," which is just a ploy to seek the review of the factual findings of the CA and the NLRC.[37]

***The petition in the CA was timely filed.***

Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended,[38] provides:

> Sec. 4. *When and where petition filed*. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
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In this case, Powerhouse received on June 21, 2007, a copy of the May 31, 2007 Order of the NLRC denying its motion for reconsideration.[39] Thus, it had 60 days, or until August 20, 2007, to file a petition for *certiorari* before the CA. However,

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[33] *Id*. at 462-474.

[34] *Id.* at 463.

[35] *Id*. at 463-464.

[36] *Id.* at 482-500.

[37] *Id.* at 483.

[38] A.M. No. 00-02-03-SC, *Re: Reglementary Periods to File Petitions for Certiorari,* September 1, 2000.

[39] *Rollo,* p. 333.

since August 20, 2007 was proclaimed by President Arroyo as a special non-working day pursuant to Proclamation No. 1353, series of 2007, Powerhouse had until the next working day, August 21, 2007 to file its petition. The relevant portion of Rule 22, Section 1 provides: "x x x If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day." Thus, the petition filed on August 21, 2007 was timely filed.

***Powerhouse substantially complied with the requirements of verification and certification against forum shopping.***

In previous cases, we held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors; **(2) the President of a corporation; (3) the General Manager or Acting General Manager;** (4) Personnel Officer; and (5) an Employment Specialist in a labor case.[40] The rationale applied in these cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being "in a position to verify the truthfulness and correctness of the allegations in the petition."[41]

In this case, the verification and certification[42] attached to the petition before the CA was signed by William C. Go, the

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[40] *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*, G.R. No. 151413, February 13, 2008, 545 SCRA 10, 18, citing *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd. (Lepanto)*, G.R. No. 153885, September 24, 2003, 412 SCRA 101, 109; *Novelty Philippines, Inc. v. Court of Appeals*, G.R. No. 146125, September 17, 2003, 411 SCRA 211, 217-220; *Pfizer, Inc. v. Galan*, G.R. No. 143389, May 25, 2001, 358 SCRA 240, 246-248; and *Mactan-Cebu International Airport Authority v. Court of Appeals*, G.R. No. 139495, November 27, 2000, 346 SCRA 126, 132-133.

[41] *Cagayan Valley Drug Corp. v. CIR*, *supra*, at 18-19.

[42] CA *rollo*, p. 22.

President and General Manager of Powerhouse, one of the officers enumerated in the foregoing recognized exception. While the petition was not accompanied by a Secretary's Certificate, his authority was ratified by the Board in its Resolution adopted on October 24, 2007.[43] Thus, even if he was not authorized to execute the Verification and Certification at the time of the filing of the Petition, the ratification by the board of directors retroactively confirms and affirms his authority and gives us more reason to uphold that authority.[44]

Nevertheless, on the merits, the petition must fail.

It bears stressing that in a petition for review on *certiorari*, the scope of the Supreme Court's judicial review of decisions of the CA is generally confined only to errors of law. The Supreme Court is not a trier of facts, and this doctrine applies with greater force in labor cases. Factual questions are for the labor tribunals to resolve.[45]

Respondents maintain that the petition, in the guise of raising novel questions of law, is in reality seeking a review of the factual findings of the CA and the NLRC.[46]

We agree with the respondents.

In this case, although the three issues raised in the petition were stated in a manner in which they would appear to be purely legal issues, they actually assume facts contrary to the factual findings of the LA, the NLRC, and the CA and thus call for a re-examination of the evidence, which this Court cannot entertain.[47] Thus, the three issues presented by Powerhouse—

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[43] *Id.* at 162.

[44] See *Swedish Match Philippines, Inc. v. Treasurer of the City of Manila*, G.R. No. 181277, July 3, 2013, 700 SCRA 428, 437.

[45] *Alfaro v. Court of Appeals*, G.R. No. 140812, August 28, 2001, 363 SCRA 799, 806.

[46] *Rollo*, pp. 464; 483.

[47] *G & M (Phils.), Inc. v. Cruz*, G.R. No. 140495, April 15, 2005, 456 SCRA 215, 220.

the liability of the transferee agency, the existence of illegal dismissal and the basis for the monetary awards—are factual issues which have all been ruled upon by the LA, the NLRC, and the CA.

The well-entrenched rule, especially in labor cases, is that findings of fact of quasi-judicial bodies, like the NLRC, are accorded with respect, even finality, if supported by substantial evidence. Particularly when passed upon and upheld by the CA, they are binding and conclusive upon the Supreme Court and will not normally be disturbed.[48]

The Court finds no reason in this case to depart from such doctrine.

The evidence on record supports the findings of the CA and the NLRC.

***Respondent employees were illegally dismissed.***

The *onus* of proving that an employee was not dismissed or, if dismissed, his dismissal was not illegal, fully rests on the employer, and the failure to discharge the *onus* would mean that the dismissal was not justified and was illegal. The burden of proving the allegations rests upon the party alleging and the proof must be clear, positive, and convincing.[49]

Here, there is no reason to overturn the factual findings of the Labor Arbiter, the NLRC and the CA, all of which have unanimously declared that respondent employees were made to resign against their will after the foreign principal, Catcher, stopped providing them food for their subsistence as early as March 2, 2001, when they were informed that they would be repatriated, until they were repatriated on March 11, 2001.

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[48] *G & M (Phils.), Inc. v. Cruz, supra* at 217; *San Juan De Dios Educational Foundation Employees Union-Alliance of Filipino Workers v. San Juan De Dios Educational Foundation, Inc.*, G.R. No. 143341, May 28, 2004, 430 SCRA 193, 205-206.

[49] *Tatel v. JLFP Investigation and Security Agency, Inc.*, G.R. No. 206942, December 9, 2015.

The filing of complaints for illegal dismissal immediately after repatriation belies the claim that respondent employees voluntarily chose to be separated and repatriated. Voluntary repatriation, much like resignation, is inconsistent with the filing of the complaints.[50]

***Respondent employees are entitled to the payment of monetary claims.***

We also agree that respondent employees are entitled to money claims and full reimbursement of their respective placement fees. However, the award of the three-month equivalent of respondent employees' salaries should be increased to the amount equivalent to the unexpired term of the employment contract in accordance with our rulings in *Serrano v. Gallant Maritime Services, Inc.*[51] and *Sameer Overseas Placement Agency, Inc. v. Cabiles.*[52]

In *Serrano*, we declared unconstitutional the clause in Section 10 of R.A. No. 8042 limiting the wages that could be recovered by an illegally dismissed overseas worker to three months. We held that the clause "or for three (3) months for every year of the unexpired term, whichever is less" (subject clause) is both a violation of the due process and equal protection clauses of the Constitution.[53] In 2010, upon promulgation of Republic Act No. 10022,[54] the subject clause was

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[50] See *Nationwide Security and Allied Services, Inc. v. Valderama,* G.R. No. 186614, February 23, 2011, 644 SCRA 299; *Talidano v. Falcon Maritime & Allied Services, Inc.,* G.R. No. 172031, July 14, 2008, 558 SCRA 279, 292, citing *Oriental Shipmanagement Co., Inc. v. Court of Appeals,* G.R. No. 153750, January 25, 2006, 480 SCRA 100, 110.

[51] G.R. No. 167614, March 24, 2009, 582 SCRA 255.

[52] G.R. No. 170139, August 5, 2014, 732 SCRA 22.

[53] *Supra* note 52, at 302-304.

[54] An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, their Families and Overseas Filipinos in Distress, and for Other Purposes.

reinstated.[55] Presented with the unique situation that the law passed incorporated the exact clause already declared unconstitutional, without any perceived substantial change in the circumstances, in *Sameer*, we, once again, declared the reinstated clause unconstitutional, this time as provided in Section 7 of R.A. No. 10022.[56]

We likewise affirm the refund to the respondent employees of the unauthorized monthly deductions in the amount of NT$10,000.00. Contrary to Powerhouse's contention that the claim for refund was based merely on allegations, respondent employees were able to present proof before the NLRC in the form of the two (2) passbooks given to each of them by their foreign employer. According to respondent employees, the "First Passbooks," where their salaries, including their overtime pay were deposited, were in the custody of the employer, while the "Second Passbooks" where their allowances were deposited, were in their custody. They were only able to make withdrawals

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[55] R.A. No. 10022, Section 7. Section 10 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

> "SEC. 10. Money Claims. – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.
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> "In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement if his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or **for three (3) months for every year of the unexpired term, whichever is less.**
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> (Emphasis supplied.)

[56] *Supra* note 53, at 54-55.

from their Second Passbooks, however, their foreign employer made illegal deductions from their First Passbooks.[57] The pertinent pages of these First Passbooks are part of the record of this case.[58] Considering that Powerhouse failed to dispute this claim, the same is deemed admitted.[59]

It must be remembered that the burden of proving monetary claims rests on the employer. The reason for this rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents are not in the possession of the worker but in the custody and absolute control of the employer.[60] Thus, in failing to present evidence to prove that Catcher, with whom it shares joint and several liability with under Section 10 of R.A. No. 8042, had paid all the monetary claims of respondent employees, Powerhouse has, once again, failed to discharge the *onus probandi*; thus, the LA and the NLRC properly awarded these claims to respondent employees.

***Respondent employees are likewise entitled to the payment of interest over their monetary claims.***

In the matter of the applicable interest rates over the monetary claims awarded to respondent employees, Section 10 of R.A. No. 8042 provides that "[i]n case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee **with interest of twelve percent (12%) *per annum***." However, this provision does not provide a specific interest rate for the award of salary for the unexpired portion of the employment contract nor for the other money claims the respondent employees are entitled to.

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[57] *Rollo*, pp. 260-261.

[58] NLRC records, pp. 295-322.

[59] RULES OF COURT, Rule 8, Sec. 11 in relation to Sec. 3, Rule 1 of the NLRC Rules of Procedure.

[60] *Villar v. National Labor Relations Commission*, G.R. No. 130935, May 11, 2000, 331 SCRA 686, 695.

In *Sameer*, we held that *Bangko Sentral ng Pilipinas* Circular No. 799 issued on June 21, 2013,[61] which revised the interest rate for loan or forbearance of money from twelve percent (12%) to six percent (6%) in the absence of stipulation, is not applicable when there is a law that states otherwise. Thus, Circular No. 799 does not have the effect of changing the interest on awards for reimbursement of placement fees from twelve percent (12%), as provided in Section 10 of R.A. No. 8042, to six percent (6%). However, Circular No. 799 applies to the award of salary for the unexpired portion of the employment contract and the other money claims of the employees since the law does not provide a specific interest rate for these awards.[62]

Accordingly, the placement fees in the amount of ₱19,000.00 each which are to be reimbursed to respondents Magalang, Nicolas, Ybañez and Oria, and the placement fees in the amount of ₱17,000.00 each which are to be reimbursed to respondents Rey, Cabad, Nicmic, Lameyra, Abordaje, Buyag, Nolledo, Samalea, Seraspi and Oracion, shall earn interest at a rate of twelve percent (12%) *per annum* from finality of this decision until full payment thereof.

On the other hand, the other monetary awards, specifically respondent employees' salaries for the unexpired term of their employment contract, the illegal deductions which are to be refunded to them, and the award of attorney's fees in their favor, shall earn interest at the rate of six percent (6%) *per annum* from finality of this decision until full payment thereof.[63]

***Powerhouse is liable for the monetary claims.***

We likewise agree with the CA and the NLRC that JEJ could not be held liable for the monetary claims of respondent

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[61] Re: Rate of Interest in the Absence of Stipulation. Circular No. 799 took effect on July 1, 2013.

[62] *Supra* note 53, at 64-68.

[63] See *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458.

employees on account of the alleged transfer of accreditation to it. Nothing in the two letters attached by Powerhouse in its motion for reconsideration before the NLRC proved that the alleged transfer pushed through with POEA's *imprimatur*. At best, these show that Catcher intended to appoint JEJ as its new agent and Powerhouse had no objection to such transfer.[64]

Even the Affidavit of Assumption of Responsibility submitted to the CA cannot absolve Powerhouse of its liability.

The terms of Section 10 of R.A. No. 8042 clearly states the solidary liability of the principal and the recruitment agency to the employees and this liability shall not be affected by any substitution, amendment or modification for the entire duration of the employment contract, to wit:

> Sec. 10. *Monetary Claims*. — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.
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> **The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several.** This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all monetary claims or damages that may be awarded to the workers**. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.**
>
> **Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.** (Emphasis supplied.)

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[64] *Rollo,* pp. 82-84.

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In *Skippers United Pacific, Inc. v. Maguad*,[65] we ruled that the provisions of the POEA Rules and Regulations are clear enough that the manning agreement extends up to and until the expiration of the employment contracts of the employees recruited and employed pursuant to the said recruitment agreement.[66] In that case, we held that the Affidavits of Assumption of Responsibility, though valid as between petitioner Skippers United Pacific Inc. and the other two manning agencies, were not enforceable against the respondents (the employees) because the latter were not parties to those agreements.[67]

In this case, even if there was transfer of accreditation by Catcher from Powerhouse to JEJ, Powerhouse's liability to respondent employees remained intact because respondent employees are not privy to such contract, and in their overseas employment contract approved by POEA, Powerhouse is the recruitment agency of Catcher. To relieve Powerhouse from liability arising from the approved overseas employment contract is to change the contract without the consent from the other contracting party, respondent employees in this case.

To rule otherwise and free Powerhouse of liability against respondent employees would go against the rationale of R.A. No. 8042 to protect and safeguard the rights and interests of overseas Filipinos and overseas Filipino workers, in particular, and run contrary to this law's intention to an additional layer of protection to overseas workers.[68] This ensures that overseas workers have recourse in law despite the circumstances of their employment. By providing that the liability of the foreign employer may be "enforced to the full extent" against the local

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[65] G.R. No. 166363, August 15, 2006, 498 SCRA 639.

[66] *Id.* at 669.

[67] *Id.*

[68] See *Becmen Service Exporter and Promotion, Inc. v. Cuaresma,* G.R. Nos. 182978-79, April 7, 2009, 584 SCRA 690 and *Sevillana v. I.T. (International) Corp.,* G.R. No. 99047, April 16, 2001, 356 SCRA 451.

agent, the overseas worker is assured of immediate and sufficient payment of what is due them. Corollarily, the provision on joint and several liability in R.A. No. 8042 shifts the burden of going after the foreign employer from the overseas worker to the local employment agency. However, the local agency that is held to answer for the overseas worker's money claims is not left without remedy. The law does not preclude it from going after the foreign employer for reimbursement of whatever payment it has made to the employee to answer for the money claims against the foreign employer.[69]

**WHEREFORE,** the petition is **DENIED**. The Decision dated March 24, 2009 of the Court of Appeals **DISMISSING** the petition in CA-G.R. SP No. 100196 is hereby **AFFIRMED** with the **MODIFICATION** that each of the respondent employees are **AWARDED** their salaries for the entire unexpired portion of their respective employment contracts computed at the rate of NT$15,840.00 per month at an interest of six percent (6%) *per annum* from the finality of this decision until full payment thereof.

Further, the award of placement fees in respondent employees' favor shall earn interest at the rate of twelve percent (12%) *per annum* from finality of this decision until full payment thereof.

Furthermore, the illegally deducted amounts which were ordered to be refunded to respondent employees, as well as the attorney's fees awarded to respondent employees, shall earn interest at the rate of six percent (6%) *per annum* from finality of this decision until full payment thereof.

The temporary restraining order issued on March 3, 2010 is hereby **DISSOLVED**.

**SO ORDERED.**

*Peralta,*[**] *Perez,* and *Reyes, JJ.,* concur.

*Velasco, Jr., J.,* on leave.

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[69] *Sameer Overseas Placement Agency, Inc. v. Cabiles*, *supra* note 53 at 70.

[**] Designated as Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

**FIRST DIVISION**

[G.R. No. 190667. November 7, 2016]

**COCA-COLA BOTTLERS PHILIPPINES, INC.,** *petitioner, vs.* **SPOUSES JOSE R. BERNARDO AND LILIBETH R. BERNARDO, DOING BUSINESS UNDER THE NAME AND STYLE "JOLLY BEVERAGE ENTERPRISES,"** *respondents.*

**SYLLABUS**

1. **CIVIL LAW; DAMAGES; AN ACT THAT CAUSES INJURY TO ANOTHER MAY BE MADE BASIS FOR AN AWARD OF DAMAGES; CASE AT BAR.—** Articles 19, 20, and 21 of the Civil Code provide the legal bedrock for the award of damages to a party who suffers damage whenever another person commits an act in violation of some legal provision; or an act which, though not constituting a transgression of positive law, nevertheless violates certain rudimentary rights of the party aggrieved. x x x In *Albenson Enterprises Corp. v. CA*, this Court held that under any of the above provisions of law, an act that causes injury to another may be made the basis for an award of damages. x x x Meanwhile, the use of unjust, oppressive, or high-handed business methods resulting in unfair competition also gives a right of action to the injured party [as provided for under Article 28 of the Civil Code.] x x x Jurisprudence holds that when a person starts an opposing place of business, not for the sake of profit, but regardless of loss and for the sole purpose of driving a competitor out of business, in order to take advantage of the effects of a malevolent purpose, that person is guilty of a wanton wrong.

2. **ID.; ID.; TEMPERATE DAMAGES; COMPENSATORY DAMAGES MAY BE AWARDED IN THE CONCEPT OF TEMPERATE DAMAGES FOR INJURY TO BUSINESS REPUTATION OR BUSINESS STANDING, LOSS OF GOODWILL, AND LOSS OF CUSTOMERS WHO SHIFTED THEIR PATRONAGE TO COMPETITORS.—** The CA correctly ruled that the award of temperate damages was justified, even if it was not specifically prayed for, because 1) respondents did pray for the grant of "other reliefs," and

> 2) the award was clearly warranted under the circumstances. Indeed, the law permits judges to award a different kind of damages as an alternative to actual damages: x x x Compensatory damages may be awarded in the *concept* of temperate damages for injury to business reputation or business standing, loss of goodwill, and loss of customers who shifted their patronage to competitors. It is not extraordinary for courts to award temperate damages in lieu of actual damages. x x x In this case, both the RTC and the CA found that respondents had similarly suffered pecuniary loss by reason of petitioner's high-handed machinations to eliminate competition in the market.

**APPEARANCES OF COUNSEL**

*Rondain & Mendiola* for petitioner.
*Elsa I. De Guzman* for respondents.

**D E C I S I O N**

**SERENO, *C.J.*:**

This is a Petition for Review[1] filed by Coca-Cola Bottlers Philippines, Inc. (petitioner), from the Court of Appeals (CA) Decision[2] and Resolution[3] in CA-G.R. CV No. 91096. The CA affirmed *in toto* the Decision[4] of Regional Trial Court (RTC) Branch 88 in Quezon City in Civil Case No. Q-00-42320.

This case originated from the claim for damages filed by respondent spouses Jose and Lilibeth Bernardo (respondents) against petitioner for violation of Articles 19, 20, 21, and 28 of the Civil Code. The RTC found petitioner liable to pay

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[1] *Rollo*, pp. 10-35.

[2] Penned by Presiding Justice Conrado M. Vasquez and concurred in by Associate Justices Arturo G. Tayag and Ramon M. Bato, Jr., dated 23 July 2009; *id*. at 42-59.

[3] Dated 19 November 2009; *id*. at 60-61.

[4] Penned by Presiding Judge Rosanna Fe Romero-Maglaya, dated 28 September 2007; *id*. at 109-121.

respondents temperate damages in the amount of ₱500,000 for loss of goodwill, to be offset against the latter's outstanding balance for deliveries in the amount of ₱449,154. The trial court ordered petitioner to pay ₱50,000 as moral damages, ₱20,000 as exemplary damages, and ₱100,000 as attorney's fees.

Petitioner asserts that the Complaint had no basis, and that the trial court had no jurisdiction to award temperate damages in an amount equivalent to the outstanding obligation of respondents. It prays not only for the reversal of the assailed judgments, but also for an award of moral and exemplary damages, as well as attorney's fees and litigation expenses. It also asks that respondents be ordered to pay ₱449,154 plus legal interest from the date of demand until full payment.[5]

We deny the Petition.

## FACTS

Petitioner is a domestic corporation engaged in the large-scale manufacture, sale, and distribution of beverages around the country.[6] On the other hand, respondents, doing business under the name "Jolly Beverage Enterprises," are wholesalers of softdrinks in Quezon City, particularly in the vicinities of Bulacan Street, V. Luna Road, Katipunan Avenue, and Timog Avenue.[7]

The business relationship between the parties commenced in 1987 when petitioner designated respondents as its distributor.[8] On 22 March 1994, the parties formally entered into an exclusive dealership contract for three years.[9] Under the Agreement,[10] petitioner would extend developmental assistance to respondents in the form of cash assistance and trade discount incentives.

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[5] *Id.* at 34.

[6] *Id.* at 43.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at 93-95.

For their part, respondents undertook to sell petitioner's products exclusively, meet the sales quota of 7,000 cases per month, and assist petitioner in its marketing efforts.[11]

On 1 March 1997, the parties executed a similar agreement for another two years, or until 28 February 1999.[12] This time, petitioner gave respondents complimentary cases of its products instead of cash assistance, and increased the latter's sales quota to 8,000 cases per month.

For 13 years, the parties enjoyed a good and harmonious business partnership.[13] While the contracts contained a clause for breach, it was never enforced.[14]

Sometime in late 1998 or early 1999, before the contract expired, petitioner required respondents to submit a list of their customers on the pretext that it would formulate a policy defining its territorial dealership in Quezon City.[15] It assured respondents that their contract would be renewed for a longer period, provided that they would submit the list.[16] However, despite their compliance, the promise did not materialize.[17]

Respondents discovered that in February 1999, petitioner started to reach out to the persons whose names were on the list.[18] Respondents also received reports that their delivery trucks were being trailed by petitioner's agents; and that as soon as the trucks left, the latter would approach the former's customers.[19] Further, respondents found out that petitioner had

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[11] *Id*. at 93-94.

[12] Agreement; *id*. at 97-99.

[13] *Rollo*, p. 110.

[14] This observation was consistent with respondents' claim that they had faithfully complied with all their obligations.

[15] *Rollo*, pp. 44, 110.

[16] *Id*.

[17] *Id*. at 110.

[18] *Id*.

[19] *Id*. at 111.

employed a different pricing scheme, such that the price given to distributors was significantly higher than that given to supermarkets.[20] It also enticed direct buyers and *sari-sari* store owners in the area with its "*Coke Alok*" promo, in which it gave away one free bottle for every case purchased.[21] It further engaged a store adjacent to respondents' warehouse to sell the former's products at a substantially lower price.[22]

Respondents claimed that because of these schemes, they lost not only their major customers – such as Peach Blossoms, May Flower Restaurant, Saisaki Restaurant, and Kim Hong Restaurant – but also small stores, such as the canteen in the hospital where respondent Jose Bernardo worked.[23] They admitted that they were unable to pay deliveries worth ₱449,154.[24]

Respondents filed a Complaint[25] for damages, alleging that the acts of petitioner constituted dishonesty, bad faith, gross negligence, fraud, and unfair competition in commercial enterprise.[26] The Complaint was later amended[27] to implead petitioner's officers and personnel, include additional factual allegations, and increase the amount of damages prayed for.

Petitioner denied the allegations.[28] It maintained that it had obtained a list of clients through surveys, and that promotional activities or developmental strategies were implemented only after the expiration of the Agreements.[29] It opined that the filing

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[20] *Id*. at 53.

[21] *Id*.

[22] *Id*. at 55.

[23] *Id*. at 115.

[24] *Id*. at 45.

[25] *Id*. at 62-64.

[26] *Id*.

[27] *Id*. at 82-92.

[28] *See* Answer, *id*. at 66-76.

[29] *Id*. at 71.

of the complaint was a mere ploy resorted to by respondents to evade the payment of the deliveries.[30]

The RTC held petitioner liable for damages for abuse of rights in violation of Articles 19, 20, and 21 of the Civil Code and for unfair competition under Article 28. It found that petitioner's agents solicited the list of clients in order to penetrate the market and directly supply customers with its products.[31] Moreover, the trial court found that petitioner had recklessly ignored the rights of respondents to have a fair chance to engage in business or earn a living when it deliberately used oppressive methods to deprive them of their business.[32] Its officers were, however, absolved of liability, as there was no showing that they had acted in their individual and personal capacities.[33]

In the body of its Decision, the RTC stated that petitioner should pay respondents ₱500,000 as temperate damages, and that it was only just and fair that the latter offset this amount against their outstanding obligation to petitioner in the amount of ₱449,154.[34] In the *fallo*, the trial court awarded ₱50,000 as moral damages, ₱20,000 as exemplary damages, and ₱100,000 as attorney's fees.[35] It denied petitioner's counterclaim for damages for lack of factual and legal basis.[36] Petitioner moved for reconsideration, but the motion was denied.[37]

Petitioner then elevated the case to the CA, which affirmed the RTC Decision *in toto*. According to the appellate court's ruling, petitioner had used its sizable resources to railroad the business of respondents:[38]

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[30] *Id*. at 74.

[31] *Id*. at 109-121.

[32] *Id*. at 120.

[33] *Id*.

[34] *Id*. at 121.

[35] *Id*.

[36] *Id*.

[37] Order dated 8 February 2008; *id*. at 141-143.

[38] *Rollo,* pp. 52-55.

[Petitioner] infiltrated certain areas in Quezon City at the expense of and later, in derogation of its wholesalers, particularly [respondents]. As admitted by Allan Mercado, the Integrated Selling and Marketing Manager of appellant, it was previously dependent on wholesalers to circulate its products around the country. x x x.

x x x x x x x x x

[T]owards the end of the partnership, appellant employed a different marketing scheme purportedly to obviate the poor dealership management from wholesalers in major areas. But as may be shown by the incidents leading to the filing of this case, this method was designed strategically to overrun [respondents'] business and take over the customers of its wholesalers.

x x x x x x x x x

One such method was "different pricing schemes" wherein the prices given to supermarkets and grocery stores were considerably lower than those imposed on wholesalers. No prior advice thereof was given to [respondents] or any of the wholesalers. In fact, they only knew of it when their customers began complaining about the variation in prices of softdrinks sold in supermarkets and those that were sold by them. When in fact [respondent] Bernardo personally inspected the products in grocery stores, he discovered that a box of Coke-in-can is sold at ₱40.00, lower than those offered by them as wholesalers.

About the same time, [petitioner] also implemented the "Area Market Cooperatives" (AMC) and the "*Coke-Alok*" promo. Under the AMC, customers of wholesalers can purchase [petitioner's] products from prominent stores in heavily crowded areas for ₱76.00 per case, as opposed to [respondent's] offering of ₱112.00. In "*Coke-Alok,*" [petitioner] directly sold Coke products to wholesale customers with incentives as free bottle of Coke for every case of softdrinks purchased. Being of limited resources, [respondents had no] means to equal the lucrative incentives given by [petitioner] to their customers.

x x x x x x x x x

Apart from direct selling and other promotions, [petitioner] also employed high-handed means that further shrunk [respondents'] market coverage. In one instance, [petitioner's sales representative] advised [respondents] and other wholesalers to keep away from major

thoroughfares. Apparently, [petitioner] was going to supply their products to these stores themselves. x x x.

x x x x x x x x x

x x x Furthermore, one of [petitioner's] representatives, Nelson Pabulayan, admitted that he sold products at the canteen in V. Luna Hospital [which was then being serviced by respondents].

As if that was not enough, petitioner engaged other stores, such as Freezel's Bakeshop that was located adjacent to [respondent's] warehouse, to sell Coke products at a price substantially lower than [that offered by respondents].

**ISSUES**

Petitioner argues that the trial court had no jurisdiction to award temperate damages that were not prayed for in the Complaint. It further asserts that it did not violate Articles 19, 20, 21 or 28; hence, the award of damages and attorney's fees was improper.

**OUR RULING**

The CA did not err in affirming the finding that petitioner was liable for temperate, moral and exemplary damages, as well as attorney's fees, for abuse of rights and unfair competition.

***The Petition raises questions of fact.***

Petitioner ignores the nature of a petition for review as a remedy against errors of law. Instead, it raises factual matters that have already been passed upon by the RTC and the CA.

It insists on the following facts: 1) the "promotional activities" were implemented after the dealership agreements expired;[39] 2) the "developmental strategies" were implemented nationwide and were not meant to destroy the business of respondents;[40] 3) its agents did not follow the trucks of Jolly Beverages;[41]

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[39] *Id*. at 25.

[40] *Id*. at 26.

[41] *Id*. at 27.

4) the price difference resulted because respondents could no longer avail of trade discounts and incentives under the expired Agreement;[42] and 5) there is no causal connection between the promotional activities and the claimed losses of respondents.[43]

Petitioner contends that since it did not assign any exclusive territory to respondents, the latter had no exclusive right to any customer.[44] It supposedly decided to rely on its own sales personnel to push the sale of its products, because the distributors had violated the terms of their agreements by selling competing products, failing to meet the required sales volume, or failing to pay on time.[45] Petitioner, however, did not allege that respondents committed any of these actions during the existence of the agreement.

We have repeatedly held that factual findings of the trial court, especially when affirmed by the appellate court, are given great weight, even finality, by this Court.[46] Petitioner fails to make a convincing argument that this case falls under any of the exceptions to the rule. On the contrary, the Decisions of the RTC and the CA appear to be supported by the records.

Petitioner bewails the fact that the RTC and the CA, in establishing the facts, relied heavily on the testimony of respondent Jose Bernardo.[47] Petitioner, however, forgets that trial courts are in an ideal position to observe the demeanor of the witnesses and can therefore discern if the latter are telling the truth or not.[48] In this case, both the trial and the appellate

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[42] *Id*. at 28.

[43] *Id*. at 30.

[44] *Id*. at 25.

[45] *Id*. at 12-13.

[46] *Castillo v. CA*, 329 Phil. 150 (1996).

[47] *Rollo*, pp. 21, 26-27.

[48] *People v. Cabalhin y Daclitan,* G.R. No. 100204, 28 March 1994, 231 SCRA 486 citing *People v. Rodriguez y Teves,* 254 Phil. 763 (1989); *People v. Solares y Manaloto,* 255 Phil. 196 (1989).

courts found the testimonies of respondent Jose Bernardo and his witnesses more credible than those of the witnesses presented by petitioners. We shall not substitute our judgment for that of the trial court, absent any compelling reason.

***Petitioner is liable for damages for abuse of rights and unfair competition under the Civil Code.***

Both the RTC and the CA found that petitioner had employed oppressive and high-handed schemes to unjustly limit the market coverage and diminish the investment returns of respondents.[49] The CA summarized its findings as follows:[50]

> This [cut-throat competition] is precisely what appellant did in order to take over the market: directly sell its products to or deal them off to competing stores at a price substantially lower than those imposed on its wholesalers. As a result, the wholesalers suffered losses, and in [respondents'] case, laid off a number of employees and alienated the patronage of its major customers including small-scale stores.

It must be emphasized that petitioner is not only a beverage giant, but also the manufacturer of the products; hence, it sets the price. In addition, it took advantage of the information provided by respondents to facilitate its takeover of the latter's usual business area. Distributors like respondents, who had assisted petitioner in its marketing efforts, suddenly found themselves with fewer customers. Other distributors were left with no choice but to fold.[51]

Articles 19, 20, and 21 of the Civil Code provide the legal bedrock for the award of damages to a party who suffers damage whenever another person commits an act in violation of some legal provision; or an act which, though not constituting a

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[49] *Rollo*, pp. 56, 118.

[50] *Id*. at 54.

[51] Glicerio Oliveros, Jr. and Zenaida Flores testified that they had closed their stores because of business losses; see *id*. at 116.

transgression of positive law, nevertheless violates certain rudimentary rights of the party aggrieved.[52] The provisions read:

> Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
>
> Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.
>
> Art. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

In *Albenson Enterprises Corp. v. CA*,[53] this Court held that under any of the above provisions of law, an act that causes injury to another may be made the basis for an award of damages. As explained by this Court in *GF Equity, Inc. v. Valenzona*:[54]

> The exercise of a right ends when the right disappears, and it disappears when it is abused, especially to the prejudice of others. The mask of a right without the spirit of justice which gives it life is repugnant to the modern concept of social law. It cannot be said that a person exercises a right when he unnecessarily prejudices another or offends morals or good customs. Over and above the specific precepts of positive law are the supreme norms of justice which the law develops and which are expressed in three principles: *honeste vivere*, *alterum non laedere* and *jus suum quique tribuere;* and he who violates them violates the law. For this reason, it is not permissible to abuse our rights to prejudice others.

Meanwhile, the use of unjust, oppressive, or high-handed business methods resulting in unfair competition also gives a right of action to the injured party. Article 28 of the Civil Code provides:

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[52] *Carpio v. Valmonte*, 481 Phil. 352 (2004).

[53] G.R. No. 88694, 11 January 1993, 217 SCRA 16.

[54] 501 Phil. 153, 164-165 (2005) citing *De Guzman v. NLRC*, G.R. No. 90856, 23 July 1992, 211 SCRA 723 further citing Tolentino, *Civil Code of the Philippines*, Vol. 1, 61 (1990).

Art. 28. Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage.

Petitioner cites Tolentino, who in turn cited Colin and Capitant. According to the latter, the act of "a merchant [who] puts up a store near the store of another and in this way attracts some of the latter's patrons" is not an abuse of a right.[55] The scenario in the present case is vastly different: the merchant was also the producer who, with the use of a list provided by its distributor, knocked on the doors of the latter's customers and offered the products at a substantially lower price. Unsatisfied, the merchant even sold its products at a preferential rate to another store within the vicinity. Jurisprudence holds that when a person starts an opposing place of business, not for the sake of profit, but regardless of loss and for the sole purpose of driving a competitor out of business, in order to take advantage of the effects of a malevolent purpose, that person is guilty of a wanton wrong.[56]

***Temperate, moral, and exemplary damages, as well as attorney's fees, were properly awarded.***

Petitioner argues that the trial court did not have jurisdiction to grant an award of temperate damages, because respondents did not *specifically* pray for it in their Amended Complaint:

WHEREFORE, premises considered, it is most respectfully prayed that the Honorable Court render a judgment directing defendants to:

1. Pay plaintiffs the amount of ₱1,000,000.00 representing loss of goodwill nurtured over the past 13 years as actual damages.

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[55] *Rollo*, p. 30.

[56] *Willaware Products Corp. v. Jesichris Manufacturing Corp.*, G.R. No. 195549, 3 September 2014, 734 SCRA 238 citing Tolentino, *supra* note 54, p. 117.

2. Pay plaintiffs the amount of ₱200,000 representing moral damages.

3. Pay plaintiffs the amount of ₱100,000 representing exemplary damages.

4. Pay plaintiffs the amount of ₱100,000 representing attorney's fees.

Other reliefs which are just and equitable under the premises are also prayed for.

Petitioner's argument is flimsy and unsupported even by the cases it has cited.[57] The CA correctly ruled that the award of temperate damages was justified, even if it was not specifically prayed for, because 1) respondents did pray for the grant of "other reliefs," and 2) the award was clearly warranted under the circumstances. Indeed, the law permits judges to award a different kind of damages as an alternative to actual damages:

Civil Code, Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered ***when the court finds*** that some pecuniary loss has been

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[57] *Casent Realty v. Premiere Development Bank* (516 Phil. 219 [2006]) does not aid its cause. In that case, the trial court denied Casent Realty's Very Urgent Motion for Clarification regarding the functions of an independent auditor, but allowed the petitioner to file a manifestation that it was uninterested in having independent auditors assist the parties in arriving at an amicable settlement of the case, so that pre-trial would proceed. While this Court found that the order of the trial court was inconsistent with the allegations made in the motion, it held that there was no grave abuse of discretion.

The other case cited by petitioner, *Spouses Gonzaga v. CA* (483 Phil. 424 [2004]), is inapplicable. In that case, the petition was denied because of the failure of Spouses Gonzaga to file a cross-claim against a third party for the refund of a certain amount. The additional relief they asked from the court – the enforcement of the deed of conditional sale, the deed of final and absolute sale, and the memorandum of agreement executed by them and the third party – would be distinct from the relief they prayed for in their third-party complaint, which is for the payment of whatever would be adjudged against them for their occupation of the land. In this case, the trial court merely awarded an alternative kind of damages.

suffered but its amount can not, from the nature of the case, be provided with certainty. (Emphasis supplied)

Compensatory damages may be awarded in the *concept* of temperate damages for injury to business reputation or business standing, loss of goodwill, and loss of customers who shifted their patronage to competitors.[58]

It is not extraordinary for courts to award temperate damages in lieu of actual damages. In *Canada v. All Commodities Marketing Corporation*,[59] this Court awarded temperate damages in recognition of the pecuniary loss suffered, after finding that actual damages could not be awarded for lack of proof. In *Public Estates Authority v. Chu*,[60] this Court held that temperate damages should have been awarded by the trial court considering that the plaintiff therein had suffered some pecuniary loss.

In this case, both the RTC and the CA found that respondents had similarly suffered pecuniary loss by reason of petitioner's high-handed machinations to eliminate competition in the market.[61]

We see no grave error on the part of the RTC when it ruled that the unpaid obligation of respondents shall be offset against the temperate damages due them from petitioner.[62] However,

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[58] *RCPI v. CA*, 190 Phil. 1058 (1981).

[59] 590 Phil. 342 (2008).

[60] 507 Phil. 472 (2005).

[61] *Rollo*, p. 58.

[62] Petitioner never questioned this part of the RTC Decision pertaining to the offsetting (See *id.* at 121):

The Court is not unmindful of the undisputed fact that plaintiffs have an outstanding obligation with CCBPI in the amount of ₱449,154.00. However, record shows that said outstanding obligation was incurred by the plaintiffs at the time the afore-said marketing strategies were already employed by CCBPI and the wholesalers' grievances including that of the plaintiffs were already aired by them. Hence, it is not amiss to deduce that these obligations arose as a result of CCBPI's machinations leading to plaintiff's business reversals. The Court thus finds, as justice and fair play require, that plaintiff's

the trial court was not accurate in considering the ₱500,000 temperate damages as adequate to completely extinguish the obligation of respondents to petitioner.[63] We note that while the principal was ₱449,154, this amount earned legal interest from the time of demand. Nonetheless, in view of the established fact that respondents incurred the losses after their business was systematically crippled by petitioner, it is only proper and just that the obligation, as well as the legal interest that has accrued, be deemed totally compensated by the temperate damages. Therefore, respondents do not need to tender the amount of ₱449,154 plus legal interest to petitioner, while the latter does not have to tender any amount as temperate damages to the former.

With regard to moral damages, petitioner argues that respondents failed to provide satisfactory proof that the latter had undergone any suffering or injury.[64] This is a factual question that has been resolved by the trial court in a Decision affirmed by the CA. The award finds legal basis under Article 2219(10) of the Civil Code, which states that moral damages may be recovered in acts and actions referred to in Articles 21 and 28.[65]

Petitioner likewise questions the award of exemplary damages without "competent proof."[66] It cites *Spouses Villafuerte v. CA*[67] as basis for arguing that the CA should have based its Decision

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outstanding obligation be offset by the temperate damages CCBPI caused to plaintiffs and is held liable for as a consequence of its unfair marketing strategies.

[63] In order to effect total compensation under Article 1281 of the Civil Code, the two debts must be of the same amount.

[64] *Rollo*, pp. 22-23.

[65] Article 2219. Moral damages may be recovered in the following and analogous cases:

x x x x x x x x x

(10) Acts and actions referred to in Articles **21**, 26, 27, **28**, 29, 30, 32, 34, and 35.

[66] *Rollo*, p. 23.

[67] 498 Phil. 105 (2005).

regarding the fact and the amount of exemplary damages upon competent proof that respondents have suffered injury and upon evidence of the actual amount thereof. We enjoin petitioner's counsel to fully and carefully read the text of our decisions before citing them as authority.[68] The excerpt lifted pertains to compensatory damages, not exemplary damages. We remind counsel that exemplary damages are awarded under Article 2229 of the Civil Code by way of example or correction for the public good. The determination of the amount is left to the discretion of the judge; its proof is not incumbent upon the claimant.

There being no meritorious argument raised by petitioner, the award of exemplary damages must be sustained to caution powerful business owners against the use of oppressive and high-handed commercial strategies to target and trample on the rights of small business owners, who are striving to make a decent living.

Exemplary damages having been awarded, the grant of attorney's fees was therefore warranted.[69]

***Petitioner's counterclaims for moral and exemplary damages, as well as attorney's fees and litigation expenses, were properly denied.***

The counterclaim for the payment of ₱449,154 plus legal interest was effectively granted when the trial court offset the

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[68] Rule 10.2, Canon 10 of the Code of Professional Responsibility states:

Rule 10.02 - A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.

[69] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

x x x x x x x x x

See also *PhilTranco Service Enterprises, Inc. v. CA,* 340 Phil. 98 (1997); *Air France v. Carrascoso,* 124 Phil. 722 (1966).

temperate damages awarded to respondents against the outstanding obligation of the latter to petitioner.

The counterclaims for moral and exemplary damages, as well as attorney's fees and litigation expenses, had no basis and were properly denied. The fact that petitioner was compelled to engage the services of counsel in order to defend itself against the suit of respondents did not entitle it to attorney's fees.

According to petitioner, it is entitled to moral damages, because "respondents clearly acted in a vexatious manner when they instituted this suit."[70] We see nothing in the record to sustain this argument.

With respect to the prayer for exemplary damages, neither do we find any act of respondents that has to be deterred.

**WHEREFORE,** the Petition is **DENIED.** The Decision dated 23 July 2009 and Resolution dated 19 November 2009 rendered by the Court of Appeals in CA-G.R. CV No. 91096, which affirmed *in toto* the Decision dated 28 September 2007 issued by Regional Trial Court Branch 88 Quezon City in Civil Case No. Q-00-42320, are hereby **AFFIRMED** with **MODIFICATION** in that the damages awarded shall earn legal interest of 6% per annum from the date of finality of this Decision until its full satisfaction. The total compensation of respondents' unpaid obligation, including legal interest that has accrued, and the temperate damages awarded to them, is hereby upheld.

**SO ORDERED.**

*Leonardo-de Castro, Bersamin, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

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[70] *Rollo,* p. 33.

is **ORDERED** to pay petitioners Lorenzo Ching, Catherine Ching, Laurence Ching, and Christine Ching nominal damages in the amount of ₱25,000.00.

**SO ORDERED.**

*Sereno, C.J. (Chairperson), Bersamin, Perlas-Bernabe,* and *Caguioa, JJ.*, concur.

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**THIRD DIVISION**

[G.R. No. 204419. November 7, 2016]

**PEOPLE OF THE PHILIPPINES,** *petitioner, vs.* **HON. EDMAR P. CASTILLO, SR., as Presiding Judge of Branch 6, Regional Trial Court, Aparri, Cagayan and JEOFREY JIL RABINO *y* TALOZA,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE PETITION IS PROPER WHEN ANY TRIBUNAL, BOARD OR OFFICER EXERCISING JUDICIAL OR QUASI-JUDICIAL FUNCTIONS HAD ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, AND THERE IS NO APPEAL, NOR PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW FOR THE PURPOSE OF ANNULLING OR MODIFYING THE PROCEEDING.—** A petition for *certiorari* under Rule 65 of the Rules of Court is proper when (1) any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and (2) there is no appeal, nor plain, speedy and adequate remedy

in the ordinary course of law for the purpose of annulling or modifying the proceeding. Grave abuse of discretion exists when there is an arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or a whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross. On the other hand, a remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.

**2. ID.; ID.; ID.; THE GENERAL RULE IS THAT A PARTY IS MANDATED TO FOLLOW THE HIERARCHY OF THE COURTS EXCEPT FOR COMPELLING REASONS OR WHEN WARRANTED BY THE NATURE OF THE ISSUES RAISED; CASE AT BAR.—** The general rule is that a party is mandated to follow the hierarchy of courts. However, in exceptional cases, the Court, for compelling reasons or if warranted by the nature of the issues raised, may take cognizance of petitions filed directly before it. In this case, since the pivotal issue raised by petitioner involves an application of a rule promulgated by this Court in the exercise of its rule-making power under the Constitution regarding the jurisdiction of courts in the proper issuance of a search warrant, this Court deems it proper to resolve the present petition. x x x It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice. In certain cases, this Court even allowed private complainants to file petitions for *certiorari* and considered the said petitions as if filed by the Office of the Solicitor General. In *United Laboratories, Inc. v. Isip*, this Court ruled that an exception exists to the general rule that the proper party to file a petition in the CA or Supreme Court assailing any adverse order of the RTC in the search warrant proceedings is the People of the

Philippines, through the OSG, x x x Therefore, if this Court had previously considered the petitions filed by private complainants and deemed them as if filed by the Office of the Solicitor General, there is no reason to disallow the petition herein filed by the Assistant Provincial Prosecutor.

**3. ID.; CRIMINAL PROCEDURE; SEARCH WARRANT; REQUISITES FOR THE ISSUANCE OF A SEARCH WARRANT, CITED.—** The requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized. Necessarily, a motion to quash a search warrant may be based on grounds extrinsic of the search warrant, such as (1) the place searched or the property seized are not those specified or described in the search warrant; and (2) there is no probable cause for the issuance of the search warrant.

**4. ID.; ID.; ID.; A SEARCH WARRANT MAY BE ISSUED BY ANY COURT AND THE RESULTANT CASE MAY BE FILED IN ANOTHER COURT THAT HAS JURISDICTION OVER THE OFFENSE COMMITTED.—** This Court has provided rules to be followed in the application for a search warrant under Rule 126 of the Rules of Criminal Procedure x x x It must be noted that nothing in the above-quoted rule does it say that the court issuing a search warrant must also have jurisdiction over the offense. A search warrant may be issued by any court pursuant to Section 2, Rule 126 of the Rules of Court and the resultant case may be filed in another court that has jurisdiction over the offense committed. What controls here is that a search warrant is merely a process, generally issued by a court in the exercise of its ancillary jurisdiction, and not a criminal action to be entertained by a court pursuant to its original jurisdiction. Thus, in certain cases when no criminal action has yet been filed, any court may issue a search warrant even though it has no jurisdiction over the offense allegedly committed, provided that all the requirements for the issuance of such warrant are present.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioner.
*Catral Catral & Urani Law Offices* for private respondents.

**D E C I S I O N**

**PERALTA**,[*] ***J.*:**

This is to resolve the Petition for *Certiorari* under Rule 65 of the Rules of Court dated November 12, 2012 of petitioner People of the Philippines as represented by Second Assistant Provincial Prosecutor Carlos B. Sagucio, that seeks to reverse and set aside the Regional Trial Court's (*RTC, Branch 6, Aparri, Cagayan*) Joint Resolution[1] dated May 14, 2012 quashing Search Warrant No. 45 issued by the Municipal Trial Court (*MTC*) of Gattaran, Cagayan and eventually dismissing Criminal Case No. II-10881 against private respondent Jeofrey Jil Rabino *y* Taloza.

The facts follow.

On January 13, 2012, Judge Marcelo C. Cabalbag of the MTC of Gattaran, Cagayan issued Search Warrant No. 45, which reads, in part, as follows:

SEARCH AND SEIZURE ORDER

TO ANY OFFICER OF THE LAW:

It appearing to the satisfaction of the undersigned, after examining under oath SPO1 Ronel P. Saturno of the Regional Intelligence Division based at Regional Office 2, Camp Adduru, Tuguegarao City, the applicant herein, and his witness that there is probable cause to believe that a Violation [of] R.A. 9165 Comprehensive Dangerous Drug, has been and is being committed and there are good and sufficient reasons to believe that JOEFREY JIL RABINO @ JEFF/JEO, a resident of Rizal Street, Maura, Aparri, Cagayan has in his possession or control the following items, to wit:

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[*] Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

[1] Penned by respondent Judge Edmar P. Castillo, Sr., *rollo*, pp. 27-30.

SHABU (Methamphetamine and PARAPHERNALIAS

you are hereby ordered to make an immediate search at any time of the day or night but preferably at daytime at the afore-stated residential place of JEOFREY JIL RABINO @ JEFF/JEO and its premises and forthwith seize and take possession of the above-described items to immediately bring him, thereafter, to the undersigned to be dealt with in accordance with Section 12, Rule 126 of the December 1, 2000 Rules on Criminal Procedure.

WITNESS MY HAND and SEAL this 13th day of January 2012, at Gattaran, Cagayan.[2]

Thereafter, to effect the above Search and Seizure Order, a search was conducted by elements of the Philippine Drug Enforcement Agency (*PDEA*) and officers of the Philippine National Police (*PNP*) yielding one (1) sachet containing residue of suspected methamphetamine hydrochloride inside the house of private respondent Rabino located in Aparri, Cagayan. When the confiscated item was submitted to the Regional Crime Laboratory Office No. 2 of the PNP in Tuguegarao City for qualitative examination, the test gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug.[3]

Thus, an Information[4] dated January 15, 2012 was filed against private respondent Rabino for violation of Section 11 of Republic Act (*R.A.*) No. 9165, which reads as follows:

That on or about January 14, 2012, in the Municipality of Aparri, [P]rovince of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, without any legal authority thereof, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody one (1) big zip-lock transparent plastic sachet containing two (2) pieces of transparent plastic sachets containing white crystalline substance, one sachet with traces of said substance gave POSITIVE results to the tests for the presence of Methamphetamine Hydrochloride, commonly known as Shabu, a dangerous drug, while the other sachet gave negative

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[2] *Rollo*, p. 12.

[3] *Id*. at 13.

[4] *Id*. at 10.

results to said tests, the said accused knowing fully well and aware that it is prohibited for any person to possess or use any dangerous drug regardless of the quality of the purity thereof, unless authorized by law.

CONTRARY TO LAW.

Docketed as Criminal Case No. II-10881, the case was raffled to the RTC, Branch 6, Aparri, Cagayan, presided by respondent Judge Castillo.

Before the case was set for arraignment, or on March 13, 2012, private respondent Rabino filed a Motion to Quash Search Warrant and for Suppression of Illegally Acquired Evidence with the following grounds:

Search Warrant; Issuing Court must have territorial jurisdiction over the place to be searched; No compelling reason for MTC Gattaran to issue warrant

x x x x x x x x x

No probable cause to issue Search Warrant

x x x x x x x x x

No searching question elicited from deponent

x x x x x x x x x

No particularity in the places to be searched

x x x x x x x x x

Irregularity in the implementation of the search

x x x x x x x x x

Suppression of Evidence Just and Proper[5]

The RTC, through respondent Judge Castillo, granted the above motion in its Joint Resolution dated May 14, 2012, which partly reads as follows:

It is indubitable from the foregoing that the minimum penalty for illegal possession of methamphetamine hydrochloride or shabu is

[5] *Id*. at 16-20.

imprisonment of twelve (12) years and one (1) day to twenty (20) years, which penalty is way beyond imprisonment of six (6) years. A fortiori, MTC Gattaran did not have jurisdiction to entertain the application for and to issue Search Warrant No. 45. As such, Search Warrant No. 45 is null and void. [Corollary] thereto, all proceedings had in virtue thereof are likewise null and void.

With the foregoing conclusion, any further discussion on the grounds relied upon by the accused to buttress his motion and the opposition interposed by the public prosecutor are deemed mere surplusage.

WHEREFORE, in view of all the foregoing, the motion is GRANTED. Search Warrant No. 45 is hereby ordered QUASHED. Consequently, all evidence obtained in the execution of Search Warrant No. 45 are likewise ordered SUPPRESSED. There being no more evidence to support them, the Informations in the above-captioned cases are hereby dismissed.

SO ORDERED.[6]

Petitioner filed a motion for reconsideration, but it was denied by the same court in its Joint Order[7] dated September 24, 2012.

Hence, the present petition.

The issue and arguments raised by petitioner are as follows:

With all due respect, the assailed Resolution of May 14, 2012 was issued by respondent Judge Castillo with grave abuse of discretion amounting to lack of jurisdiction and/or is patently erroneous. It is respectfully submitted that the Municipal Trial Court of Gattaran, Cagayan has the authority to issue Search Warrant No. 45 earlier mentioned to search and seize the shabu stated therein in Aparri, Cagayan a place which is within the same second judicial region in violation of R.A. 9165, notwithstanding the fact that the power to hear and try the offense is within the exclusive jurisdiction of the Regional Trial Court.

Private respondent, on the other hand, in his Comment[8] dated January 25, 2016, claims that the petition was filed in violation

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[6] *Id*. at 29-30.

[7] *Id*. at 35-36.

[8] *Id*. at 75-82.

of the doctrine of hierarchy of courts. He also argues that the petition should have been filed by the State, through the Office of the Solicitor General, and not petitioner Second Assistant Provincial Prosecutor Carlos B. Sagucio. Lastly, private respondent insists that the petition does not show that the assailed Joint Resolution of the RTC was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

This Court finds merit to the petition.

Before proceeding with the discussion on the substantial issue raised in the petition, certain procedural issues have been pointed out by private respondent that need to be tackled. According to the private respondent, the petition for *certiorari* under Rule 65 filed by petitioner before this Court must be struck down as it violates the doctrine on hierarchy of courts. Private respondent further argues that petitioner did not provide any compelling reason that would merit the direct filing with this Court of a petition for *certiorari* under Rule 65. It is also averred that the petition should have been filed by the Office of the Solicitor General and not the Assistant Provincial Prosecutor because the petition is in the nature of an appeal and the former is vested with the power of representing the people before any court.

Rule 65 of the Rules of Court provides as follows:

> Section 1. Petition for *certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

A petition for *certiorari* under Rule 65 of the Rules of Court is proper when (1) any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and (2) there is no appeal, nor

plain, speedy and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding.[9] Grave abuse of discretion exists when there is an arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or a whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.[10] On the other hand, a remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency.[11] Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.[12]

The special civil action for *certiorari* is the proper recourse availed of by petitioner in questioning the quashal of the search warrant as the petition alleges grave abuse of discretion on the part of the judge that ordered the said quashal. In his allegation that the judge misapplied the rules on jurisdiction or on the proper courts authorized to issue a search warrant, petitioner has shown that the quashal of the search warrant was patently and grossly done. In any case, the Court had allowed even direct recourse to this Court[13] or to the Court of Appeals[14] via a special civil action for *certiorari* from a trial court's quashal of a search

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[9] *Ang Biat Huat Sons Industries, Inc. v. Court of Appeals*, 547 Phil. 588, 594 (2007).

[10] *Villanueva v. Porras-Gallardo*, G.R. No. 147688, July 10, 2006.

[11] *San Miguel Corporation v. Court of Appeals*, 425 Phil. 951, 956 (2002).

[12] *People of the Philippines v. Court of Appeals*, 468 Phil. 1, 10 (2004).

[13] See *Columbia Pictures, Inc. v. Flores*, G.R. No. 78631, June 29, 1993, 223 SCRA 761.

[14] See *Washington Distillers, Inc. v. Court of Appeals*, 329 Phil. 650 (1996); *20th Century 3Fox Film Corporation v. Court of Appeals*, Nos. 76649-51, August 19, 1988, 164 SCRA 655.

warrant.[15] The general rule is that a party is mandated to follow the hierarchy of courts. However, in exceptional cases, the Court, for compelling reasons or if warranted by the nature of the issues raised, may take cognizance of petitions filed directly before it.[16] In this case, since the pivotal issue raised by petitioner involves an application of a rule promulgated by this Court in the exercise of its rule-making power under the Constitution[17] regarding the jurisdiction of courts in the proper issuance of a search warrant, this Court deems it proper to resolve the present petition.

As such, even if the petitioner in this case, representing the People, is only the Assistant Provincial Prosecutor and not the Office of the Solicitor General, such technicality can be relaxed in the interest of justice. The Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided.[18] It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[19] In certain cases, this Court even allowed private complainants to file petitions for *certiorari* and considered the said petitions as if filed by the Office of the Solicitor General. In *United Laboratories, Inc. v. Isip*,[20] this Court ruled that an exception

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[15] *Santos v. Pryce Gases, Inc*., 563 Phil. 781, 796 (2007).

[16] *United Laboratories, Inc. v. Isip,* 500 Phil. 342, 359 (2005).

[17] Sec. 5, Art. VIII of the Constitution.

[18] *Buscaino v. Commission on Audit*, 369 Phil. 886, 900 (1999).

[19] *Aguam v. Court of Appeals*, G.R. No. 137672, May 31, 2000, 332 SCRA 784 (2000).

[20] *Supra* note 16.

exists to the general rule that the proper party to file a petition in the CA or Supreme Court assailing any adverse order of the RTC in the search warrant proceedings is the People of the Philippines, through the OSG, thus:

> The general rule is that the proper party to file a petition in the CA or Supreme Court to assail any adverse order of the RTC in the search warrant proceedings is the People of the Philippines, through the OSG. However, in *Columbia Pictures Entertainment, Inc. v. Court of Appeals*, the Court allowed a private corporation (the complainant in the RTC) to file a petition for certiorari, and considered the petition as one filed by the OSG. The Court in the said case even held that the petitioners therein could argue its case in lieu of the OSG:
>
> > From the records, it is clear that, as complainants, petitioners were involved in the proceedings which led to the issuance of Search Warrant No. 23. In *People v. Nano*, the Court declared that while the general rule is that it is only the Solicitor General who is authorized to bring or defend actions on behalf of the People or the Republic of the Philippines once the case is brought before this Court or the Court of Appeals, if there appears to be grave error committed by the judge or a lack of due process, the petition will be deemed filed by the private complainants therein as if it were filed by the Solicitor General. In line with this ruling, the Court gives this petition due course and will allow petitioners to argue their case against the questioned order in lieu of the Solicitor General.
>
> The general rule is that a party is mandated to follow the hierarchy of courts. However, in exceptional cases, the Court, for compelling reasons or if warranted by the nature of the issues raised, may take cognizance of petitions filed directly before it. In this case, the Court has opted to take cognizance of the petition, considering the nature of the issues raised by the parties.[21]

Therefore, if this Court had previously considered the petitions filed by private complainants and deemed them as if filed by the Office of the Solicitor General, there is no reason to disallow the petition herein filed by the Assistant Provincial Prosecutor.

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[21] *United Laboratories, Inc. v. Isip, et al., supra*, at 359. (Citations omitted).

Anent the main issue as to whether a municipal trial court has the authority to issue a search warrant involving an offense in which it has no jurisdiction, this Court answers in the affirmative.

Section 2, Article III of the Constitution provides:

> SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized.[22] Necessarily, a motion to quash a search warrant may be based on grounds extrinsic of the search warrant, such as (1) the place searched or the property seized are not those specified or described in the search warrant; and (2) there is no probable cause for the issuance of the search warrant.[23]

The respondent RTC judge, in this case, quashed the search warrant and eventually dismissed the case based merely on the fact that the search warrant was issued by the MTC of Gattaran, Cagayan proceeding from a suspected violation of R.A. 9165 or *The Dangerous Drugs Act*, an offense which is beyond the

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[22] *People v. Francisco*, 436 Phil. 383, 390 (2002).

[23] *Abuan v. People*, 536 Phil. 672, 692 (2006), citing *Franks v. State of Delaware*, 438 US 154, 98 S.Ct. 2674 (1978); *US v. Leon*, 468 US 897, 104 S.Ct. 3405 (1984); *US v. Mittelman*, 999 F.2d 440 (1993); *US v. Lee*, 540 F.2d 1205 (1976).

jurisdiction of the latter court. It is therefore safe to presume that the other grounds raised by the private respondent in his motion to quash are devoid of any merit. By that alone, the respondent judge gravely abused his discretion in quashing the search warrant on a basis other than the accepted grounds. It must be remembered that a search warrant is valid for as long as it has all the requisites set forth by the Constitution and must only be quashed when any of its elements are found to be wanting.

This Court has provided rules to be followed in the application for a search warrant. Rule 126 of the Rules of Criminal Procedure provides:

> Sec. 2. Court where application for search warrant shall be filed. – An application for search warrant shall be filed with the following:
>
> (a) Any court within whose territorial jurisdiction a crime was committed.
>
> (b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.
>
> However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending.

Apparently, in this case, the application for a search warrant was filed within the same judicial region where the crime was allegedly committed. For compelling reasons, the Municipal Trial Court of Gattaran, Cagayan has the authority to issue a search warrant to search and seize the dangerous drugs stated in the application thereof in Aparri, Cagayan, a place that is within the same judicial region. The fact that the search warrant was issued means that the MTC judge found probable cause to grant the said application after the latter was found by the same judge to have been filed for compelling reasons. Therefore, Sec. 2, Rule 126 of the Rules of Court was duly complied with.

It must be noted that nothing in the above-quoted rule does it say that the court issuing a search warrant must also have

jurisdiction over the offense. A search warrant may be issued by any court pursuant to Section 2, Rule 126 of the Rules of Court and the resultant case may be filed in another court that has jurisdiction over the offense committed. What controls here is that a search warrant is merely a process, generally issued by a court in the exercise of its ancillary jurisdiction, and not a criminal action to be entertained by a court pursuant to its original jurisdiction.[24] Thus, in certain cases when no criminal action has yet been filed, any court may issue a search warrant even though it has no jurisdiction over the offense allegedly committed, provided that all the requirements for the issuance of such warrant are present.

**WHEREFORE,** the Petition for *Certiorari* under Rule 65 of the Rules of Court, dated November 12, 2012, of petitioner People of the Philippines is **GRANTED.** Consequently, the Joint Resolution dated May 14, 2012 of the Regional Trial Court, Branch 6, Aparri, Cagayan, insofar as it quashed Search Warrant No. 45 issued by the Municipal Trial Court of Gattaran, Cagayan, is **REVERSED** and **SET ASIDE,** and Criminal Case No. II-10881 against private respondent Jeofrey Jil Rabino *y* Taloza is **REINSTATED**.

**SO ORDERED.**

*Perez, Reyes,* and *Jardeleza, JJ.,* concur.

*Velasco, Jr., J. (Chairperson),* on official leave.

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[24] *Macondray & Co., Inc. v. Bernabe, etc., et al.*, 67 Phil. 658 (1939); *Co Kim Cham v. Valdez Tan Keh, et al.*, 75 Phil. 113 (1945).

**FIRST DIVISION**

[G.R. No. 200150. November 7, 2016]

**CATHERINE CHING, LORENZO CHING, LAURENCE CHING, AND CHRISTINE CHING,** *petitioners, vs.* **QUEZON CITY SPORTS CLUB, INC.; MEMBERS OF THE BOARD OF DIRECTORS, NAMELY: ANTONIO T. CHUA, MARGARET MARY A. RODAS, ALEJANDRO G. YABUT, JR., ROBERT C. GAW, EDGARDO A. HO, ROMULO D. SALES, BIENVENIDO ALANO, AUGUSTO E. OROSA, AND THE FINANCE MANAGER, LOURDES RUTH M. LOPEZ,** *respondents.*

**SYLLABUS**

**1. MERCANTILE LAW; CORPORATION CODE; THE ARTICLES OF INCORPORATION AND BY-LAWS OF A COUNTRY CLUB ARE THE FUNDAMENTAL DOCUMENTS GOVERNING THE CONDUCT OF THE CORPORATE AFFAIRS OF SAID CLUB WHICH MUST BE STRICTLY COMPLIED WITH AND APPLIED TO THE LETTER.—**The Court had previously recognized in *Forest Hills Golf and Country Club, Inc. v. Gardpro, Inc.*,that articles of incorporation and by-laws of a country club are the fundamental documents governing the conduct of the corporate affairs of said club; they establish the norms of procedure for exercising rights, and reflected the purposes and intentions of the incorporators. The by-laws are the self-imposed rules resulting from the agreement between the country club and its members to conduct the corporate business in a particular way. In that sense, the by-laws are the private "statutes" by which the country club is regulated, and will function. Until repealed, the by-laws are the continuing rules for the government of the country club and its officers, the proper function being to regulate the transaction of the incidental business of the country club. The by-laws constitute a binding contract as between the country club and its members, and as among the members themselves. The by-laws are self-imposed private laws binding on all members, directors, and officers of the country club. The

prevailing rule is that the provisions of the articles of incorporation and the by-laws must be strictly complied with and applied to the letter.

**2. CIVIL LAW; CIVIL CODE; CONTRACTS; IN CONSTRUING AND APPLYING THE PROVISIONS OF THE ARTICLES OF INCORPORATION AND BY-LAWS OF THE COUNTRY CLUB, THE COURT SUSTAINED THE APPLICATION OF THE RULES ON INTERPRETATION OF CONTRACTS UNDER THE CIVIL CODE.—**In construing and applying the provisions of the articles of incorporation and by-laws of the country club, the Court, also in *Forest Hills,* sustained the application by the Court of Appeals therein of the rules on interpretation of contracts under Articles 1370 and 1374 of the Civil Code. The plain meaning rule embodied in Article 1370 of the Civil Code provides that if the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control; while Article 1374 of the Civil Code declares that "[t]he various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly." Verily, all stipulations of the contract are considered and the whole agreement is rendered valid and enforceable, instead of treating some provisions as superfluous, void, or inoperable.

**3. ID.; DAMAGES; MORAL DAMAGES; ELEMENTS TO SUSTAIN THE AWARD OF MORAL DAMAGES, CITED.—**The elements for the award of moral damages in a case are: (1) an injury clearly sustained by the claimant; (2) a culpable act or omission factually established; (3) a wrongful act or omission by the defendant as the proximate cause of the injury sustained by the claimant; and (4) the award of damages predicated on any of the cases stated in Article 2219 of the Civil Code. Also, the person claiming moral damages must prove the existence of bad faith by clear and convincing evidence, for the law always presumes good faith. It is not enough that one suffered sleepless nights, mental anguish, and serious anxiety as the result of the actuations of the other party. Invariably, such action must be shown to have been willfully done in bad faith or with ill motive. There being no clear and convincing evidence of respondents' bad faith in suspending petitioner Catherine's privileges in respondent Club nor in implementing

such suspension, petitioners are not entitled to moral damages. Since the basis for moral damages has not been established, there is no basis to recover exemplary damages and attorney's fees, as well.

4. **ID.; ID.; EXEMPLARY OR CORRECTIVE DAMAGES; THE PLAINTIFF MUST SHOW THAT HE IS ENTITLED TO MORAL, TEMPERATE OR COMPENSATORY DAMAGES BEFORE THE COURT MAY CONSIDER THE QUESTION OF WHETHER OR NOT EXEMPLARY DAMAGES SHOULD BE AWARDED.—** Under Article 2229 of the Civil Code, "[e]xemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." Article 2234 of the same Code further provides that "[w]hile the amount of the exemplary damages need not be proven, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded." Because petitioners herein failed to show that they are entitled to moral damages, then the Court cannot award exemplary damages.

5. **ID.; ID.; ATTORNEY'S FEES; ATTORNEY'S FEES ARE AWARDED ONLY IN THE INSTANCES AS SPECIFIED UNDER THE CIVIL CODE, AS SUCH, IT IS NECESSARY FOR THE COURT TO MAKE FINDINGS OF FACT AND LAW THAT WOULD BRING THE CASE WITHIN THE AMBIT OF THOSE ENUMERATED INSTANCES TO JUSTIFY THE GRANT OF SUCH AWARD, AND IN ALL CASES IT MUST BE REASONABLE.—**As regards the award of attorney's fees, it is well-settled that it is the exception rather than the general rule. Counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees, as part of damages, are awarded only in the instances specified in Article 2208 of

the Civil Code. As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable. None of the grounds stated in Article 2208 are present in the present case. As the Court held in *Asian Terminals, Inc. v. Allied Guarantee Insurance, Co., Inc.*, "[a]lthough attorney's fees may be awarded when a claimant is 'compelled to litigate with third persons or incur expenses to protect his interest' by reason of an unjustified act or omission on the part of the party from whom it is sought, but when there is a lack of findings on the amount to be awarded, and since there is no sufficient showing of bad faith in the defendant's refusal to pay other than an erroneous assertion of the righteousness of its cause, attorney's fees cannot be awarded against the latter."

**6. ID.; ID.; NOMINAL DAMAGES; THE CIVIL CODE AUTHORIZES THE AWARD OF NOMINAL DAMAGES TO A PLAINTIFF WHOSE RIGHT HAS BEEN VIOLATED OR INVADED BY THE DEFENDANT, FOR THE PURPOSE OF VINDICATING OR RECOGNIZING THAT RIGHT, NOT FOR INDEMNIFYING THE PLAINTIFF FOR ANY LOSS SUFFERED; CASE AT BAR.—** In all, there was no evidence that respondents acted in bad faith by particularly singling out petitioners, from among all other members of respondent Club who did not pay the assessment, to be harassed or humiliated. Considering that there was justifiable ground for the suspension of petitioner Catherine's privileges in respondent Club, but her right to due process was violated as she was not afforded notice and hearing prior to the suspension, the Court proceeds to determine the reliefs to which petitioners are entitled. x x x Article 2221 of the Civil Code authorizes the award of nominal damages to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, not for indemnifying the plaintiff for any loss suffered. The Court may also award nominal damages in every case where a property right has been invaded. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. For its failure to observe due process, as provided under Section 35 (a) of the By-Laws, in the suspension of petitioner Catherine's privileges, respondent Club is liable to pay petitioners nominal damages in the amount of

₱25,000.00. The Court clarifies that only respondent Club shall be liable for the nominal damages because in the absence of malice and bad faith, officers of a corporation cannot be made personally liable for the liabilities of the corporation which, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members.

**APPEARANCES OF COUNSEL**

*Stanlee D. Calma* for petitioners.

*Librojo and Associates Law Offices* for respondents Chua, Rodas, Yabut & Gaw.

*Rizalena V. Lumbera* for respondents Quezon City Sports Club, *etc., et al.*

**D E C I S I O N**

**LEONARDO-DE CASTRO, *J.*:**

Assailed before the Court under Rule 45 of the Rules of Court is the Decision[1] dated June 27, 2011 in CA-G.R. CV No. 92293 of the Court of Appeals, which reversed and set aside the Decision[2] dated May 23, 2008 of the Regional Trial Court (RTC) of Quezon City, Branch 223, in Civil Case No. Q-03-50022; and ordered the dismissal of the Complaint for Damages of petitioners, spouses Lorenzo (Lorenzo) and Catherine (Catherine) Ching and their children Laurence and Christine Ching, against respondents, Quezon City Sports Club, Inc. (Club); the Board of Directors (BOD) of respondent Club, namely, Antonio T. Chua (Chua), Margaret Mary A. Rodas, Alejandro G. Yabut, Jr., Robert C. Gaw, Edgardo A. Ho (Ho), Romulo D. Sales, Bienvenido Alano, and Augusto E. Orosa; and the Finance Manager of respondent Club, Lourdes Ruth M. Lopez (Lopez). The RTC directed respondents to jointly and severally pay

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[1] *Rollo*, pp. 36-51; penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino concurring.

[2] *Id*. at 55-71; penned by Presiding Judge Ramon A. Cruz.

petitioners ₱200,000.00 as moral damages, ₱50,000.00 as exemplary damages, ₱50,000.00 as attorney's fees; and costs of suit.

Respondent Club is a duly registered domestic corporation providing recreational activities, sports facilities, and exclusive privileges and services to its members.

Petitioner Catherine became a member and regular patron of respondent Club in 1989. Per policy of respondent Club, petitioner Catherine's membership privileges were extended to immediate family members.

On June 15, 1999, the National Labor Relations Commission (NLRC) rendered a Decision in NLRC NCR Case No. 00-07-06219, ordering respondent Club to pay backwages, 13th and 14th month pay, and allowances to six illegally dismissed employees. The successive appeals of respondent Club to the Court of Appeals and this Court were unsuccessful, and the judgment for illegal dismissal against respondent Club became final and executory. As a result, an *alias* writ of execution of said judgment was served on respondent Club on September 19, 2001 for the total amount of ₱4,433,550.00.

Because respondent Club was not in a financial position to pay the monetary awards in NLRC NCR Case No. 00-07-06219, respondent BOD approved on September 20, 2001 Board Resolution No. 7-2001,[3] entitled "*Special Assessment for Club Members in Relation to the Marie Rose Navarro, et al. v. QCSI, et al. Case*," resolving to "seek the assistance of its members by assessing each member the amount of TWO THOUSAND FIVE HUNDRED PESOS (₱2,500.00) payable in five (5) equal monthly payments starting the month of September 2001."

Petitioner Catherine was duly notified of the implementation of the special assessment through a Letter[4] dated September 25, 2001 from the Treasurer of respondent Club. The amount of ₱500.00 was debited and/or charged to Catherine's account each month from September 2001 to January 2002, as reflected

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[3] Records, Volume 1, pp. 413-414.

[4] *Id*. at 8-9.

in the Statements of Account[5] issued by respondent Club. Each Statement of Account sent by respondent Club to petitioner Catherine included a general notice, quoted below:

> (*) This statement is rendered as of the above date and shall be deemed correct if no discrepancy is reported within ten (10) days from receipt hereof.
>
> (*) Accounts which are past due for 60 days and the amount is over Php20,000.00 will be automatically suspended.
>
> (*) Accounts that are 75 days in arrears will be automatically suspended regardless of amount.
>
> (*) Over the counter (OTC) payments are now accepted at 27 Asiatrust Banks branches Metro Manila wide.[6]

Petitioner Catherine believed that the imposition of the special assessment in Board Resolution No. 7-2001 was unjust and/or illegal, however, she took no action against the same. Petitioner Catherine simply avoided paying the special assessment by settling the amounts due in her Statements of Account from September 2001 to January 2002 short of ₱500.00.[7]

Respondent BOD then passed Board Resolution No. 3-2002 on April 18, 2002 which suspended the privileges of the members of respondent Club who had not yet paid the special assessment, thus:

> As per report of the Finance Manager, 80% of the active/assessed members paid the special assessment while 20% have not yet [paid] their shares.
>
> To fully enforce Board Resolution No. 7-2001 and in order to be fair with the other members who have already paid, the Board deemed it appropriate to suspend the privileges of those members who would continue not to pay the said special assessment despite receipt of the demand to do so.[8]

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[5] Records, Volume 2, pp. 582-596.

[6] *Id*. at 584, 587, 590, 593, and 596.

[7] *Id*.

[8] Records, Volume 1, p. 10.

Petitioner Catherine continued availing herself of the services of respondent Club and regularly paid the amounts due in her Statements of Account from February 2002 to May 2003, but always leaving behind a balance of more or less ₱2,500.00.[9] Petitioner Catherine was not personally informed of Board Resolution No. 3-2002 nor advised that she was already deemed delinquent in the payment of any other Statements of Account.

On May 22, 2003, petitioner Laurence went to respondent Club intending to avail himself of its services using the account of his mother, petitioner Catherine. Respondent Club refused to accommodate petitioner Laurence because his mother's membership privileges had been suspended. The following day, May 23, 2003, petitioner Catherine went to respondent Club to verify the suspension of her membership privileges. Respondent Lopez, the Finance Manager of respondent Club, gave petitioner Catherine copies of Board Resolution Nos. 7-2001 and 3-2002. Petitioner Catherine also noticed during said visit that her name was included and highlighted in respondent Lopez's Memorandum dated May 22, 2003 addressed to "All Outlets" with the subject matter of "Suspended Members Due to Non-Payment of ₱2,500.00 Special Assessment," copies of which were posted at the workstations of the employees of respondent Club and in other conspicuous places within the premises of respondent Club.[10]

Petitioner Catherine, through counsel, sent respondents a letter dated May 24, 2003 demanding the immediate recall of the suspension of her membership privileges, an explanation why she should not file a case for damages against respondents, and an apology for besmirching her name and good reputation.[11] Respondents, also through counsel, replied in a letter dated May 29, 2003 pointing out that respondent Club had never besmirched the reputation of any of its members in its 20 years of existence; that petitioner Catherine herself admitted that she

[9] *Id*. at 38-58.

[10] *Id*. at 12-13.

[11] *Id*. at 11.

had failed to pay the ₱2,500.00 special assessment fee; and that the list of suspended members who failed to pay the special assessment fee was never posted but was given to the members concerned.[12]

Meanwhile, so she can avail herself of the services of respondent Club, petitioner Catherine registered as a guest of either her husband, petitioner Lorenzo, or her other daughter, Noelle Ching (Noelle). Consequently, petitioner Catherine was paying more than double her customary fees to enjoy the services of respondent Club.

On July 7, 2003, petitioners instituted before the RTC a Complaint for damages against respondents, based on Articles 19, 20, and 21 of the Civil Code.[13] Petitioners prayed for the following reliefs:

> Wherefore, it is respectfully prayed that after due hearing, judgment be rendered against the [respondents] ordering them to reinstate the membership of [petitioner] Catherine Ching with the Quezon City Sports Club, Inc., and ordering [respondents] to:
>
> a. Refund the amount of ₱1,822.80 incurred by [petitioners] as a consequence of the illegal suspension of the membership of Catherine Ching;
>
> b. Pay to [petitioners] the amount of Two Million Pesos (₱2,000,000.00) as moral damages;
>
> c. Pay to [petitioners] the amount of Two Hundred Thousand Pesos (₱200,000.00) as attorney's fees and ₱2,500.00 per court appearance;

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[12] *Id*. at 14.

[13] Articles 19, 20, and 21 of the Civil Code states:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

d. Pay exemplary damages for ₱50,000.00 or in such amount as may be determined by the Honorable Court; and

e. Pay the costs of the suit.[14]

Respondents filed their separate Answers with Counterclaims, seeking the dismissal of petitioners' Complaint and payment of moral damages, exemplary damages, and attorney's fees.

During trial, petitioners Catherine and Lorenzo[15] and Roland Dacut[16] (Dacut), an employee of respondent Club and petitioner Catherine's regular tennis trainer for 10 years, all took the witness stand. All documentary exhibits formally offered by petitioners were admitted by the RTC in its Order[17] dated November 21, 2005.

It was revealed during trial that a few days after the filing of the Complaint, petitioner Catherine was refused access to respondent Club, even as a mere guest of her daughter Noelle. Apparently, respondents "disapproved" Noelle's letter dated July 8, 2003 extending her membership privileges at respondent Club to her mother, petitioner Catherine, and other immediate family members.[18] To lift the suspension of her membership privileges, petitioner Catherine finally paid "under protest" the special assessment of ₱2,500.00 on July 13, 2003.[19]

Petitioner Catherine lamented that even though she had already paid the special assessment, respondents continued harassing her when she was at respondent Club. Every time petitioner Catherine went to respondent Club, a security guard would unusually monitor her movements and activities. Dacut was also directed by the management of respondent Club to stop playing with petitioner Catherine or other members of her family.[20]

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[14] Records, Volume 1, p. 6.

[15] TSN, July 21, 2005, July 28, 2005, and September 29, 2005.

[16] TSN, October 13, 2005.

[17] Records, Volume 1, p. 305.

[18] *Id.* at 265.

[19] *Id.* at 267.

[20] TSN, October 13, 2005, p. 9.

Petitioners also filed a Manifestation on January 22, 2007 informing the RTC that on September 21, 2006, respondent BOD issued Board Resolution No. 10-2006,[21] in which they resolved to expel petitioner Catherine as a regular member of respondent Club due to her filing of the civil suit against respondents. Petitioner Catherine received a notice of her expulsion on November 20, 2006.[22] Petitioner Catherine's expulsion from respondent Club became the subject matter of another case before the RTC.

Respondents, for their part, presented the testimonies of respondent Lopez,[23] Finance Manager; respondent Ho,[24] BOD member; and Karen Layug,[25] Human Resources Department Manager, all of respondent Club. The RTC, in its Order[26] dated

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[21] Records, Volume 1, pp. 345-348. The board resolution reads:

WHEREAS, a letter-complaint dated 6 May 2006 was submitted by Director Edgardo A. Ho to the Board of Directors calling for the imposition of disciplinary action on Catherine Ching for allegedly committing an act inimical to the interest of the Club, namely, filing a case against the Club, which resulted to (a) exposing the Club to unnecessary expenses; (b) constraining Director Ho to go to court in order to defend the Club and to prove his counter-claim.

WHEREAS, the House Committee sent a [M]emorandum dated 15 June 2006 to Catherine Ching directing her to submit her explanation.

WHEREAS, a letter-explanation dated 27 June 2006 was submitted by Catherine Ching alleging that she merely exercising her legal right when she filed the civil case against the Club because she was suspended by the Club for no apparent reason.

WHEREAS, on 21 September 2006, the members of the Board of Directors deliberated on administrative case of Catherine Ching and after thoroughly discussing its merits, unanimously voted for her expulsion.

WHEREAS, the House Committee is hereby authorized to issue the notice of expulsion to Catherine Ching.

[22] *Id*. at 346-348.

[23] TSN, December 8, 2005.

[24] TSN, January 26, 2006.

[25] TSN, September 5, 2007.

[26] Records, Volume 1, p. 425.

July 10, 2007, admitted all the documentary evidence formally offered by respondents.

The RTC rendered its Decision on May 23, 2008. The RTC, based on the "Business Judgment Rule" and *Philippine Stock Exchange, Inc. v. Court of Appeals*,[27] held that questions of policy and management are left to the honest decision of the officers and directors of a corporation; and the courts are without authority to substitute their judgment for that of the BOD unless said judgment had been attended with bad faith. The RTC found no evidence of bad faith on the part of respondents in adopting Board Resolution No. 7-2001 on September 20, 2001, imposing the special assessment of ₱2,500.00 on all members of respondent Club. Respondent Club was forced to adopt said Board Resolution because it was not in a financial capacity to pay the judgment in NLRC NCR Case No. 00-07-06219. The special assessment was reasonable and fair in order to save respondent Club from the execution of the *alias* writ of execution.

The RTC pointed out petitioner Catherine's admission in the Pre-Trial Order dated July 26, 2005 that she was aware of the issuance of Board Resolution No. 7-2001. Petitioner Catherine's silence and/or failure to immediately challenge the validity of said Board Resolution could only be construed as her assent to the same and/or waiver of her right to question its propriety.

The RTC though ruled that respondents failed to comply with the By-Laws of respondent Club when they suspended petitioner Catherine's privileges. According to the trial court:

> Section 35 of the By-laws of the [respondent] Club provides the grounds and the procedure for the suspension and/or expulsion of a member. A member maybe suspended or expelled if he or she violates the By-laws, rules, regulations, resolution and orders duly promulgated by the Board of Directors or for an act, which in the opinion of the board, are serious or prejudicial to the Club. In either case however, a suspension or expulsion comes after proper notice and hearing. It could be for this reason why Board Resolution [No.] 3-2002 required

[27] 346 Phil. 218, 234 (1997).

"receipt of a demand" upon a member before his privileges are suspended. Here, it appears that the privileges of [petitioners] were suspended without notice or demand having been issued to [petitioner] Catherine to pay the special assessment and if she fails her privileges and that of her dependents will be suspended. True it is that the statement of account contains a reminder that an account which is more than seventy-five (75) days in arrears, regardless of the amount, will be suspended but the Statements of Account, offered in evidence by [respondents] were for other expenses and billings incurred by [petitioners] such as Sports and Recreation Chits (CHH), Charge Account Slip Chits (CHC), Beauty Parlor Chits (CBP), Reflexology Chits (RC), Restaurant Chits (CHR), Monthly Dues (MD) and Locker Rental (LR), and none containing a demand for the payment for the special assessment. There could be some other Statements of Account but these were not formally offered and since they were not offered the Court will not consider them as such. Needless to state, the Statements of Account forming part of the [respondents'] evidence do not prove demand upon the [petitioners] to pay for the Special Assessment before their privileges can be suspended. True also that [petitioner] Catherine admitted during the Pre-trial Conference of her being aware of the billings for the special assessment but this admission is vague as to the time when she came to know of these billings partaking of a demand.[28]

In addition, the RTC adjudged that respondents acted in bad faith or with malice in continuing to deprive petitioner Catherine her membership privileges even after she had already paid the special assessment, thus:

The [c]ourt finds no reason to doubt the testimony of Roland Dacut. It gains weight because he has no reason to testify particularly against his employer whom he has served for twenty (20) years. His testimony establishes [respondent] Chua's deliberate intention to deny the [petitioners] of their privilege of playing tennis at the [respondent] Club despite their membership. This deliberate intention is further established by Roland Dacut's testimony that everytime [petitioner] Catherine would come to the [respondent] Club the security guards would monitor her moves or activities by following where she would go. The [c]ourt is appalled by these actions because at the time he

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[28] *Rollo*, pp. 65-66.

was directed to stop playing with the [petitioners] sometime around August or September of 2004, [petitioner] Catherine's membership with the [respondent] Club has already been reinstated when she paid the special assessment in July 2003. [Respondent] Club's action in depriving [petitioners] of their privileges are certainly not consistent with good faith. [Respondents'] violation of their By-laws coupled by their acts of depriving the [petitioners] of their privileges despite their reinstatement in July 2003 thus would entitle them for the damages they claim. [Petitioners'] evidence while not preponderant to support the invalidity of Board Resolution No. 7-2001 however are strong enough to prove violation of the Club's By-laws where [petitioners] were immediately suspended without notice and hearing and for their continuous act of depriving them of their privilege as members of the [respondent] Club.[29] (Citations omitted.)

The RTC decreed in the end:

WHEREFORE, on the basis of the foregoing, judgment is hereby rendered in favor of [petitioners] (a) DIRECTING all the [respondents], jointly and severally to pay the [petitioners] moral damages in the amount of two hundred thousand pesos (₱200,000.00), Philippine Currency; (b) DIRECTING all the [respondents], jointly and severally to pay the [petitioners] the amount of fifty thousand pesos (₱50,000.00), Philippine Currency as exemplary damages; (c) DIRECTING all the [respondents], jointly and severally to pay the [petitioners] the amount of fifty thousand pesos (₱50,000.00), Philippine Currency as and by way of attorney's fees; and (d) to pay the costs of the suit.[30]

Respondents filed a Motion for Reconsideration of the foregoing RTC judgment, attaching certified true copies of petitioner Catherine's Statements of Account issued by respondent Club from September 2001 to January 2002, which included the ₱500.00 monthly installment charges for the special assessment. In an Order[31] dated September 24, 2008, the RTC denied the Motion for Reconsideration of respondents.

Respondents appealed before the Court of Appeals.

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[29] *Id*. at 68-69.

[30] *Id*. at 70-71.

[31] Records, Volume 2, p. 612.

In its Decision dated June 27, 2011, the Court of Appeals narrowed down the pivotal issue for its resolution to whether or not respondents are liable to pay petitioners moral and exemplary damages, attorney's fees, and costs of suit for (a) suspending petitioner Catherine's membership privileges without prior notice as required by the By-Laws of respondent Club; and (b) posting the Memorandum dated May 22, 2003 within the premises of respondent Club.

The Court of Appeals ruled in favor of respondents.

The Court of Appeals determined that Section 33(a) of the By-Laws of respondent Club on the "Billing of Members, Posting of Suspended Accounts" applied to petitioners' case, instead of Section 35 of the same By-Laws on "Suspension and Expulsion;" and the former allowed automatic suspension of a member's privileges after notice, but with no need for a hearing. The appellate court reasoned:

> The fact that there is a separate provision in the Club's By-Laws specifically dealing with suspension due to non-payment of accounts negates [petitioners'] claim that Catherine's suspension may only be implemented upon proper notice and hearing. As testified to by the Club's Finance Manager and admitted by Catherine during the pre-trial, the Club's policy on the suspension of accounts was implemented on the basis of the following annotations found in the monthly Statement of Account, to wit:
>
> * * * * NOTICE * * * *
>
> (*) This statement is rendered as of the above date and shall be deemed correct if no discrepancy is reported within ten (10) days from receipt hereof.
>
> (*) **Accounts which are past due for 60 days and the amount is over Php 20,000.00 will be automatically suspended.**
>
> (*) **Accounts that are 75 days in arrears will be automatically suspended regardless of amount.**
>
> x x x x x x x x x
>
> While the Club's Treasurer was previously required to notify the member that if his bill is not paid in full by the end of the same

month, his name will be posted as suspended the following day, it is apparent that the policy of the club regarding non-payment of accounts was changed into automatic suspension, depending on the amount and length of time that the bill remains unpaid. However, the current policy appears to be beneficial to the members since they are granted an extension of 60 or 75 days, as the case may be, within which to settle their outstanding obligations before their accounts may be suspended.

At any rate, We find that the monthly Statements of Account (Statements) sent to Catherine should be considered as sufficient notice of suspension. An examination of Catherine's Statements for the months of September to December 2001 and January 2002 show that she was billed for the special assessment in the amount of ₱500.00 and was reflected therein as "SAL-02", "SAL-03", "SAL-04", and "SAL-05". Catherine cannot feign ignorance of this fact in view of her admission, *viz*.: (1) her Statements clearly indicate that accounts that are 75 days in arrears will be automatically suspended; (2) she was billed for the ₱2,500.00 special assessment from September 2001 to January 2002; and (3) the special assessment remained unpaid for 1 year and 4 months. In addition, the amount of the special assessment, together with the penalties for non-payment thereof, were written in the box with the heading "OVER 60 DAYS" in her subsequent Statements. In view of the foregoing, the Club correctly suspended Catherine's account considering that the special assessment remained unpaid for more than 75 days.

Be that as it may, the court *a quo* ruled that the entries with the code "SAL" do not appear in the Statements which were formally offered by [respondents]. Indeed, a formal offer is necessary, since judges are required to base their findings of fact and their judgment solely and strictly upon the evidence offered by the parties at the trial. In the case at bar, it appears that while [respondents] Alano, Ho, and Lopez attached the pertinent pages of Catherine's Statements (September 2001 to January 2002) which contain the entries "SAL" to their Answer, they failed to include these pages to the Statements which they formally offered in evidence. However, a scrutiny of the Statements attached to their Answer reveals that they form an integral part of the Statements formally offered in evidence. More importantly, the offer of the Statements attached to their Answer would be a mere superfluity since Catherine had already admitted that she was aware that she was billed for the

₱2,500.00 special assessment from September 2001 to January 2002.[32] (Citations omitted.)

The Court of Appeals also found no bad faith or intent to injure/humiliate on the part of respondents, considering that: (a) the suspension of petitioner Catherine's privileges was in accordance with the By-Laws and policy of respondent Club; (b) despite petitioner Catherine's failure to pay the special assessment charged against her from September 2001 to January 2002, and the approval on April 18, 2002 of Board Resolution No. 3-2002 which suspended the privileges of members of respondent Club who had not paid the special assessment, petitioner Catherine's privileges were not actually suspended until respondent Lopez issued her Memorandum dated May 22, 2003: (c) billing clerks and attendants were furnished copies of respondent Lopez's Memorandum dated May 22, 2003 for their guidance or reference since it was their duty to check the status of a member's account, and if they wrongfully accommodated a suspended member, then the charges incurred by said member would be automatically deducted from their salaries; (d) copies of respondent Lopez's Memorandum dated May 22, 2003 were posted in the billing clerks' cubicles and there was no proof that copies of said Memorandum were posted in conspicuous places within the premises of respondent Club; and (e) there was likewise no evidence that respondents instructed or authorized the billing clerks to post copies of respondent Lopez's Memorandum dated May 22, 2003 in their cubicles and to highlight petitioner Catherine's name. Hence, there was no basis for awarding moral and exemplary damages, attorney's fees, and costs of suit in petitioners' favor.

To the Court of Appeals, Dacut's testimony that they were instructed by the management of respondent Club to avoid petitioners was hearsay, as the instructions were merely relayed to him by Sonny Torres (Torres), a tennis attendant. Dacut had no personal knowledge as to whether respondents had in fact directed Torres to give such an instruction to the trainers.

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[32] *Rollo*, pp. 43-45.

Although hearsay evidence could be admitted due to the lack of objection to the same, as what happened in this case, it was still without probative value.

Lastly, the Court of Appeals denied the counterclaims for damages of respondents. Respondents failed to establish that petitioners were moved by bad faith or malice in impleading the respondent BOD in the case *a quo*. In the absence of a wrongful act or omission, or of fraud or bad faith on petitioners' part, moral damages could not be awarded; and without moral damages, then there was no basis to award exemplary damages and attorney's fees.

The dispositive portion of the Decision of the appellate court reads:

> ***WHEREFORE,*** the Decision dated May 23, 2008 of the Regional Trial Court of Quezon City, Branch 223, in Civil Case No. Q-03-50022, is hereby ***REVERSED*** and ***SET ASIDE***. [Petitioners'] Complaint is hereby ***DISMISSED*** for lack of merit.[33]

Petitioners' Motion for Reconsideration was denied by the Court of Appeals in its Resolution[34] dated January 12, 2012.

Hence, petitioners filed the instant Petition with the following assignment of errors:

I

THE COURT OF APPEALS ERRED IN RULING THAT THE SUSPENSION OF CATHERINE CHING IN NOT PAYING THE SPECIAL ASSESSMENT PURSUANT TO A BOARD RESOLUTION CAN BE MADE UNDER ARTICLE 33 OF THE BY-LAWS OF THE CLUB.

II

THE COURT OF APPEALS ERRED IN RULING THAT THERE WAS NO BAD FAITH OR INTENT TO INJURE OR HUMILIATE IN THE POSTING AND HIGHLIGHTING OF THE NAME OF

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[33] *Id*. at 50.

[34] *Id*. at 53-54.

CATHERINE CHING IN THE MEMORANDUM CONTAINING THE LIST OF SUSPENDED MEMBERS.

III

THE COURT OF APPEALS ERRED IN RULING THAT THE TESTIMONY OF ROLAND DACUT IS HEARSAY.[35]

Preliminarily, the Court notes that this Petition does not question the imposition of the special assessment of ₱2,500.00 upon the members of respondent Club under Board Resolution No. 7-2001. It also does not challenge petitioner Catherine's eventual expulsion from respondent Club on November 20, 2006, which is the subject matter of another case.

The instant Petition assails the manner by which respondents suspended petitioner Catherine's membership privileges at respondent Club. It was allegedly done in violation of petitioners' right to due process and with ill motive and in bad faith, causing damage to petitioners.

The Petition is partly meritorious.

The following facts are undisputed: (1) respondent BOD approved Board Resolution No. 7-2001 on September 20, 2001 imposing the special assessment of ₱2,500.00 upon every member of the respondent Club, payable in five monthly installments of ₱500.00, to raise the payment for the monetary judgment against respondent Club in NLRC NCR Case No. 00-07-06219; (2) petitioner Catherine was charged the ₱500.00 monthly installment for the special assessment in her Statements of Account from September 2001 to January 2002, but she did not pay any of them; (3) petitioner Catherine was continually charged the total of ₱2,500.00 special assessment in her Statements of Account from February 2002 to May 2003, which she still did not pay; (4) petitioner Catherine received all the said Statements of Account; (5) by virtue of Board Resolution No. 3-2002, passed by respondent BOD on April 18, 2002, and respondent Lopez's Memorandum dated May 22, 2003,

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[35] *Id*. at 15.

the membership privileges of members of respondent Club who did not pay the special assessment, which included petitioner Catherine, were suspended; (6) petitioner Catherine paid the ₱2,500.00 special assessment only on July 13, 2003, after her membership privileges were already suspended.

Petitioners, on one hand, maintain that petitioner Catherine's nonpayment of the special assessment of ₱2,500.00 was a violation of a resolution of the respondent Board, to which Section 35(a) of the By-Laws of respondent Club — requiring notice and hearing prior to the member's suspension — should have applied:

> SUSPENSION AND EXPULSION
>
> Sec. 35. (a) For violating these By-Laws or rules and regulations of the Club, or **resolution** and orders duly promulgated at Board or stockholders' meeting, or for any other causes and acts of a member which in the opinion of the Board are serious or prejudicial to the Club such as acts or conduct of a member or the immediate members of his family, his guest or visitors, which the Board may deem disorderly or injurious to the interest or hostile to the objects of the Club, the offending member may be suspended, or expelled by a two-thirds (2/3) vote of the Board of Directors **upon proper notice and hearing**.[36] (Emphases supplied.)

Respondents, on the other hand, invoke Section 33(a) of the By-Laws of respondent Club, which allows the suspension of a member with unpaid bills after notice:

> Sec. 33. (a) Billing of Members, Posting of Suspended Accounts— As soon as possible after the end of every month, a statement showing the account or bill of a member for said month will be prepared and sent to them. If the bill of any regular member **remains unpaid** by the 20th of the month following that in which the bill was incurred, the **Treasurer shall notify him**

[36] Records, Volume 1, pp. 296-297.

> that if his bill is not paid in full by the end of the same month, his name will be posted as suspended the following day at the Clubhouse Bulletin Board. While posted, a regular member together with the immediate members of his family may not use the facilities or avail of the privileges of the Club.[37] (Emphases supplied.)

The Court had previously recognized in *Forest Hills Golf and Country Club, Inc. v. Gardpro, Inc.*,[38] that articles of incorporation and by-laws of a country club are the fundamental documents governing the conduct of the corporate affairs of said club; they establish the norms of procedure for exercising rights, and reflected the purposes and intentions of the incorporators. The by-laws are the self-imposed rules resulting from the agreement between the country club and its members to conduct the corporate business in a particular way. In that sense, the by-laws are the private "statutes" by which the country club is regulated, and will function. Until repealed, the by-laws are the continuing rules for the government of the country club and its officers, the proper function being to regulate the transaction of the incidental business of the country club. The by-laws constitute a binding contract as between the country club and its members, and as among the members themselves. The by-laws are self-imposed private laws binding on all members, directors, and officers of the country club. The prevailing rule is that the provisions of the articles of incorporation and the by-laws must be strictly complied with and applied to the letter.

In construing and applying the provisions of the articles of incorporation and by-laws of the country club, the Court, also in *Forest Hills*, sustained the application by the Court of Appeals therein of the rules on interpretation of contracts under Articles 1370 and 1374 of the Civil Code. The plain meaning rule embodied in Article 1370 of the Civil Code provides that if the

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[37] *Id.* at 295.

[38] G.R. No. 164686, October 22, 2014, 739 SCRA 28, 42-43.

terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control; while Article 1374 of the Civil Code declares that "[t]he various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly." Verily, all stipulations of the contract are considered and the whole agreement is rendered valid and enforceable, instead of treating some provisions as superfluous, void, or inoperable.

Being guided accordingly, the Court now turns to the pertinent By-Laws of respondent Club.

At cursory glance, it would seem that the suspension of petitioner Catherine's privileges was due to the ₱2,500.00 special assessment charged in her Statements of Account from September 2001 to January 2002, which remained unpaid for over three months by the time respondent BOD passed Board Resolution No. 3-2002 on April 18, 2002; and for one year and four months by the time respondent Lopez issued her Memorandum dated May 22, 2003. However, tracing back, the ₱2,500.00 special assessment was not an ordinary account or bill incurred by petitioners in respondent Club, as contemplated in Section 33(a) of the By-Laws.

Section 33(a) of the By-Laws refers to the regular dues and ordinary accounts or bills incurred by members as they avail of the services at respondent Club, and for which the members are charged in their monthly Statement of Account. The immediate payment or collection of the amount charged in the member's monthly Statement of Account is essential so respondent Club can carry-on its day-to-day operations, which is why Section 33(a) allows for the automatic suspension of a nonpaying member after a specified period and notification.

The special assessment in the instant case arose from an extraordinary circumstance, *i.e.*, the necessity of raising payment for the monetary judgment against respondent Club in an illegal dismissal case. The special assessment of ₱2,500.00 was imposed upon the members by respondent BOD through Board Resolution No. 7-2001 dated September 20, 2001; it only so happened

that said Board Resolution was implemented by directly charging the special assessment, in ₱500.00 installments, in the members' Statements of Account for five months. Thus, petitioner Catherine's nonpayment of the special assessment was, ultimately, a violation of Board Resolution No. 7-2001, covered by Section 35(a) of the By-Laws. This much was acknowledged by respondent BOD itself when it mentioned in Board Resolution No. 3-2002 that "[t]o enforce Board Resolution No. 7-2001," it was suspending the members who did not pay the special assessment.

Section 35(a) of the By-Laws requires notice and hearing prior to a member's suspension. Definitely, in this case, petitioner Catherine did not receive notice specifically advising her that she could be suspended for nonpayment of the special assessment imposed by Board Resolution No. 7-2001 and affording her a hearing prior to her suspension through Board Resolution No. 3-2002. Respondents merely relied on the general notice printed in petitioner Catherine's Statements of Account from September 2001 to April 2002 warning of automatic suspension for accounts of over ₱20,000.00 which are past due for 60 days, and accounts regardless of amount which are 75 days in arrears. While said general notice in the Statements of Account might have been sufficient for purposes of Section 33(a) of the By-Laws, it fell short of the stricter requirement under Section 35(a) of the same By-Laws. Petitioner Catherine's right to due process was clearly violated.

Nevertheless, it is not lost upon this Court that petitioner Catherine herself admitted violating Board Resolution No. 7-2001 by not paying the ₱2,500.00 special assessment. Petitioner Catherine cannot deny knowledge of the special assessment because the first installment of ₱500.00 was already charged in her Statement of Account for September 2001 and she willfully did not pay said amount. Despite being aware of the special assessment, petitioner Catherine simply chose not to pay the same, without taking any other step to let respondents know of her opposition to said special assessment, until she complained in her letter dated May 24, 2003 about the suspension of her membership privileges. Again, the Court is not called upon to

determine the propriety of the imposition of the special assessment upon the members of the respondent Club. Whatever reasons petitioner Catherine might have against the special assessment would not change the fact of her nonpayment of the same in violation of Board Resolution No. 7-2001. Consequently, there was ground for respondents to suspend petitioner Catherine's membership privileges.

Moreover, bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud. The determination of whether one acted in bad faith is evidentiary in nature, and acts of bad faith must be substantiated by evidence. Indeed, it is well-settled that bad faith under the law cannot be presumed; it must be established by clear and convincing evidence. The ascertainment of good faith, or lack of it, is a question of fact. While the general rule is that questions of fact are outside the province of this Court to determine in a petition for review under Rule 45 of the Revised Rules of Court — because the Court is not a trier of facts — the rule is not iron-clad. Among the recognized exceptions to such rule is that the findings of the Court of Appeals are contrary to that of the trial court, as in this case.[39]

After a review of the records, the Court, like the Court of Appeals, finds no bad faith on the part of respondents in implementing petitioner Catherine's suspension. Petitioners utterly failed to establish that respondents acted with malice or ill will or motive in the issuance and distribution to the billing clerks and attendants of respondent Lopez's Memorandum dated May 22, 2003, which bore the list of suspended members of respondent Club. In contrast, respondents were able to explain that these were done in the ordinary course of business, *i.e.*, to implement Board Resolution Nos. 7-2001 and 3-2002. It was necessary that the billing clerks and attendants had a list of the

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[39] *See Philippine National Bank v. Heirs of Estanislao Militar*, 526 Phil. 788 (2006).

suspended members of respondent Club as they were the ones on the frontline who directly deal with the members and would bear the penalty if they mistakenly allowed suspended members access to the services of respondent Club. There was also no proof that respondents actually ordered the highlighting of petitioner Catherine's name in the list and/or the posting of the list in the billing clerks' work stations; these could have been easily done by the billing clerks themselves on their own volition. Noticeably, there were also other names highlighted in the list, not just petitioner Catherine's. In addition, the posting of the list of suspended members in conspicuous places in respondent Club did not necessarily connote bad faith on the part of respondents because Section 33(a) of the By-Laws, which respondents misguidedly believed applied to this case, authorized the posting of such a list on the Clubhouse Bulletin Board.

The Court further affirms the Court of Appeals in not according weight and credence to Dacut's testimony that respondents expressly ordered the trainers not to play with petitioners. Reproduced below are the pertinent portions of Dacut's testimony:

ATTY. CALMA:

Q Now, was your playing tennis with [her] continuous?
A No, sir.

Q Why?
A The management of the Quezon City Sports Club directed or ordered us trainers not to play with Mrs. Ching.

Q Was it only Mrs. Ching? Did they say that you not [play] with Mrs. Ching only?
A The Ching family, sir.

Q Who relayed to you the order?
A The tennis attendant told us, sir, *sa taas*, but he does not want to mention the name.

Q Who was this tennis attendant?
A Sonny Torres, sir.

Q When he said, *taas,* what does he meant by that?
A The tennis attendant was referring to the President.

Q Who is the President, do you know him?
A Antonio Chua.

Q Now, how did he tell you about this order?
A He told the tennis attendant not to play with Mrs. Ching and were told to just hide in case Mrs. Ching arrives.

Q So, if Mrs. Ching arrives to play tennis in the Club, what would you do considering this order?
A To run and to hide and not to play with Mrs. Ching.

Q Why?
A According to the attendant, he said that once we play with Mrs. Ching, *may paglalagyan kami*.

Q Mr. Witness, do you know the reason why that order was issued?
A Mrs. Ching told me it was because of the assessment fee of two thousand five hundred pesos (₱2,500.00).

Q Why, what happened? What did Mrs. Ching do with that two thousand five hundred pesos (₱2,500.00)?
A She did not pay the assessment, sir.[40]

Irrefragably, Dacut had no personal knowledge that respondent Chua, President of respondent Club, had in fact given the order to the trainers not to play with petitioners. Dacut only relied on what Torres, a tennis assistant, relayed to him and the other trainers. Yet, Torres only said that the order was given "*sa taas*" (from the top), without mentioning any name. It was Dacut who deduced that Torres was referring to respondent Chua. It was also not clear by what authority Torres spoke for or on behalf of respondent Chua. Therefore, Dacut's testimony on this matter is evidently hearsay evidence, which, although admitted for lack of objection, had no probative value.

Worthy of reiterating herein is the following disquisition of the Court in *Patula v. People*[41] on hearsay evidence:

To elucidate why the Prosecution's hearsay evidence was unreliable and untrustworthy, and thus devoid of probative value, reference is

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[40] TSN, October 13, 2005, pp. 8-11.

[41] 685 Phil. 376, 393-396 (2012).

made to Section 36 of Rule 130, *Rules of Court*, a rule that states that a witness can testify only to those facts that she knows of her personal knowledge; that is, which are derived from her own perception, except as otherwise provided in the *Rules of Court*. The personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because her testimony derives its value not from the credit accorded to her as a witness presently testifying but from the veracity and competency of the extrajudicial source of her information.

In case a witness is permitted to testify based on what she has heard another person say about the facts in dispute, the person from whom the witness derived the information on the facts in dispute is not *in court* and *under oath* to be examined and cross-examined. The weight of such testimony then depends not upon the veracity of the witness but upon the veracity of the other person giving the information to the witness without oath. The information cannot be tested because the declarant is not standing in court as a witness and cannot, therefore, be cross-examined.

It is apparent, too, that a person who relates a hearsay is not obliged to enter into any particular, to answer any question, to solve any difficulties, to reconcile any contradictions, to explain any obscurities, to remove any ambiguities; and that she entrenches herself in the simple assertion that she was told so, and leaves the burden entirely upon the dead or absent author. Thus, the rule against hearsay testimony rests mainly on the ground that there was no opportunity to cross-examine the declarant. The testimony may have been given under oath and before a court of justice, but if it is offered against a party who is afforded no opportunity to cross-examine the witness, it is hearsay just the same.

Moreover, the theory of the hearsay rule is that when a human utterance is offered as evidence of the truth of the fact asserted, the credit of the assertor becomes the basis of inference, and, therefore, the assertion can be received as evidence only when made on the witness stand, subject to the test of cross-examination. However, if an extrajudicial utterance is offered, not as an assertion to prove the matter asserted but without reference to the truth of the matter asserted, the hearsay rule does not apply. For example, in a slander case, if a prosecution witness testifies that he heard the accused say that the complainant was a thief, this testimony is admissible not to prove

that the complainant was really a thief, but merely to show that the accused uttered those words. This kind of utterance is hearsay in character but is not legal hearsay. The distinction is, therefore, between *(a)* the fact that the statement was made, to which the hearsay rule does not apply, and *(b)*the truth of the facts asserted in the statement, to which the hearsay rule applies.

Section 36, Rule 130 of the *Rules of Court* is understandably not the only rule that explains why testimony that is hearsay should be excluded from consideration. Excluding hearsay also aims to preserve the right of the opposing party to cross-examine the *original* declarant claiming to have a direct knowledge of the transaction or occurrence. If hearsay is allowed, the right stands to be denied because the declarant is not in court. It is then to be stressed that the right to cross-examine the adverse party's witness, being the only means of testing the credibility of witnesses and their testimonies, is essential to the administration of justice.

To address the problem of controlling inadmissible hearsay as evidence to establish the truth in a dispute while also safeguarding a party's right to cross-examine her adversary's witness, the *Rules of Court* offers two solutions. The first solution is to require that *all* the witnesses in a judicial trial or hearing be examined only in court *under oath or affirmation.*Section 1, Rule 132 of the *Rules of Court* formalizes this solution, *viz.*:

> Section 1. *Examination to be done in open court.* — The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.

The second solution is to require that *all* witnesses be *subject to the cross-examination by the adverse party*. Section 6, Rule 132 of the *Rules of Court* ensures this solution thusly:

> Section 6. *Cross-examination; its purpose and extent*. — Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue.

Although the second solution traces its existence to a Constitutional precept relevant to criminal cases, *i.e.*, Section 14, (2), Article III, of the 1987 *Constitution*, which guarantees that: "*In all criminal prosecutions, the accused shall x x x enjoy the right x x x to meet the witnesses face to face x x x*," the rule requiring the cross-examination by the adverse party equally applies to non-criminal proceedings.

We thus stress that the rule excluding hearsay as evidence is based upon serious concerns about the trustworthiness and reliability of hearsay evidence due to its not being given under oath or solemn affirmation and due to its not being subjected to cross-examination by the opposing counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant or actor upon whose reliability the worth of the out-of-court statement depends. (Citations omitted.)

In all, there was no evidence that respondents acted in bad faith by particularly singling out petitioners, from among all other members of respondent Club who did not pay the assessment, to be harassed or humiliated.

Considering that there was justifiable ground for the suspension of petitioner Catherine's privileges in respondent Club, but her right to due process was violated as she was not afforded notice and hearing prior to the suspension, the Court proceeds to determine the reliefs to which petitioners are entitled.

The elements for the award of moral damages in a case are: (1) an injury clearly sustained by the claimant; (2) a culpable act or omission factually established; (3) a wrongful act or omission by the defendant as the proximate cause of the injury sustained by the claimant; and (4) the award of damages predicated on any of the cases stated in Article 2219 of the Civil Code.[42] Also, the person claiming moral damages must

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[42] Art. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;
(2) Quasi-delicts causing physical injuries;
(3) Seduction, abduction, rape, or other lascivious acts;
(4) Adultery or concubinage;
(5) Illegal or arbitrary detention or arrest;

prove the existence of bad faith by clear and convincing evidence, for the law always presumes good faith. It is not enough that one suffered sleepless nights, mental anguish, and serious anxiety as the result of the actuations of the other party. Invariably, such action must be shown to have been willfully done in bad faith or with ill motive.[43]

There being no clear and convincing evidence of respondents' bad faith in suspending petitioner Catherine's privileges in respondent Club nor in implementing such suspension, petitioners are not entitled to moral damages. Since the basis for moral damages has not been established, there is no basis to recover exemplary damages and attorney's fees, as well.[44]

Under Article 2229 of the Civil Code, "[e]xemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." Article 2234 of the same Code further provides that "[w]hile the amount of the exemplary damages need not be proven, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded." Because petitioners herein failed to show that they are entitled to moral damages, then the Court cannot award exemplary damages.

As regards the award of attorney's fees, it is well-settled that it is the exception rather than the general rule. Counsel's

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(6) Illegal search;
(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in Article 309;
(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No.9 of this article, in the order named.

[43] *Nazareno v. City of Dumaguete*, 607 Phil. 768, 803-804 (2009).

[44] *Manay, Jr. v. Cebu Air, Inc.*, G.R. No. 210621, April 4, 2016.

fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees, as part of damages, are awarded only in the instances specified in Article 2208 of the Civil Code.[45] As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable.[46] None of the grounds stated in Article 2208 are present in the present case. As the Court held in *Asian*

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[45] Article 2208 of the Civil Code reads:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fee and expenses of litigation must be reasonable.

[46] *Travel and Tours Advisers, Incorporated v. Cruz, Sr.*, G.R. No. 199282, March 14, 2016.

*Terminals, Inc. v. Allied Guarantee Insurance, Co., Inc.*,[47] "[a]lthough attorney's fees may be awarded when a claimant is 'compelled to litigate with third persons or incur expenses to protect his interest' by reason of an unjustified act or omission on the part of the party from whom it is sought, but when there is a lack of findings on the amount to be awarded, and since there is no sufficient showing of bad faith in the defendant's refusal to pay other than an erroneous assertion of the righteousness of its cause, attorney's fees cannot be awarded against the latter."

Even so, the Court deems it proper to award nominal damages to petitioners. Article 2221 of the Civil Code authorizes the award of nominal damages to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, not for indemnifying the plaintiff for any loss suffered. The Court may also award nominal damages in every case where a property right has been invaded. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances.[48] For its failure to observe due process, as provided under Section 35(a) of the By-Laws, in the suspension of petitioner Catherine's privileges, respondent Club is liable to pay petitioners nominal damages in the amount of ₱25,000.00.

The Court clarifies that only respondent Club shall be liable for the nominal damages because in the absence of malice and bad faith, officers of a corporation cannot be made personally liable for the liabilities of the corporation which, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members.

**WHEREFORE**, in view of the foregoing, the instant Petition is partly **GRANTED**. The Decision dated June 27, 2011 of the Court of Appeals in CA-G.R. CV No. 92293 is **REVERSED and SET ASIDE**. The respondent Quezon City Sports Club, Inc.

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[47] G.R. No. 182208, October 14, 2015.

[48] *Cojuangco, Jr. v. Court of Appeals*, 369 Phil. 41, 60-61 (1999).

**FIRST DIVISION**

[G.R. No. 211072. November 7, 2016]

**COMMISSIONER OF INTERNAL REVENUE,** *petitioner, vs.* **DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,** *respondent.*

**SYLLABUS**

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); VALUE ADDED TAX (VAT); THE TAX CODE PROVIDES FOR THE RULES ON CLAIMING REFUNDS OR TAX CREDITS OF UNUTILIZED INPUT VAT.—** Section 112 of the NIRC provides for the rules on claiming refunds or tax credits of unutilized input VAT, x x x Based on the plain language of the foregoing provision, a VAT- registered taxpayer claiming for a refund or tax credit of its excess and unutilized input VAT must file an administrative claim within two (2) years from the close of the taxable quarter when the sales are made. After that, the CIR is given 120 days, from the submission of complete documents in support of said administrative claim, within which to grant or deny said claim. Upon receipt of CIR's decision, denying the claim in full or partially, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has 30 days within which to file a petition for review with the CTA.

2. **ID.; ID.; ID.; CLAIM FOR TAX REFUND OR TAX CREDIT; JUDICIAL CLAIM MAY BE FILED WITH THE COURT OF TAX APPEALS (CTA) WITHIN THIRTY (30) DAYS FROM RECEIPT OF THE DECISION OF THE COMMISSIONER OF INTERNAL REVENUE (CIR) OR THE EXPIRATION OF 120-DAY PERIOD FOR THE CIR TO ACT ON THE CLAIM; EXCEPTION, EXPLAINED.—** [T]his Court in *Aichi* clarified that the 120-day period granted to the CIR is mandatory and jurisdictional, the non-observance of which is fatal to the filing of a judicial claim with the CTA. The Court further explained that the two (2)-year prescriptive period under Section 112(A) of the NIRC pertains only to the filing of the administrative claim with the BIR; while the judicial claim may be filed with the CTA within 30 days from the receipt

of the decision of the CIR or expiration of 120-day period of the CIR to act on the claim. x x x Subsequently, in *San Roque*, while the Court reiterated the mandatory and jurisdictional nature of the 120+30 day periods, it recognized as an exception BIR Ruling No. DA-489-03, issued prior to the promulgation of *Aichi*, where the BIR expressly allowed the filing of judicial claims with the CTA even before the lapse of the 120-day period. The Court held that BIR Ruling No. DA-489-03 furnishes a valid basis to hold the CIR in estoppel because the CIR had misled taxpayers into filing judicial claims before the CTA even before the lapse of the 120-day period: x x x Following *San Roque*, the Court, in a catena of cases, has consistently adopted the rule that the 120-day waiting period does **not** apply to claims for refund that were prematurely filed during the period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003, until October 6, 2010, when the *Aichi* was promulgated; but before and after said period, the observance of the 120-day period is mandatory and jurisdictional. x x x All told, the Court maintains that the 120-day period is permissible from December 10, 2003, when BIR Ruling No. DA-489-03 was issued, until October 6, 2010, when *Aichi* was promulgated; but before and after said period, the observance of the 120-day period is mandatory and jurisdictional.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioner.
*Salvador & Associates* for respondent.

**D E C I S I O N**

**CAGUIOA, *J.*:**

Before the Court is a Petition for Review[1] on *Certiorari* under Rule 45 of the Rules of Court filed by petitioner Commissioner of Internal Revenue (CIR), assailing the Amended Decision[2]

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[1] *Rollo*, pp. 10-27.

[2] *Id.* at 34-44. Penned by Associate Justice Amelia R. Cotangco-Manalastas with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito

dated July 29, 2013 and Resolution[3] dated January 7, 2014 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 815. The CTA *En Banc* reversed and set aside its earlier decision dated January 31, 2013, which affirmed the CTA First Division's dismissal of the claim for refund or issuance of tax credit filed by respondent Deutsche Knowledge Services, Pte. Ltd. (DKS) in CTA Case No. 7940 on the ground of prematurity, and remanded the case to the court of origin for further proceedings.

**Facts**

DKS is the Philippine branch of a multinational company organized and existing under and by the virtue of the laws of Singapore. It is licensed to do business as a regional operating headquarters in the Philippines.

On July 25, 2007, DKS filed its original Quarterly Value Added Tax (VAT) Return for the 2nd quarter of CY 2007 with the Bureau of Internal Revenue (BIR).

On June 18, 2009, DKS filed with the BIR-Revenue District Office No. 47 an Application for Tax Credits/Refunds (BIR Form No. 1914) of its excess and unutilized input VAT for the 2nd quarter of CY 2007 in the amount of ₱8,767,719.30. Subsequently, on June 30, 2009, or even before any action by the CIR on its administrative claim, DKS filed a Petition for Review with the CTA, docketed as CTA Case No. 7940.

Trial commenced and DKS filed its Formal Offer of Evidence on September 22, 2010, which was admitted by the CTA First Division in a Resolution dated December 1, 2010.

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C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban, concurring; Associate Justice Caesar A. Casanova, dissenting; and Associate Justices Lovell R. Bautista and Cielito N. Mindaro-Grulla, on leave.

[3] *Id.* at 47-53. Penned by Associate Justice Amelia R. Cotangco-Manalastas with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Ma. Belen M. Ringpis-Liban, concurring.

Meanwhile, on October 6, 2010, while DKS's claim for refund or tax credit was pending before the CTA First Division, this Court promulgated *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[4] (*Aichi*). In that case, the Court held that compliance with the 120-day period granted to the CIR, within which to act on an administrative claim for refund or credit of unutilized input VAT, as provided under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, is mandatory and jurisdictional in filing an appeal with the CTA.

On February 21, 2011, the CIR filed a Motion to Dismiss,[5] stating that the CTA First Division lacked jurisdiction because respondent's Petition for Review was prematurely filed.

In a Resolution dated April 26, 2011,[6] the CTA First Division dismissed respondent's judicial claim, the decretal portion of which reads:

> WHEREFORE, premises considered, the Motion to Dismiss dated February 21, 2011, filed by respondent [CIR], is hereby GRANTED. Consequently, the Petition for Review dated June 30, 2009, filed by petitioner Deutsche Knowledge Services Pte. Ltd. is hereby DISMISSED.
>
> SO ORDERED.[7]

The CTA First Division ruled that the petition for review filed by DKS on June 30, 2009, or barely twelve (12) days after the filing of its administrative claim for refund, was clearly premature justifying its dismissal. The CTA First Division explained that pursuant to Section 112(C) of the NIRC and the jurisprudence laid down in *Aichi*, it is a mandatory requirement

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[4] 646 Phil. 710 (2010).

[5] *Rollo*, pp. 54-60.

[6] *Id*. at 62-74. Penned by Associate Justice Esperanza R. Fabon-Victorino with Associate Justice Erlinda P. Uy, concurring and Presiding Justice Ernesto D. Acosta on leave.

[7] *Id*. at 74.

to wait for the lapse of the 120-day period granted to petitioner to act on the application for refund or issuance of tax credit, before a judicial claim may be filed with the CTA.

DKS moved for reconsideration, but the same was denied by the CTA First Division in its Resolution[8] dated August 2, 2011.

Aggrieved, DKS elevated the matter to the CTA *En Banc*, raising the following arguments: (1) the CTA First Division validly acquired jurisdiction of its judicial claim for refund; (2) *Aichi* should not be applied indiscriminately to all claims for VAT refund; (3) the prospective application of the *Aichi* interpretation on the observance of the 120-day rule is legally and equitably imperative; and (4) DKS is entitled to a refund of its claimed input VAT for the 2nd quarter of CY 2007.

On January 31, 2013, the CTA *En Banc* rendered a Decision[9] affirming the April 26, 2011 and August 2, 2011 Resolutions of the CTA First Division. It agreed with the CTA First Division in applying the ruling in *Aichi* which warranted the dismissal of DKS's judicial claim for refund on the ground of prematurity.

In the meantime, on February 12, 2013, this Court decided the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue,* and *Philex Mining Corporation v. Commissioner of Internal Revenue*[10] (*San Roque*), wherein the Court recognized BIR Ruling No. DA-489-03 as an exception to the 120-day period.

Invoking this Court's pronouncements in *San Roque*, DKS moved for reconsideration. The CTA *En Banc* found merit in said motion and rendered the assailed Amended Decision, the dispositive portion of which reads as follows:

**WHEREFORE**, premises considered, the instant *Motion for Reconsideration (Re: Decision dated January 31, 2013)* is hereby

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[8] *Rollo*, pp. 77-99.

[9] *Id*. at 102-113.

[10] 703 Phi1. 310 (2013).

**GRANTED**. The *Decision* dated January 31, 2013, which affirmed the CTA First Division's dismissal of the Petition for Review docketed as CTA Case No. 7940 on the ground of prematurity, is hereby **REVERSED AND SET ASIDE**.

Accordingly, CTA Case No. 7940 is hereby **REMANDED** to the court of origin for further proceedings.

**SO ORDERED.**[11]

The CIR filed a Motion for Reconsideration but the motion was denied for lack of merit by the CTA *En Banc* in its Resolution[12] dated January 7, 2014.

Hence, this petition.

**Issue**

The singular issue submitted by the Petition for this Court's resolution is whether the CTA *En Banc* erred in taking cognizance of the case and holding that DKS's petition for review was not prematurely filed with the CTA First Division.

**The Court's Ruling**

The Petition lacks merit.

***Exception to the mandatory and jurisdictional nature of the 120-day period under Section 112(C) of the NIRC***

Section 112 of the NIRC provides for the rules on claiming refunds or tax credits of unutilized input VAT, the pertinent portions of which read as follows:

Sec. 112. *Refunds or Tax Credits of Input Tax*. —

(A) *Zero-rated or Effectively Zero-rated Sales*. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable

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[11] *Supra* note 2, at 43.

[12] *Supra* note 3.

to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x

x x x x x x x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*.— In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof**.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

Based on the plain language of the foregoing provision, a VAT-registered taxpayer claiming for a refund or tax credit of its excess and unutilized input VAT must file an administrative claim within two (2) years from the close of the taxable quarter when the sales are made. After that, the CIR is given 120 days, from the submission of complete documents in support of said administrative claim, within which to grant or deny said claim. Upon receipt of CIR's decision, denying the claim in full or partially, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has 30 days within which to file a petition for review with the CTA.

As earlier stated, this Court in *Aichi* clarified that the 120-day period granted to the CIR is mandatory and jurisdictional, the non-observance of which is fatal to the filing of a judicial claim with the CTA. The Court further explained that the two (2)-year prescriptive period under Section 112(A) of the NIRC pertains only to the filing of the administrative claim with the BIR; while the judicial claim may be filed with the CTA within 30 days from the receipt of the decision of the CIR or expiration of 120-day period of the CIR to act on the claim. Thus:

**Section 112 (D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim.** In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. **However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.**

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA.

**As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**

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In fine, the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.[13] (Emphasis supplied)

Subsequently, in *San Roque*, while the Court reiterated the mandatory and jurisdictional nature of the 120+30 day periods, it recognized as an exception BIR Ruling No. DA-489-03, issued prior to the promulgation of *Aichi*, where the BIR expressly allowed the filing of judicial claims with the CTA even before the lapse of the 120-day period. The Court held that BIR Ruling No. DA-489-03 furnishes a valid basis to hold the CIR in estoppel because the CIR had misled taxpayers into filing judicial claims before the CTA even before the lapse of the 120-day period:

There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.

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BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is

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[13] *Supra* note 4, at 731-732.

also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

**Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.**[14] (Emphasis supplied)

Following *San Roque*, the Court, in a catena of cases,[15] has consistently adopted the rule that the 120-day waiting period

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[14] *Supra* note 10, at 373-376.

[15] See *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. Nos. 195175 & 199645, August 10, 2015, 765 SCRA 511;*Commissioner of Internal Revenue v. Air Liquide Philippines, Inc*., G.R. No. 210646, July 29, 2015, 764 SCRA 385; *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 173241, March 25, 2015, 754 SCRA 279; *Cargill Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 203774, March 11, 2015, 753 SCRA 124; *Panay Power Corporation* (*formerly Avon River Power Holdings Corporation*) *v. Commissioner of Internal Revenue*, G.R. No. 203351, January 21, 2015, 746 SCRA 588; *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015, 745 SCRA 663; *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, G.R. No. 204745, December 8, 2014, 744 SCRA 143; *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. No. 198928, December 3, 2014, 743 SCRA 693; *Taganito Mining Corporation v. Commissioner of Internal Revenue*, G.R. No. 198076, November 19, 2014, 741 SCRA 196; *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc*., G.R. No. 190021, October 22, 2014, 739 SCRA 147;*CBK Power Company Limited v. Commissioner of Internal Revenue*, 744 Phil. 559 (2014); *San Roque Power Corp. v. Commissioner of Internal Revenue*, 737 Phil. 387 (2014); *Miramar Fish Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 185432, June 4, 2014, 724 SCRA 611; *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, 727 Phil. 487 (2014); *Commissioner of Internal Revenue v. Team Sual Corporation*, 726 Phil.

does **not** apply to claims for refund that were prematurely filed during the period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003, until October 6, 2010, when the *Aichi* was promulgated; but before and after said period, the observance of the 120-day period is mandatory and jurisdictional.[16]

In this case, records show that DKS filed its administrative and judicial claim for refund on June 18, 2009 and June 30, 2009, respectively, or after the issuance of BIR Ruling No. DA-489-03, but before the date when *Aichi* was promulgated. Thus, even though DKS filed its judicial claim without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the case because the claim was filed within the excepted period stated in *San Roque*. Verily, the CTA *En Banc* did not err in reversing the dismissal of DKS's judicial claim and remanding the case to the CTA First Division for the resolution of the case on the merits.

***Application and validity of BIR Ruling No. DA-489-03***

The CIR now claims that BIR Ruling No. DA-489-03 is invalid because it was merely issued by a Deputy Commissioner and not by the CIR, who is exclusively authorized by law to interpret the provisions of the NIRC.

The Court is not persuaded. The Court *En Banc*'s Resolution in *San Roque* dated October 8, 2013[17] is instructive:

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266 (2014); *Commissioner of Internal Revenue. v. Toledo Power, Inc.*, 725 Phil. 66 (2014);*Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, 724 Phil. 534 (2014); *Team Energy Corp. v. Commissioner of Internal Revenue*, 724 Phil. 127 (2014); *Commissioner of Internal Revenue v. Visayas Geothermal Power Company, Inc*., 720 Phil. 710 (2013); *Nippon Express (Phils.) Corp. v. Commissioner of Internal Revenu*e, 706 Phil. 442 (2013).

[16] *Taganito Mining Corporation v. Commissioner of Internal Revenue*, 736 Phil. 591, 600 (2014).

[17] *Commissioner of Internal Revenue v. San Roque Power Corp.*, 719 Phil. 137 (2013).

In asking this Court to disallow Taganito's claim for tax refund or credit, the CIR repudiates the validity of the issuance of its own BIR Ruling No. DA-489-03. "Taganito cannot rely on the pronouncements in BIR Ruling No. DA-489-03, being a mere issuance of a Deputy Commissioner.

Although Section 4 of the 1997 Tax Code provides that the "power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance," Section 7 of the same Code does not prohibit the delegation of such power. Thus, "**[t]he Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."[18]

Finally, the CIR contends that even assuming that BIR Ruling No. DA-489-03 should be considered as an exception to the 120-day period; it was already repealed and superseded on November 1, 2005 by Revenue Regulations No. 16-2005 (RR 16-2005), which echoed the mandatory and jurisdictional nature of the 120-day waiting period under Section 112 of the NIRC. Thus, DKS cannot rely on BIR Ruling No. DA-489-03 because its claim was filed in June 2009 or almost four (4) years since RR 16-2005 took effect.

In other words, the CIR posits that compliance with the 120-day period should only be considered permissible from December 10, 2003, when BIR Ruling No. DA-489-03 was issued, until October 31, 2005, prior to the effectivity of RR 16-2005.

The Court disagrees.

Again, it has already been settled in *San Roque* that BIR Ruling No. DA-489-03 is a general interpretative rule which **all** taxpayers may rely upon from the time of its issuance on December 10, 2003 until its effective reversal by the Court in *Aichi*. While RR 16-2005 may have re-established the necessity

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[18] *Id*. at 163-164.

of the 120-day period, taxpayers cannot be faulted for still relying on BIR Ruling DA-489-03 even after the issuance of RR 16-2005 because the issue on the mandatory compliance of the 120-day period was only brought before the Court and resolved with finality in *Aichi*.

All told, the Court maintains that the 120-day period is permissible from December 10, 2003, when BIR Ruling No. DA-489-03 was issued, until October 6, 2010, when *Aichi* was promulgated; but before and after said period, the observance of the 120-day period is mandatory and jurisdictional.

**WHEREFORE**, premises considered, the instant petition for review is hereby **DENIED**. The Amended Decision dated July 29, 2013 and the Resolution dated January 7, 2014 of the CTA *En Banc* in CTA EB No. 815 are hereby **AFFIRMED**. Let this case be **REMANDED** to the CTA First Division for the proper determination of the refundable amount due to respondent, if any.

**SO ORDERED.**

*Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin*, and *Perlas-Bernabe, JJ.*, concur.

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**FIRST DIVISION**

[G.R. No. 212631. November 7, 2016]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **DANDITO LASTROLLO *y* DOE,** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DELAY IN REPORTING AN INCIDENT OF**

**RAPE DOES NOT CAST DOUBT ON THE CREDIBILITY OF THE COMPLAINANT.—** AAA's deportment after the rape does not impair her credibility nor does it negate the occurrence of the crime. There is no established singular reaction to rape by all victims of this crime. x x x It has likewise been judicially settled that delay in reporting an incident of rape is not an indication of fabrication and does not necessarily cast doubt on the credibility of the complainant. This is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant. It must be remembered here that AAA was raped by her own uncle, and threatened that she would be killed if she told her mother about what happened. A rape victim's actuations are often overwhelmed by fear rather than by reason. It is from this fear that the perpetrator builds a climate of extreme psychological terror which effectively numbs the victim to silence. Here, the fear instilled upon AAA by Dandito's threats to her life is even more magnified by the moral ascendancy that he has over her; not to mention the proximity of their homes, which make such threat imminent and real. Thus, delay in reporting the incident is justified in this case.

**2. ID.; ID.; ID.; DENIAL AND ALIBI ARE INHERENTLY WEAK DEFENSES THAT CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONY OF THE PROSECUTION WITNESS THAT THE ACCUSED COMMITTED THE CRIME.—** For alibi to prosper, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the crime scene during its commission. Physical impossibility refers to distance and the facility of access between the scene of the crime and the location of the accused when the crime was committed. In other words, the accused must demonstrate that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime was committed. x x x Verily, this Court has repeatedly ruled that both denial and *alibi* are inherently weak defenses that cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony, which has a ring of truth on one hand, and a mere denial and *alibi* on the other, the former is generally held to prevail.

**3. CRIMINAL LAW; REVISED PENAL CODE; RAPE; IMPOSABLE PENALTY.—** As for the imposable penalty, Article 266-B of the RPC provides that the crime of simple rape shall be punished by *reclusion perpetua* but death penalty shall be imposed "when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim." In the instant case, while Dandito admitted that AAA is his niece, the Information failed to allege that they are relatives within the third civil degree of affinity.

**4. ID.; ID.; ID.; ID.; CONSIDERING THAT THE QUALIFYING CIRCUMSTANCES OF MINORITY AND THIRD DEGREE RELATIONSHIP WERE NOT DULY ESTABLISHED, THE CORRECT PENALTY FOR THE SIMPLE RAPE COMMITTED IS *RECLUSION PERPETUA*.—** As regards AAA's minority, while the Information sufficiently alleged AAA's minority, records are devoid of any proof of AAA's age at the time of the incident. In *People v. Buado, Jr.*, the Court reiterated the x x x guidelines in appreciating age as an element of the crime or as an aggravating or qualifying circumstance: x x x Here, the prosecution did not offer in evidence AAA's birth certificate or any authentic document showing her birth date; neither did the prosecution present any witness to testify on AAA's age at the time of the commission of the crime. While AAA stated that she was 17 years old at the time of the taking of her testimony, the same will not suffice because it was not clearly and expressly admitted by the accused. In sum, considering that the qualifying circumstances of minority and third degree relationship were not duly established, the RTC and the CA were correct in convicting Dandito of simple rape and imposing the penalty of *reclusion perpetua*.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

## D E C I S I O N

**CAGUIOA, *J.*:**

On appeal is the October 17, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05449, which affirmed with modification the January 5, 2012 Judgment[2] of the Regional Trial Court (RTC), Branch 34, Iriga City, in Criminal Case No. IR-6782, finding appellant Dandito Lastrollo y Doe (Dandito) guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

### The Facts

On July 22, 2004, an Information was filed charging Dandito of the crime of rape defined and penalized by Article 335 of the Revised Penal Code (RPC) as amended by Republic Act No. (RA) 7659, RA 8353 and in relation to RA 7610, committed as follows:

> That [sometime] within the months of November and December, 2003, in barangay [CCC], Nabua, Camrines Sur, Philippines, and within the jurisdiction of the Honorable Court, the said accused, with intent to lie, by means of force, intimidation and influence, did then and there willfully, unlawfully and feloniously lie and succeeded in having carnal knowledge with [AAA[3]], minor, sixteen (16) years old and suffering from mental illness, against her will and consent, to her damage and prejudice.
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> ACTS CONTRARY TO LAW.[4]

Upon arraignment, Dandito pleaded not guilty to the offense charged.[5]

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[1] *Rollo*, pp. 2-19. Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Florito S. Macalino.

[2] CA *rollo*, pp. 47-54. Penned by Presiding Judge Manuel M. Rosales.

[3] The victim's name and personal circumstances or any other information tending to establish or compromise her identity as well as those of her immediate family are withheld per *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] Records, p. 1.

[5] Minutes of the Session held on December 11, 2006, *id*. at 50.

During pre-trial, the parties made the following stipulations:

1. That accused Dandito is the same accused who was arraigned and pleaded not guilty to the crime as charged;
2. That the victim and the accused are residents of the same barangay;
3. That the wife of the accused and the father of the private complainant are siblings.[6]

Thereafter, trial on the merits ensued with the prosecution presenting three (3) witnesses: the victim AAA, her mother BBB and Dr. Gilda Gonzales (Dr. Gonzales). On the other hand, Dandito, his wife Remedios, and his employer, Nestor Ramos (Nestor), testified for the defense.

The parties' evidence, as summarized by the CA in the assailed Decision, are as follows:

**The Version of the Prosecution**

*AAA* was only 17 years old when she testified in court. According to her mother, *AAA* has abnormalities. She only attended one (1) day in the first (1st) grade because she was teased for being "abnormal". When brought to a mental hospital for psychiatric evaluation, Dr. Imelda C. Escuadra (Dr. Escuadra), MD, FPPA, Medical Specialist II in Bicol Medical Center, Naga City issued a medical certificate stating that *AAA* had "Moderate Mental Retardation (Mental age 7 to 8 years old)."

Sometime in November and December 2003, *AAA* went to the land of May Aida Niebres which is located at the back of their own house in *Brgy*. CCC. As she was picking banana blossoms, someone suddenly pulled down her pants. She looked behind and saw her uncle Dandito carrying a bolo. *AAA* asked him to let her go, but Dandito threatened to hack her with his bolo and told her to lie down on the grass beside the banana tree. Thereafter, he inserted his penis inside *AAA*'s vagina. *AAA* felt pain. Before leaving, Dandito told *AAA* not to tell her mother about what happened, otherwise he would kill her.

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[6] Pre-Trial Order, *id*. at 74.

Dandito raped *AAA* for the second time while the latter was at home cooking. He suddenly entered the house and closed the door. He covered *AAA*'s mouth with his hand, pulled down *AAA*' s pants and underwear, and let *AAA* lie down in their living room. Afterwards, Dandito inserted his penis inside *AAA*'s vagina and again, she felt pain. Like the first incident, Dandito threatened to kill *AAA* if she tells her mother her harrowing experience at the hand of accused-appellant.

On both occasions, Dandito was armed with a bolo and *AAA* did not shout or move away from him out of fear. She did not also tell her ordeal to her mother, until it was discovered that she was already pregnant.

On March 15, 2004, *BBB* noticed that her daughter *AAA* was vomiting. When she asked *AAA*, the latter was unable to answer and remained quiet. Suspicious, on March 18, 2004, *BBB* brought *AAA* to the clinic of Dr. Gonzales in Nabua, Camarines Sur.

Using the pregnancy and palpitation test, Dr. Gonzales found that *AAA* was about four (4) months pregnant. She estimated that *AAA* had sexual congress at around November or December 2003. She then issued a medical certificate stating therein her findings.

When asked by her mother (who impregnated her], *AAA* answered "*Pay Dito*" referring to Dandito x x x. They then proceeded to the police headquarters of Nabua, Camarines Sur to file a complaint against [Dandito].

*AAA* gave birth prematurely, but her baby subsequently died.[7]

**The Version of the Defense**

Dandito interposed the defense of denial and alibi. He admitted that [his] wife and *AAA*'s father are siblings and that his family is residing in *Brgy*. CCC. Their house is located opposite *AAA*'s house and about two (2) minutes away by bicycle and one (1) hour by foot.

According to Dandito, at the time of the alleged rape, he was working as a fish gatherer in Bato Lake, Bato, Camarines Sur. He had several employers thereat including his brother Martin and a certain "*Manong Andres*". While working in Bato Lake, he stayed in a nipa hut near the irrigation pump. Since he does not usually go home, his wife

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[7] *Rollo*, pp. 4-5.

regularly went to Bato Lake to get his salary. His travel time from Bato Lake to *Brgy*. CCC is more than an hour if he rides his bicycle but less than an hour if on board a passenger jeepney or any motorized vehicle.

Nestor claimed that Dandito was the caretaker of his farm in Bato Lake from 1995 until the latter's arrest sometime in 2007. Dandito religiously complied with their Agreement that he would not leave Nestor's pump station because there were valuable equipment stored thereat. There were only three (3) instances when Dandito asked permission, but during the period of November and December 2003 Dandito stayed in the farm and worked with him. Nestor also testified that Dandito, with his family, was already residing in Tagpulo, Bato, Camarines Sur about one (1) kilometer away from the farm. However, he is not aware that Dandito had a house in *Brgy*. CCC.

Remedios corroborated the testimony of her husband. She admitted that *AAA*'s house is around 20 meters away from their house in *Brgy*. CCC. She maintained that from 1998 until 2003, Dandito never visited their house in *Brgy*. CCC.[8]

*Ruling of the RTC*

On January 5, 2012, the RTC rendered Judgment convicting Dandito of one (1) count of simple rape, the dispositive portion of which reads as follows:

WHEREFORE, for all of the foregoing, accused Dandito Lastrollo y [Doe], having been found guilty of the crime of Rape beyond reasonable doubt, as defined and penalized under Art. 266-A and 266-B of the Revised Penal Code amending Art. 335 by Republic Act 8353, he is hereby sentenced to suffer the penalty of imprisonment of reclusion perpetua; to indemnify by way of civil indemnity [AAA] the amount of Fifty Thousand Pesos (Php 50,000.00) and moral damages of Fifty Thousand Pesos (Php 50,000.00) and to pay the cost.

The herein accused shall be entitled to be credited for the whole period served during his preventive imprisonment.

SO ORDERED.[9]

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[8] *Id*. at 6-7.

[9] *Supra* note 2, at 54.

The RTC gave full weight and credence to AAA's positive and categorical testimony as to the sexual abuse committed upon her by the accused.[10] According to the RTC, Dandito was positively identified by AAA and no evidence of ill motive was shown which could have prompted AAA to point at her uncle as the person who sexually abused her.[11] Furthermore, the RTC emphasized that AAA, a minor and suffering from moderate mental retardation, could not have concocted a story of rape against an older relative bearing in mind the cultural reverence and respect for elders that are deeply ingrained in Filipino children without mentioning the stigma and embarrassment to which she will be subjected in a public tria1.[12] However, the RTC did not appreciate AAA's minority as a special qualifying circumstance because the prosecution failed to adduce sufficient evidence of AAA's age.[13]

As to the defense of alibi, the RTC found it intrinsically weak because Dandito failed to show convincing proof that it was physically impossible for him to be at the place of the incident.[14]

Aggrieved, Dandito appealed to the CA.[15]

*Ruling of the CA*

In the assailed Decision,[16] the CA agreed with the RTC's finding on AAA's credibility, and held that rape was sufficiently proven by AAA's testimony.[17] Although Dandito tried to discredit AAA's recollection of the rape incident by pointing to the alleged

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[10] *Id*. at 52.

[11] *Id*. at 53.

[12] *Id*.

[13] *Id*. at 54.

[14] *Id*. at 53.

[15] Notice of Appeal, records, p. 93; Brief for the Accused-Appellant dated December 5, 2012, CA *rollo*, pp. 29-45.

[16] *Supra* note 1.

[17] *Id*. at 9.

lack of details thereof, the CA ruled that there is nothing in AAA's testimony that defies logic or is contrary to the ordinary experience of man.[18] The fear instilled by Dandito upon AAA's mind explains AAA's reluctance to tell anyone, even her mother, of the suffering she experienced at the hands of her uncle.[19]

Moreover, the CA found Dandito's defense of alibi unavailing as it failed to pass the tests of impossibility and credibility. In essence, the CA held that Dandito failed to prove that it was impossible for him to be in AAA's residence at any time during the alleged date of the commission of rape.[20]

While the CA did not consider as aggravating circumstances AAA's minority[21]and mental illness,[22] as these were not proven during trial, it nonetheless awarded exemplary damages because of the aggravating circumstance of relationship that was duly proven.[23]

Thus, on October 17, 2013, the CA rendered the assailed decision, affirming the RTC's decision with modification, the decretal portion of which reads:

**WHEREFORE**, the appeal is **DENIED**. The January 5, 2012 Judgment of the Regional Trial Court, Branch 34, Iriga City in Criminal Case No. IR-6782 is **AFFIRMED** with **MODIFICATIONS**. As modified, in addition to the damages awarded by the Regional Trial Court, accused-appellant **DANDITO LASTROLLO Y DOE** is hereby ordered to pay the victim ₱30,000.00 exemplary damages. The damages awarded to the victim shall be subject to interest rate of 6% per annum from the finality of this Decision until fully paid.

**SO ORDERED.**[24]

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[18] *Id*. at 14-15.

[19] *Id*.

[20] *Id*. at 16.

[21] *Id*. at 17.

[22] *Id*. at 10-11.

[23] *Id*. at 18.

[24] *Id*. at 19.

Hence, this appeal.[25]

In its January 14, 2015 Resolution,[26] this Court required the parties to file their supplemental briefs; but both parties manifested[27] that they would no longer file the pleadings and opted to replead and adopt the arguments submitted before the CA.

*Issue*

Consequently, the only issue for the Court's consideration is whether the CA erred in affirming Dandito's guilt beyond reasonable doubt.

*The Court's Ruling*

We affirm Dandito's conviction with modification as to the award of damages.

***Credibility of the victim and her testimony.***

Dandito was charged with one count of simple rape as defined under Article 266-A of the RPC, which pertinently reads:

**ART. 266-A.** *Rape, When and How Committed*. — Rape is committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

x x x x x x x x x

For a charge of rape under the abovementioned provision to prosper, the prosecution must prove that (1) Dandito had carnal knowledge of AAA; and (2) he accompanied such act by force, threat or intimidation.

The Court agrees with the findings of both the RTC and CA that carnal knowledge through threat or intimidation was

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[25] CA *rollo*, pp. 112-113.

[26] *Rollo*, pp. 30-31.

[27] *Id*. at 36-38 and 41-43.

established beyond reasonable doubt by the lone testimony of the victim herself. In her testimony, AAA positively identified Dandito as the man who pulled down her pants, let her lie down and inserted his penis to her vagina. AAA also categorically stated that during the incident, Dandito, who was carrying a bolo, threatened to kill her if she would tell her mother of what happened. We quote pertinent portions of AAA's testimony:

Q You said you were raped by your uncle at the land of Aida Niebres in [CCC], Nabua, in what particular place were you raped by the accused in this land of Aida Niebres?

A At the back of our house.

Q How did the accused rape you during that time, at the back of your house?

A While I was getting the heart of the banana, all of a sudden my pants were pulled down, and when I turned my back, it was Dandito Lastrollo.

Q All right, after Dandito Lastrollo pulled your pants, while you were to get the banana blossoms, what did he do next, if any?

A **I told him to let me go because I will go home, but he threatened me to hack me. And then, he let me lie down on the grass by the banana and, then, he inserted his penis into my vagina and I felt pain. It was very painful.**

Q After Dandito Lastrollo, the accused, inserted his penis to your vagina, what did he do next, if any?

A **He told me that if I will tell my mother, he would kill me.**

x x x x x x x x x

Q [AAA], you said a while ago that you were abused by Dandito Lastrollo for two (2) times, you already narrated the first incident. When was the second time that the accused, Dandito Lastrollo, abused you or raped you?

A I was cooking in our house when he suddenly entered and closed the door. He covered my mouth with his hand and, then, he removed my pants.

Q [AAA], after he removed your pants, what did he do next, if any?

A **He let me lie down in our sala and, then, he inserted his penis into my vagina.**

x x x x x x x x x

Q And after that, what happened next, if any?

A **He told me that if I will tell my mother, he would kill me.**[28] (Emphasis supplied)

In an attempt to exculpate himself from liability, Dandito questions AAA's credibility. According to Dandito, AAA's narration of the rape incident was too general and lacks specific details on the sexual positions showing how the supposed defloration took place, as well as, AAA's feelings and actions during the sexual intercourse, which seriously cast doubts on AAA's credibility and her claim of rape.

In *People v. Sanchez*,[29] the Court summarized well-established guidelines laid down by jurisprudence in addressing the issue of credibility of witnesses on appeal, *viz*:

**First**, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.

**Second**, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.

And **third**, the rule is even more stringently applied if the CA concurred with the RTC.[30]

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[28] TSN, November 13, 2007, pp. 4-6.

[29] 681 Phil. 631 (2012).

[30] *Id*. at 635-636.

In the present case, the RTC found AAA's testimony positive and categorical; that notwithstanding her immaturity with below normal understanding, AAA "testified x x x in plain language as to the sexual abuse committed upon her by the accused through force and under threat of physical harm".[31] The CA confirmed AAA's credibility stressing that "AAA's testimony was clear and straightforward, albeit in a simple language, and she remained steadfast even during cross-examination."[32]

Dandito, in turn, failed to point to any significant fact or circumstance which would justify the reversal of the foregoing findings on AAA's credibility. The details that were allegedly lacking in AAA's testimony do not affect the credibility and truthfulness of her story. The Court's pronouncement in *People v. Saludo*,[33] is instructive:

> Rape is a painful experience which is oftentimes not remembered in detail. For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[34]

Dandito also finds fault in AAA's behavior after the incident, claiming that it is unnatural for someone whose dignity was supposedly ravaged to not show fear, remorse, hate or anxiety or to delay reporting the rape to the authorities.

The Court is not persuaded.

AAA's deportment after the rape does not impair her credibility nor does it negate the occurrence of the crime. There is no

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[31] CA *rollo*, p. 52.

[32] *Rollo*, p. 14.

[33] 662 Phil. 738 (2011).

[34] *Id.* at 753.

established singular reaction to rape by all victims of this crime.[35] In *People v. Pareja*,[36] the Court ruled that:

> Victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society's expectations. It is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim. One cannot be expected to act as usual in an unfamiliar situation as it is impossible to predict the workings of a human mind placed under emotional stress. Moreover, it is wrong to say that there is a standard reaction or behavior among victims of the crime of rape since each of them had to cope with different circumstances.[37]

It has likewise been judicially settled that delay in reporting an incident of rape is not an indication of fabrication and does not necessarily cast doubt on the credibility of the complainant.[38] This is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant.[39]

It must be remembered here that AAA was raped by her own uncle, and threatened that she would be killed if she told her mother about what happened. A rape victim's actuations are often overwhelmed by fear rather than by reason. It is from this fear that the perpetrator builds a climate of extreme psychological terror which effectively numbs the victim to silence.[40] Here, the fear instilled upon AAA by Dandito's threats to her life is even more magnified by the moral ascendancy that he has over her; not to mention the proximity of their homes,

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[35] *People v. Ramos*, G.R. No. 200077, September 17, 2014, 735 SCRA 466, 488.

[36] 724 Phil. 759 (2014).

[37] *Id.* at 778-779.

[38] *People v. Basallo*, 702 Phil. 548, 574 (2013).

[39] *People v. Navarette, Jr.*, 682 Phil. 651, 667 (2012).

[40] *People v. Lantano*, 566 Phil. 628, 632 (2008).

which make such threat imminent and real. Thus, delay in reporting the incident is justified in this case.

***Defense of denial and alibi.***

Dandito raises the defense of denial and alibi, claiming that the trial court erred in disregarding his claim that from 1998 to 2003, including the dates alleged in the Information, he did not leave his workplace at Bato Lake, Camarines Sur, which was allegedly corroborated by the testimonies of his wife and his employer.

The Court is not swayed.

For alibi to prosper, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the crime scene during its commission.[41] Physical impossibility refers to distance and the facility of access between the scene of the crime and the location of the accused when the crime was committed. In other words, the accused must demonstrate that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime was committed.[42]

In this case, however, Dandito miserably failed to do so. By his own admission, the distance between his workplace, where Dandito allegedly stayed from 1998 to 2003, and AAA's house in Brgy. CCC, where the rape incidents were committed, could be traversed within an hour by bicycle or less than an hour by motorized vehicle.[43] Thus, it was not physically impossible for Dandito to have been at the scene of the crime when the rape against AAA was committed.

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[41] *People v. Federico De La Cruz y Santos*, G.R. No. 207389, February 17, 2016, p. 7.

[42] *People v. Bravo*, 695 Phil. 711, 728 (2012).

[43] TSN, August 10, 2009, pp. 5-8.

Dandito's alibi is further belied by his testimony on sur-rebuttal where he revealed that he actually goes home once a month to bring fish to his children and then goes back to Bato Lake after an hour.[44]

Verily, this Court has repeatedly ruled that both denial and *alibi* are inherently weak defenses that cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony, which has a ring of truth on one hand, and a mere denial and *alibi* on the other, the former is generally held to prevail.[45]

All told, the CA did not err in affirming the RTC's decision finding Dandito guilty beyond reasonable doubt of the crime of rape.

***Penalty, Civil Indemnity and Damages***

As for the imposable penalty, Article 266-B of the RPC provides that the crime of simple rape shall be punished by *reclusion perpetua* but death penalty shall be imposed "when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim."

In the instant case, while Dandito admitted that AAA is his niece, the Information failed to allege that they are relatives within the third civil degree of affinity. Our pronouncement in *People v. Libo-on*[46] is instructive:

> It is well-settled that this attendant circumstance, as well as the other circumstances introduced by Republic Act Nos. 7659 and 8493 are in the nature of qualifying circumstances. These attendant

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[44] TSN, July 19, 2011, p. 6.

[45] *People v. Gersamio*, G.R. No. 207098, July 8, 2015, 762 SCRA 390, 407.

[46] 410 Phil. 378 (2001).

circumstances are not ordinary aggravating circumstances which merely increase the period of the penalty. Rather, these are special qualifying circumstances which must be specifically pleaded or alleged with certainty in the information; otherwise, the death penalty cannot be imposed.

In this regard, we have previously held that if the offender is merely a relation — not a parent, ascendant, step-parent, or guardian or common-law spouse of the mother of the victim — it must be alleged in the information that he is "a relative by consanguinity or affinity (as the case may be) within the third civil degree." Thus, in the instant case, the allegation that accused-appellant is the uncle of private complainant is not specific enough to satisfy the special qualifying circumstance of relationship. The relationship by consanguinity or affinity between appellant and complainant was not alleged in the information in this case. Even if it were so alleged, it was still necessary to specifically allege that such relationship was within the third civil degree.[47]

As regards AAA's minority, while the Information sufficiently alleged AAA's minority, records are devoid of any proof of AAA's age at the time of the incident.

In *People v. Buado, Jr.*,[48] the Court reiterated the following guidelines in appreciating age as an element of the crime or as an aggravating or qualifying circumstance:

In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony,

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[47] *Id*. at 406-407.

[48] 701 Phil. 72 (2013), citing *People v. Pruna*, 439 Phil. 440, 470-471 (2002).

if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.[49]

Here, the prosecution did not offer in evidence AAA's birth certificate or any authentic document showing her birth date; neither did the prosecution present any witness to testify on AAA's age at the time of the commission of the crime. While AAA stated that she was 17 years old at the time of the taking of her testimony, the same will not suffice because it was not clearly and expressly admitted by the accused.

In sum, considering that the qualifying circumstances of minority and third degree relationship were not duly established, the RTC and the CA were correct in convicting Dandito of simple rape and imposing the penalty of *reclusion perpetua*.

As to the award of damages, the Court deems it proper to modify the CA's award pursuant to the Court's recent ruling

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[49] *Id*. at 93.

in *People v. Jugueta*.[50] Therefore, AAA is entitled to ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. All damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

**WHEREFORE**, in view of the foregoing, the appeal is **DISMISSED** for lack of merit. The Decision dated October 17, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 05449 is **AFFIRMED with MODIFICATIONS** as to the civil damages: (1) Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, (2) Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and (3) Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages. All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

**SO ORDERED.**

*Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin,* and *Perlas-Bernabe, JJ.*, concur.

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**FIRST DIVISION**

[G.R. No. 213488. November 7, 2016]

**TOYOTA PASIG, INC.,** *petitioner, vs.* **VILMA S. DE PERALTA,** *respondent.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; WAGES; COMMISSIONS ARE EXPLICITLY INCLUDED**

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[50] G.R. No. 202124, April 5, 2016.

**AS PART OF WAGES IN ITS DEFINITION UNDER THE LABOR CODE.—** The x x x provision [of Section 97 (f) of the Labor Code] explicitly includes commissions as part of wages. In *Iran v. NLRC*, the Court thoroughly explained the wisdom behind such inclusion as follows: x x x **While commissions are, indeed, incentives or forms of encouragement to inspire employees to put a little more industry on the jobs particularly assigned to them, still these commissions are direct remunerations for services rendered.** x x x In this case, respondent's monetary claims, such as commissions, tax rebates for achieved monthly targets, and success share/profit sharing, are given to her as incentives or forms of encouragement in order for her to put extra effort in performing her duties as an ISE. Clearly, such claims fall within the ambit of the general term "commissions" which in turn, fall within the definition of wages pursuant to prevailing law and jurisprudence.

**2. ID.; ID.; ID.; FAILURE OF EMPLOYER TO SUBMIT NECESSARY DOCUMENTS THAT ARE IN ITS POSSESSION GIVES RISE TO THE PRESUMPTION THAT THE PRESENTATION THEREOF IS PREJUDICIAL TO ITS CAUSE, THAT IS, THE NON-PAYMENT OF THE EMPLOYEES' BENEFITS.—** [R]espondent's allegation of nonpayment of such monetary benefits places the burden on the employer, *i.e.*, petitioner, to prove with a reasonable degree of certainty that it paid said benefits and that the employee, *i.e.*, respondent, actually received such payment or that the employee was not entitled thereto. x x x In this case, petitioner simply dismissed respondent's claims for being purely self-serving and unfounded, without even presenting any tinge of proof showing that respondent was already paid of such benefits or that she was not entitled thereto. In fact, during the proceedings before the LA, petitioner was even given the opportunity to submit pertinent company records to rebut respondent's claims but opted not to do so, thus, constraining the LA to direct respondent to submit her own computations. It is well-settled that the failure of employers to submit the necessary documents that are in their possession gives rise to the presumption that the presentation thereof is prejudicial to its cause. Indubitably, petitioner failed to discharge its afore-described burden. Hence, it is bound to pay the monetary benefits claimed by respondent. As aptly pointed out by the NLRC, since respondent already earned these monetary benefits,

she must promptly receive the same, notwithstanding the fact that she was legally terminated from employment.

**APPEARANCES OF COUNSEL**

*Alonso and Associates* for petitioner.
*Domingo Z. Legaspi* for respondent.

**D E C I S I O N**

**PERLAS-BERNABE, *J.*:**

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated April 14, 2014[2] and July 24, 2014[3] of the Court of Appeals (CA) in CA-G.R. SP Nos. 131495 and 131558, upholding the Decision[4] dated May 15, 2013 of the National Labor Relations Commission (NLRC) in LAC No. 03-000954-13 NCR-03-03689-12 which, *inter alia*, found petitioner Toyota Pasig, Inc. (petitioner) liable to respondent Vilma S. De Peralta (respondent) in the amount of ₱617,248.08 representing the latter's unpaid commissions, tax rebate for achieved monthly targets, salary deductions, unpaid salary for the month of January 2012, and success share/profit sharing for the year 2011.

**The Facts**

The instant case stemmed from a complaint[5] for illegal dismissal, illegal deduction, unpaid commission, annual profit sharing, damages, and attorney's fees filed by respondent against

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[1] *Rollo*, pp. 11-34.

[2] *Id*. at 39-43. Penned by Associate Justice Normandie B. Pizarro with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Manuel M. Barrios concurring.

[3] *Id*. at 44-45.

[4] *Id*. at 65-81. Penned by Commissioner Nieves E. Vivar-De Castro with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra concurring.

[5] Not attached to the *rollo*.

petitioner and/or Severino C. Lim, Jnalyn P. Lim, Jason Ian Yap, Jorge Tuason, Marissa Operaña, and Arturo P. Lopez (Lim, *et al*.) before the NLRC, docketed as NLRC-NCR-CASE No. 03-03689-12.[6] Essentially, respondent alleged that petitioner – a corporation engaged in the business of car dealership, including service and sales of parts and accessories of Toyota motor vehicles[7] – initially hired her as a cashier in March 1997.[8] Eventually in 2004, she worked her way up to the position of Insurance Sales Executive (ISE) which she held from 2007 to 2012 and where she received various distinctions from petitioner, including "Best Insurance Sales Executive" for the years 2007 and 2011.[9] However, things turned sour when her husband, Romulo "Romper" De Peralta, also petitioner's employee and the President of the Toyota Shaw-Pasig Workers Union – Automotive Industry Workers Alliance (TSPWU-AIWA), organized a collective bargaining unit through a certification election.[10] According to respondent, petitioner suddenly dismissed from service the officials/directors of TSPWU-AIWA, including her husband.[11] Thereafter, petitioner allegedly started harassing respondent for her husband's active involvement in TSPWU-AIWA, which resulted to the issuance of a Notice to Explain dated January 3, 2012 accusing her of "having committed various acts" relative to the processing of insurance of three (3) units as "outside transactions" and claiming commissions therefor, instead of considering the said transactions as "new business accounts" under the dealership's marketing department.[12] Accordingly, she was preventively suspended because of such charge. On February 3, 2012, respondent received a Notice of Termination,[13] which prompted her to file the instant

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[6] *Rollo*, p. 50.

[7] *Id*. at 16 and 55.

[8] *Id*. at 51 and 66.

[9] *Id*. at 50, 52, and 66.

[10] See *id*. at 53 and 67.

[11] *Id*. at 55 and 68.

[12] *Id*. at 57, 58-59, and 66.

[13] *Id*. at 57 and 68.

complaint, where she also prayed for the payment of her earned substantial commissions, tax rebates, and other benefits dating back from July 2011 to January 2012, amounting to ₱617,248.08.[14]

In their defense, petitioner and Lim, *et al.* maintained that respondent was dismissed from service for just cause and with due process. They explained that respondent was charged and proven to have committed acts of dishonesty and falsification by claiming commissions for new business accounts which should have been duly credited to the dealership's marketing department.[15] They further averred that respondent's claims for commissions, tax rebates, and other benefits were unfounded and without documentation and validation.[16]

**The LA Ruling**

In a Decision[17] dated January 25, 2013, the Labor Arbiter (LA) dismissed the complaint for lack of merit, but ordered petitioner to pay respondent the amount of ₱11,111.50 representing the latter's salary for January 2012.[18]

It found that respondent herself admitted through her letter-explanation to the Notice to Explain that she indeed processed the insurance of units from petitioner's own dealership, and as a result, received commissions which were rightly attributable to the dealership's marketing department not being "outside transactions."[19] According to the LA, respondent's acts constituted dishonesty which is tantamount to serious misconduct, a just cause for dismissal.[20] Anent respondent's claims for unpaid commissions, the LA found no basis to grant the same, considering that the documents submitted in support thereof

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[14] *Id.* at 68.

[15] *Id.* at 60.

[16] *Id.* at 62-63 and 68-69.

[17] *Id.* at 50-63. Penned by Labor Arbiter Lilia S. Savari.

[18] *Id.* at 63.

[19] *Id.* at 61.

[20] *Id.* at 61-62.

were mere computations which are insufficient proof of her entitlement thereto.[21]

Aggrieved, respondent appealed[22] to the NLRC.

**The NLRC Ruling**

In a Decision[23] dated May 15, 2013, the NLRC affirmed the LA ruling with modification finding petitioner liable to respondent in the amount of ₱617,248.08 representing the latter's unpaid commissions, tax rebate for achieved monthly targets, salary deductions, salary for the month of January 2012, and success share/profit sharing.[24]

The NLRC agreed with the LA's finding that respondent's act of taking credit in the form of commissions on accounts rightly attributable to the dealership's marketing department constituted serious misconduct, which justified her termination from employment.[25] As such, respondent is not entitled to backwages, separation pay, damages, and attorney's fees.[26]

However, with regard to respondent's other monetary claims, the NLRC held petitioner liable for the same as it failed to present documents showing that respondent is not entitled to said claims, as per her computation. The NLRC, however, exculpated Lim, *et al.* from such liability as it was not shown that they acted with gross negligence or bad faith in directing petitioner's affairs.[27]

Dissatisfied, the parties separately elevated the case to the CA via petitions for *certiorari*.[28] In their respective petitions

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[21] *Id*. at 62-63.

[22] Not attached to the *rollo*.

[23] *Rollo*, pp. 65-81.

[24] *Id*. at 80.

[25] See *id*. at 75-77.

[26] *Id*. at 80.

[27] *Id*. at 77-79.

[28] Not attached to the *rollo*.

before the CA, respondent assailed the legality of her dismissal, while petitioner questioned NLRC's award of the amount of ₱617,248.08 in respondent's favor. Eventually, their separate petitions were consolidated and docketed as CA-G.R. SP Nos. 131495 and 131558.[29]

**The CA Ruling**

In a Resolution dated April 14, 2014,[30] the CA dismissed the consolidated petitions and, accordingly, affirmed the NLRC ruling *in toto*. It held that the NLRC did not gravely abuse its discretion in declaring respondent to have been dismissed for just cause as such finding conform with the facts and the law on the matter. Similarly, it held that no grave abuse of discretion may be ascribed to the NLRC in awarding respondent her other monetary claims, considering that petitioner failed to discharge its burden of proving that respondent was not entitled to the same.[31]

Both parties moved for reconsideration,[32] which were however, denied in a Resolution[33] dated July 24, 2014; hence, this petition filed by petitioner.

It also appears that respondent filed a separate petition before the Court, docketed as G.R. No. 213691.[34] In a Resolution dated November 24, 2014,[35] the Court denied respondent's separate petition for her failure to show that the CA committed reversible error in upholding the legality of her dismissal. Said ruling had then lapsed into finality.[36]

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[29] *Rollo*, pp. 39-40.

[30] *Id*. at 39-43.

[31] *Id*. at 40-42.

[32] Not attached to the *rollo*.

[33] *Rollo*, pp. 44-45.

[34] Entitled "*Vilma S. De Peralta v. NLRC*."

[35] See First Division Minute Resolution dated November 24, 2014.

[36] Date of Finality was October 13, 2015.

**The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the CA correctly upheld petitioner's liability to respondent in the amount of ₱617,248.08 representing the latter's unpaid commissions, tax rebate for achieved monthly targets, salary deductions, salary for the month of January 2012, and success share/profit sharing.

**The Court's Ruling**

The petition primarily argues that the CA erred in awarding respondent her monetary claims despite failing to prove her entitlement thereto. Corollary, it likewise contends that such monetary claims do not partake of unpaid wages/salaries, as well as the labor standard benefits of employees as provided by law – *e.g.*, 13th month pay, overtime pay, service incentive leave pay, night differential pay, holiday pay – and as such, petitioner, as employer, did not bear the burden of proving the payment of such monetary claims or that respondent was not entitled thereto.[37]

The petition is without merit.

Article 97 (f) of the Labor Code reads:

ART. 97. *Definitions.* – As used in this Title:

x x x x x x x x x

(f) **"Wage" paid to any employee shall mean the remuneration of earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis,** or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging, or other facilities customarily furnished by the employer to the employee. "Fair and reasonable value" shall not include any profit to the employer, or to any person affiliated with the employer. (Emphasis and underscoring supplied)

[37] *Rollo*, pp. 24-32.

The aforesaid provision explicitly includes commissions as part of wages. In *Iran v. NLRC*,[38] the Court thoroughly explained the wisdom behind such inclusion as follows:

> This definition explicitly includes commissions as part of wages. **While commissions are, indeed, incentives or forms of encouragement to inspire employees to put a little more industry on the jobs particularly assigned to them, still these commissions are direct remunerations for services rendered.** In fact, commissions have been defined as the recompense, compensation or reward of an agent, salesman, executor, trustee, receiver, factor, broker or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal. **The nature of the work of a salesman and the reason for such type of remuneration for services rendered demonstrate clearly that commissions are part of a salesman's wage or salary**.
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> x x x x x x x x x
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> The NLRC asserts that the inclusion of commissions in the computation of wages would negate the practice of granting commissions only after an employee has earned the minimum wage or over. While such a practice does exist, the universality and prevalence of such a practice is questionable at best. In truth, this Court has taken judicial notice of the fact that some salesmen do not receive any basic salary but depend entirely on commissions and allowances or commissions alone, although an employer-employee relationship exists. Undoubtedly, this salary structure is intended for the benefit of the corporation establishing such, on the apparent assumption that thereby its salesmen would be moved to greater enterprise and diligence and close more sales in the expectation of increasing their sales commissions. **This, however, does not detract from the character of such commissions as part of the salary or wage paid to each of its salesmen for rendering services to the corporation**.[39] (Emphases and underscoring supplied)

In this case, respondent's monetary claims, such as commissions, tax rebates for achieved monthly targets, and

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[38] 352 Phil. 261 (1998). See also *Philippine Duplicators, Inc. v. NLRC*, G.R. No. 110068, November 11, 1993, 227 SCRA 747, 752-755; *Songco v. NLRC*, 262 Phil. 667, 672-676 (1990).

[39] *Id*. at 270, citations omitted.

success share/profit sharing, are given to her as incentives or forms of encouragement in order for her to put extra effort in performing her duties as an ISE. Clearly, such claims fall within the ambit of the general term "commissions" which in turn, fall within the definition of wages pursuant to prevailing law and jurisprudence. Thus, respondent's allegation of nonpayment of such monetary benefits places the burden on the employer, *i.e.*, petitioner, to prove with a reasonable degree of certainty that it paid said benefits and that the employee, *i.e.*, respondent, actually received such payment or that the employee was not entitled thereto.[40] The Court's pronouncement in *Heirs of Ridad v. Gregorio Araneta University Foundation*[41] is instructive on this matter, to wit:

> Well-settled is the rule that **once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which he alleged that the employer failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. One who pleads payment has the burden of proving it, and even where the employees must allege non-payment, the general rule is that the burden rests on the employer to prove payment, rather than on the employees to prove non-payment.** The reason for the rule is that the pertinent personnel files, payrolls, records, remittances, and other similar documents – which will show that overtime, differentials, service incentive leave, and other claims of the worker have been paid – are not in the possession of the worker but in the custody and absolute control of the employer.[42] (Emphasis and underscoring supplied)

In this case, petitioner simply dismissed respondent's claims for being purely self-serving and unfounded, without even presenting any tinge of proof showing that respondent was already paid of such benefits or that she was not entitled thereto. In fact, during the proceedings before the LA, petitioner was even

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[40] See *JARL Construction v. Atencio*, 692 Phil. 256, 271 (2012).

[41] 703 Phil. 531 (2013).

[42] *Id*. at 538, citations omitted.

given the opportunity to submit pertinent company records to rebut respondent's claims but opted not to do so, thus, constraining the LA to direct respondent to submit her own computations.[43] It is well-settled that the failure of employers to submit the necessary documents that are in their possession gives rise to the presumption that the presentation thereof is prejudicial to its cause.[44]

Indubitably, petitioner failed to discharge its afore-described burden. Hence, it is bound to pay the monetary benefits claimed by respondent. As aptly pointed out by the NLRC, since respondent already earned these monetary benefits, she must promptly receive the same, notwithstanding the fact that she was legally terminated from employment.[45]

**WHEREFORE**, the petition is **DENIED**. The Resolutions dated April 14, 2014 and July 24, 2014 of the Court of Appeals in CA-G.R. SP Nos. 131495 and 131558 are hereby **AFFIRMED** *in toto*.

**SO ORDERED.**

*Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin,* and *Caguioa, JJ.,* concur.

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[43] See *rollo*, pp. 42 and 77-79.

[44] *Grandteq Industrial Steel Products, Inc. v. Margallo*, 611 Phil. 612, 629 (2009), citing *National Semiconductor (HK) Distribution, Ltd. v. NLRC,* 353 Phil. 551, 558 (1998).

[45] See *rollo*, p. 79.

**FIRST DIVISION**

[G.R. No. 216064. November 7, 2016]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **ANTONIO DACANAY *y* TUMALABCAB,** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; EXTRAJUDICIAL CONFESSION; A CONFESSION MADE BEFORE NEWS REPORTERS, ABSENT ANY SHOWING OF UNDUE INFLUENCE FROM THE POLICE AUTHORITIES, IS SUFFICIENT TO SUSTAIN A CONVICTION FOR THE CRIME CONFESSED TO BY THE ACCUSED.—** [O]ur pronouncements in *People v. Andan* are instructive. In said case, we held that a confession made before news reporters, absent any showing of undue influence from the police authorities, is sufficient to sustain a conviction for the crime confessed to by the accused: x x x The fact that the extrajudicial confession was made by Antonio while inside a detention cell does not by itself render such confession inadmissible, contrary to what Antonio would like this Court to believe. In *People v. Domantay*, where the accused was also interviewed while inside a jail cell, this Court held that such circumstance alone does not taint the extrajudicial confession of the accused, especially since the same was given freely and spontaneously: x x x It is well-settled that where the accused fails to present evidence of compulsion; where he did not institute any criminal or administrative action against his supposed intimidators for maltreatment; and where no physical evidence of violence was presented, all these will be considered as factors indicating voluntariness. x x x All told, absent any independent evidence of coercion or violence to corroborate Antonio's bare assertions, no other conclusion can be drawn other than the fact that his statements were made freely and spontaneously, unblemished by any coercion or intimidation.

**2. CRIMINAL LAW; REVISED PENAL CODE; PARRICIDE; ELEMENTS.—** Under Article 246 of the RPC, the crime of

Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendants or other descendants, or the legitimate spouse of the accused.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

**D E C I S I O N**

**CAGUIOA, *J.*:**

This is an Appeal[1] filed under Section 13(c), Rule 124 of the Rules of Court from the Decision dated April 2, 2014[2] (questioned Decision) of the Court of Appeals, Tenth (10th) Division (CA), in CA-G.R. CR-HC No. 05083, which affirmed the Judgment dated June 21, 2011[3] of the Regional Trial Court of Manila, Branch 7 (RTC), in Criminal Case No. 07-257131.

In an Information filed with the RTC, accused-appellant Antonio[4] T. Dacanay (Antonio) was charged with the crime of Parricide under Article 246 of the Revised Penal Code (RPC), as amended,[5] the accusatory portion of which reads:

That on or about October 06, 2007, in the City of Manila, Philippines, the said accused, with intent to kill, did then and there

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[1] *Rollo*, pp. 16-18.

[2] *Id*. at 2-15. Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Magdangal M. De Leon and Stephen C. Cruz concurring.

[3] CA *rollo*, pp. 19-30. Penned by Presiding Judge Ma. Theresa Dolores C. Gomez-Estoesta.

[4] Also referred to as Anthony in the CA Decision.

[5] ART. 246. *Parricide*. – Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one NORMA DACANAY y ERO, his wife, by then and there stabbing her body with an ice pick several times, thereby inflicting upon her mortal stab wounds which were the direct and immediate cause of her death thereafter.

Contrary to law.[6]

The antecedent facts, as summarized by the RTC and affirmed by the CA, follow.

On October 6, 2007, Norma E. Dacanay (Norma), the wife of Antonio, was found lifeless with several puncture wounds on the bathroom floor of their home by their son, Quinn, who was then coming home from school.[7] Quinn likewise observed that the rest of the house was in disarray, with the clothes and things of Norma scattered on the floor, as if suggesting that a robbery had just taken place.[8] At that time, Antonio had already left for work after having allegedly left the house at around six in the morning.[9]

Quinn then rushed to the house of his aunt, one Beth Bautista, to tell her about the fate of Norma, and then proceeded to the workplace of Antonio,[10] which was only ten (10) minutes away from their house.[11] Thereafter, both Quinn and Antonio proceeded back to their house and were met by some police officers who were then already conducting an investigation on the incident.[12]

Antonio was then interviewed by PO3 Jay Santos (PO3 Santos), during which interview, Antonio informed PO3 Santos

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[6] CA *rollo*, p. 19.

[7] *Rollo*, pp. 3, 4.

[8] *Id*.

[9] *Id*. at 6.

[10] *Id*. at 3; CA *rollo*, p. 20.

[11] *Id*. at 7.

[12] *Id*. at 3.

that One Hundred Thousand Pesos (₱100,000.00) in cash and pieces of jewelry were missing.[13] Antonio alluded to a certain "Miller" as an alleged "lover" of Norma who may have perpetrated the crime.[14] However, after further investigation, the identity of "Miller" was never ascertained, as none of Norma's friends knew of any such person.[15]

After PO3 Santos's inspection of the crime scene, Antonio was invited to the precinct to formalize his statement, to which the latter declined, as he still had to take care of the funeral arrangements of Norma.[16] While Antonio promised to proceed to the police station on the following day, he never made good on such promise.[17]

On October 8, 2007, PO3 Santos went to Antonio's workplace at PHIMCO Industries, Inc. (PHIMCO) in Punta, Sta. Ana, Manila, to once again invite Antonio to the precinct.[18] Antonio acceded to such request and, after fetching Quinn from school, they all proceeded to the police station.[19] When they arrived at the precinct, Barangay Kagawad Antonio I. Nastor, Jr. and some members of the media were present.[20]

While at the precinct, Barangay Kagawad Antonio I. Nastor, Jr. informed PO3 Santos that Antonio was already willing to confess to killing Norma.[21] Accordingly, PO3 Santos proceeded to contact a lawyer from the Public Attorney's Office.[22] In the

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[13] *Id.* at 4.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.* at 5.

[19] *Id.*

[20] *Id.*

[21] RTC Decision dated June 21, 2011, p. 3; CA *rollo*, p. 21.

[22] CA Decision dated April 2, 2014, p. 4; *rollo*, p. 5.

meantime, PO3 Santos apprised Antonio of his constitutional rights, including the right to remain silent.[23] However, as determined by both the RTC and the CA, despite having been apprised of his rights, Antonio nonetheless confessed to the crime before the media representatives, who separately interviewed him without PO3 Santos, *viz*:

> Per [Antonio]'s account, around 4:00 in the morning, he and his wife had a fight pertaining to the unaccounted amount of ₱100,000.00. With extreme anger, he stabbed his wife several times. Thereafter, he threw all the pieces of evidence to the river. [Antonio] further declared that he set up the first floor of their house by placing a pitcher of juice, a half-empty glass of juice and cigarette on top of the table, to make it appear that someone else went to their house and robbed the place. He also confessed that he took the missing pieces of jewelry and placed them inside his locker at PHIMCO. He allegedly admitted the killing of his wife as his conscience has been bothering him. x x x[24]
>
> Insofar as accused's confession was heard, media men Nestor Etolle from the Philippine Star and Jun Adsuara from Tanod (Bantay ng Bayan) alleged, in the same tenor, that when it was reported that the case has (*sic*) been solved, they each went, at different time intervals, to the detention cell of the Manila Police District to interview the suspect. Accused, however, remained consistent in admitting that he was the one who killed his wife x x x. He was alleged to have said that he has been bothered by his conscience that was why he admitted to the killing. x x x[25] (Citations omitted)

Notably, the reporters, Jun Adsuara and Nestor Etoile, were presented by the prosecution during trial, wherein both testified that Antonio voluntarily admitted his complicity in the crime without any intimidation or coercion exerted on his person.[26] As a result of the interview, a news article entitled "*Mister*

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[23] Appellant's Brief dated March 20, 2012, p. 7; CA *rollo*, p. 84.

[24] CA Decision dated April 2, 2014, p. 4; *rollo*, p. 5.

[25] RTC Decision dated June 21, 2011, pp. 3-4; CA *rollo*, pp. 21-22.

[26] *Id*. at 8-9; *id*. at 26-27.

*timbog sa pagpatay sa asawa*" was published in the October 10, 2007 issue of *Tanod Diyaryo Bayan*.[27]

Moreover, it was later confirmed by PO3 Santos during a follow-up operation that the missing jewelry (*e.g.*, a pair of gold earrings, a necklace with a cross pendant, a necklace with an oval pendant) were indeed stored in Antonio's locker at PHIMCO, consistent with the latter's extrajudicial confession before the press.[28] Likewise, based on a medico-legal report prepared by Dr. Romeo Tagala Salen of the Manila Police District, the cause of Norma's death was due to multiple puncture wounds on the body, and that the weapon used could have been a round instrument (*e.g.*, an ice pick).[29]

For his defense, as summarized by the RTC, Antonio interposed the twin defenses of alibi and denial, claiming coercion and intimidation on the part of the police officers involved in the investigation of the crime, to wit:

> At the police station, accused was subjected to investigation. His son was directed to stay far from where he was positioned. Moments later, accused felt that the investigating police were not satisfied with his answer for which reason he was isolated in another room. There were at least three (3) policemen. He also saw PO2 Jaime Gonzales, being the companion of PO3 Jay Santos during the time of his arrest. It was at this instance where he was boxed on the side as they cursed him and pointed a gun at him. The police wanted him to admit that he was the one who killed his wife. Accused felt that he was shaking all over. Accused was then moved back to where his son was confined. He saw the policemen strip his son of his clothes as son cried, "*Papa, help me!*" His son was then brought to the same room where he was earlier isolated x x x. Accused could only beg, "*Maawa kayo sa amin! Ako na lang ang saktan n yo, huwag na lang anak ko*" x x x.
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> x x x x x x x x x
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> Accused thereafter denied having talked to a kagawad about being responsible for the killing of his wife. He insisted that he was detained

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[27] *Rollo*, p. 6.

[28] CA *rollo*, p. 21.

[29] *Id*. at 85.

for a crime he did not commit. He alluded that he was transferred to a place in V. Mapa, Sta. Mesa, at around mid-morning in a service vehicle where his arresting officers were wearing civilian clothes. He was asked if he had money. Since he claimed not to have any, he heard the police say, "*nag-aaksaya lang tayo ng panahon dito*" x x x.

It was then that accused was again transferred, this time, to PHIMCO premises. His handcuff was removed by PO2 Jaime Gonzales. Accused asked the guard for permission to enter. Accused was asked to lead them to the production area where he worked and showed them the chemicals he used for mixing x x x. Accused next denied that jewelries (*sic*) were retrieved from his locker at PHIMCO. He alleged, however, that he was shown jewelries (*sic*) which were taken from the pocket of PO2 Jaime Gonzales but he averred that he did not recognize them. However, he was directed to place his hand in his locker where a photo was taken x x x. They went back to the police headquarters and was warned to keep mum about their trip to Quintos. He was also warned that media people will be taking his video x x x.

Accused drifted to sleep but as soon as he woke up, he was told that he will be interviewed by the media. He remembered answering their questions but denied having given any detail about the killing of his wife x x x. The policemen behind him struck him in the head and admonished him why he was not answering. He was asked by PO3 Jay Santos to sign a paper until PO3 Santos himself withdrew it x x x.

Later, he was subjected to inquest proceedings. He chose not to tell the investigating prosecutor of his ordeal since he did not want a repeat of his experience at the police precinct. He alleged that he felt afraid since PO3 Santos threatened him and poked a gun at him x x x.

Accused denied having killed his wife, alleging that she was alive the morning he left for work x x x. He alluded to the fact that his wife was engaged in lending money, proof of which was a blue ledger she always kept for accounting x x x.[30] (Citations omitted)

Upon arraignment, Antonio entered a plea of not guilty to the crime charged.[31] Trial on the merits then ensued and by

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[30] RTC Decision dated June 21, 2011, pp. 6-7; CA *rollo*, pp. 24-25.

[31] *Id*. at 81.

Order dated April 5, 2011 of the RTC, the case was submitted for judgment.[32]

*Ruling of the RTC*

In its Judgment dated June 21, 2011,[33] the RTC gave weight to the extrajudicial confession of Antonio and found him guilty of the crime of Parricide, the dispositive portion of which stated:

> WHEREFORE, for the death of his wife, Norma Dacanay y Ero, this Court finds accused **ANTONIO DACANAY y TUMALABCAB *GUILTY*** beyond reasonable doubt of the crime of *Parricide* defined and penalized under Article 246 of the Revised Penal Code and is hereby imposed the penalty of *reclusion perpetua*.
>
> The preventive imprisonment already served by the accused shall be **CREDITED** to the service of his sentence pursuant to Article 29 of the same Code, as amended.
>
> SO ORDERED.[34]

Aggrieved, Antonio timely filed a Notice of Appeal dated June 30, 2011,[35] elevating the case to the CA.

*Ruling of the CA*

In the questioned Decision, the CA affirmed the RTC *in toto* and dismissed the appeal for lack of merit, on the ground that Antonio failed to overcome the presumption of voluntariness attended by his extrajudicial confession, as follows:

> **WHEREFORE**, premises considered, the instant **APPEAL** is hereby **DISMISSED** for **LACK OF MERIT** and the Judgment dated June 21, 2011 rendered by the Regional Trial Court, Branch 7, Manila in Criminal Case No. 07-257131 is hereby**AFFIRMED**.
>
> **SO ORDERED.**[36]

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[32] *Id*. at 51.

[33] *Supra* note 3.

[34] *Id*. at 29.

[35] *Id*. at 57.

[36] *Rollo*, p. 15.

On April 24, 2014, Antonio filed a Notice of Appeal of even date with the CA.[37] Hence, the instant Appeal.

In a Resolution dated March 23, 2015,[38] the Court instructed the parties to file their respective Supplemental briefs, if they so desired. In lieu of Supplemental Briefs, the parties filed Manifestations respectively dated May 15, 2015[39] and May 22, 2015,[40] informing the Court that they were adopting their previous Briefs submitted to the CA.

*Issue*

The sole issue for our resolution is whether the CA, in affirming the RTC, erred in finding Antonio guilty of the crime of Parricide on the basis of his extrajudicial confession.

*The Court's Ruling*

In his Appeal, Antonio insists that his extrajudicial confession is inadmissible on the ground that it was given under a "coercive physical or psychological atmosphere".[41] To support his claim, Antonio underscores the fact that he was inside a detention cell with two (2) or three (3) other detainees when he allegedly confessed to the crime before the media.[42]

We are not persuaded.

At the outset, we note that Antonio had already *admitted* in his Appellant's Brief that he was not under custodial investigation at the time he gave his extrajudicial confession:

Although he was not under custodial investigation, note must be taken that Antonio Dacanay was inside a detention cell with two (2) or

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[37] *Id*. at 16-18.

[38] *Id*. at 22-23.

[39] *Id*. at 24-26.

[40] *Id*. at 29-30.

[41] CA *rollo*, p. 93.

[42] *Id*. at 92.

three (3) other detainees when he allegedly confessed before the media.[43]

x x x x x x x x x

Lastly, although confession before the media does not form part of custodial investigation, Antonio Dacanay should have been informed about the consequences of his (*sic*) when he decided to confess his alleged guilt.[44]

Hence, Antonio's reliance on constitutional safeguards is misplaced as much as it is unfounded. We need not belabor this point.

At this juncture, it bears stressing that during the separate occasions that Antonio was interviewed by the news reporters, there was no indication of the presence of any police officers within the proximity who could have possibly exerted undue pressure or influence. As recounted by both reporters during their testimonies, Antonio voluntarily narrated how he perpetrated the crime in a candid and straightforward manner, "with no trace of fear, intimidation or coercion in him".[45] We quote with approval the following observations by the RTC in its Decision dated June 21, 2011:

Insofar as accused's confession was heard, media men Nestor Etolle from the Philippine Star and Jun Adsuara from Tanod (Bantay ng Bayan) alleged, in the same tenor, that when it was reported that the case has (*sic*) been solved, **they each went, at different time intervals, to the detention cell of the Manila Police District to interview the suspect. Accused, however, remained consistent in admitting that he was the one who killed his wife** (TSN dated November 17, 2008, p. 7; TSN dated November 26, 2008, pp. 4-5).[46]

x x x x x x x x x

The audacity displayed by the accused in admitting the killing of his wife slowly ebbed away as time passed by. Initially moved by a

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[43] Appellant's Brief dated March 20, 2012, p. 15; *id*.

[44] *Id*. at 16; *id*. at 93.

[45] CA *rollo*, p. 27.

[46] *Id*. at 21.

moral will since his conscience could no longer contain it, accused's admission to the crime was unfortunately perpetuated by media men who published articles on his resigned fate. In the October 10, 2007 article of Jun Asuadra in the Tanod Diyaryo ng Bayan, accused was even quoted to have said, "*Hindi ako nagsisisi na pinatay ko ang aking asawa*" (Exhibits "E" to "E-2") x x x.[47]

x x x x x x x x x

Despite such caveat admonished by the Supreme Court, **it is found that accused's media confession in this case reels (*sic*) with the spontaneity of his admission for which reason he should be made responsible for the culpable act of having stabbed his wife 26 repeated times.** Clearly, it was the dictates of his conscience which made accused reveal his inner demons.

**Nestor Etolle was particularly certain that accused talked in a candid and straightforward manner with no trace of fear, intimidation or coercion in him** x x x. As an indication that accused was moved by his inner will, his revelations spilled more than what was necessary. Accused rather bared the essential details of the crime — from the marital squabble over the missing ₱100,000.00 to the fact that he threw away the ice-pick but after attempting to frame up evidence by staging the presence of cigarette butts and a glass of juice on the kitchen table. **These are damning statements; yet, the purity of such revelations could have only come from the tormented mind of the accused. Indeed, only torment could wash the soul of its impurities.**[48] (Emphasis supplied)

Meanwhile, in the questioned Decision, the CA further observed:

When the accused was interviewed on separate occasions by Nestor Etolle of Philippine Star and Juan Adsuara of Tanod Diyaryo ng Bayan, the media men where (*sic*) outside the detention cell. In both instances, there was no indication of any presence of police officers within the proximity of the accused who can possibly exert undue pressure or influence.

Necessarily, while accused was physically restrained by the cold bars of steel, he was at liberty to remain mute. Yet, he opted to respond

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[47] *Id*. at 25-26.

[48] *Id*. at 27-28.

to inquiries from the media, and in the process, he practically threw caution to the wind and spilled the beans, so to speak, when he conceded the killing of his wife and recognized his culpability therefor. As observed by both reporters, accused-appellant voluntarily narrated how he perpetrated the crime.[49]

On this score, our pronouncements in *People v. Andan*[50] are instructive. In said case, we held that a confession made before news reporters, absent any showing of undue influence from the police authorities, is sufficient to sustain a conviction for the crime confessed to by the accused:

> Clearly, appellant's confessions to the news reporters were given free from any undue influence from the police authorities.**The news reporters acted as news reporters when they interviewed appellant. They were not acting under the direction and control of the police.** They were there to check appellant's confession to the mayor. They did not force appellant to grant them an interview and reenact the commission of the crime. In fact, they asked his permission before interviewing him. **They interviewed him on separate days not once did appellant protest his innocence. Instead, he repeatedly confessed his guilt to them. He even supplied all the details in the commission of the crime, and consented to its reenactment.** All his confessions to the news reporters were witnessed by his family and other relatives. There was no coercive atmosphere in the interview of appellant by the news reporters.
>
> **We rule that appellant's verbal confessions to the newsmen are not covered by Section 12 (1) and (3) of Article III of the Constitution. The Bill of Rights does not concern itself with the relation between a private individual and another individual. It governs the relationship between the individual and the State.** The prohibitions therein are primarily addressed to the State and its agents. They confirm that certain rights of the individual exist without need of any governmental grant, rights that may not be taken away by government, rights that government has the duty to protect. x x x[51] (Emphasis supplied)

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[49] *Rollo,* p. 11.

[50] 336 Phil. 91 (1997).

[51] *Id*. at 112-113.

The fact that the extrajudicial confession was made by Antonio while inside a detention cell does not by itself render such confession inadmissible, contrary to what Antonio would like this Court to believe. In *People v. Domantay*,[52] where the accused was also interviewed while inside a jail cell, this Court held that such circumstance alone does not taint the extrajudicial confession of the accused, especially since the same was given freely and spontaneously:

**Accused-appellant claims, however, that the atmosphere in the jail when he was interviewed was "tense and intimidating" and was similar to that which prevails in a custodial investigation. We are not persuaded. Accused-appellant was interviewed while he was inside his cell.** The interviewer stayed outside the cell and the only person besides him was an uncle of the victim. Accused-appellant could have refused to be interviewed, but instead, he agreed. He answered questions freely and spontaneously. According to Celso Manuel, he said he was willing to accept the consequences of his act.

**Celso Manuel admitted that there were indeed some police officers around because about two to three meters from the jail were the police station and the radio room. We do not think the presence of the police officers exerted any undue pressure or influence on accused-appellant and coerced him into giving his confession.**

Accused-appellant contends that "it is...not altogether improbable for the police investigators to ask the police reporter (Manuel) to try to elicit some incriminating information from the accused." This is pure conjecture. Although he testified that he had interviewed inmates before, there is no evidence to show that Celso was a police beat reporter. Even assuming that he was, it has not been shown that, in conducting the interview in question, his purpose was to elicit incriminating information from accused-appellant. To the contrary, the media are known to take an opposite stance against the government by exposing official wrongdoings.

Indeed, there is no showing that the radio reporter was acting for the police or that the interview was conducted under circumstances

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[52] 366 Phil. 459 (1999).

where it is apparent that accused-appellant confessed to the killing out of fear. x x x[53] (Emphasis supplied)

Following this Court's ruling in *People v. Jerez*,[54] the details surrounding the commission of the crime, which could be supplied only by the accused, and the spontaneity and coherence exhibited by him during his interviews, belie any insinuation of duress that would render his confession inadmissible.

Notably, while Antonio's testimony is replete with imputations of violence and coercion, no other evidence was presented to buttress these desperate claims. Neither was there any indication that Antonio instituted corresponding criminal or administrative actions against the police officers allegedly responsible. It is well-settled that where the accused fails to present evidence of compulsion; where he did not institute any criminal or administrative action against his supposed intimidators for maltreatment; and where no physical evidence of violence was presented, all these will be considered as factors indicating voluntariness.[55]

In fact, what is glaring from the evidence is the deafening silence of Antonio's son, Quinn, with respect to the violence and coercion allegedly inflicted on his person and that of his father's. Indeed, were the allegations of Antonio even faintly true, Quinn would have testified to such fact while on the witness stand. Instead, despite numerous opportunities to do so, Antonio's claims were left uncorroborated, as aptly pointed out by the RTC:

> The only person who could have corroborated accused's allusion to coercion and intimidation was his own son, Quinn Anthony. However, when Quinn Anthony took the witness stand, he merely referred to the arrest of his father. He alleged that he did not even ask his father the reason for his arrest and right there and then, simply told him to take care of himself (TSN dated June 2, 2008, p. 11).

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[53] *Id*. at 474-475.

[54] 349 Phil. 319, 327 (1998).

[55] *People v. Tuniaco*, 624 Phil. 345, 352 (2010); see *People v. Del Rosario*, 411 Phil. 676, 690-691 (2001).

Perceptively, if any of such coercion or intimidation occurred, 18-year old Quinn Anthony would have been naturally goaded to reveal them. He already lost his mother. The fear of losing his father, if unjustly castigated, would have made him corroborate his father's story. But none absolutely came on the witness stand. There is thus a nagging suspicion that accused's account of coercion and intimidation may have been twisted after all.[56]

All told, absent any independent evidence of coercion or violence to corroborate Antonio's bare assertions, no other conclusion can be drawn other than the fact that his statements were made freely and spontaneously, unblemished by any coercion or intimidation.

Under Article 246 of the RPC, the crime of Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendants or other descendants, or the legitimate spouse of the accused.[57] Undoubtedly, all elements are present in this case.

To begin with, the fact that Norma was the spouse of Antonio was sufficiently proven by the prosecution through their Marriage Contract.[58]

Next, as a rule, an extrajudicial confession, where admissible, must be corroborated by evidence of *corpus delicti* in order to sustain a finding of guilt.[59] In this connection, extrajudicial confessions are presumed voluntary until the contrary is proved.[60]

Hence, as extensively discussed above, considering that Antonio failed to rebut such presumption of voluntariness regarding the authorship of the crime, coupled with the fact of death of his wife, Norma, we find Antonio guilty beyond reasonable doubt for the crime of Parricide.

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[56] CA *rollo*, p. 28.

[57] *People v. Macal*, G.R. No. 211062, January 13, 2016, p. 7.

[58] CA *rollo*, p. 29.

[59] *People v. De la Cruz*, 344 Phil. 653, 666 (1997).

[60] See *People v. Alvarez, Jr.*, 456 Phil. 889, 897 (2003).

As a final note, worth reiterating is the general rule that factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect and should not be disturbed on appeal, unless these are facts of weight and substance that were overlooked or misinterpreted and would materially affect the disposition of the case.[61] Moreover, in assessing the credibility of the competing testimonies of witnesses, the Court defers to the findings of the trial court, in light of the unique opportunity afforded them to observe the witnesses and to ascertain and measure their sincerity, spontaneity, as well as their demeanor and behavior in court.[62]

In addition, the Court finds sufficient basis to award damages to the heirs of Norma, notwithstanding the lack of such grant by the RTC and CA. An appeal in a criminal case opens the entire case for review on any question including one not raised by the parties.[63] In this case, the crime of Parricide was committed absent any modifying circumstances that would affect the imposable penalty. Hence, following our ruling in *People v. Jugueta*,[64] we hereby grant an award for civil indemnity and moral and exemplary damages in the amount of Seventy-Five Thousand Pesos (₱75,000.00) each.

**WHEREFORE**, premises considered, the appeal is **DISMISSED** for lack of merit. The Decision dated April 2, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05083, finding accused-appellant Antonio T. Dacanay **GUILTY** beyond reasonable doubt of the crime of Parricide under Article 246 of the Revised Penal Code, as amended, is hereby **AFFIRMED** with **MODIFICATION**, ordering him to pay the heirs of Norma E. Dacanay, Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy Five Thousand Pesos (₱75,000.00) as moral damages, and Seventy Five Thousand Pesos (₱75,000.00) as exemplary damages.

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[61] *Almojuela v. People*, 734 Phil. 636, 651 (2014).

[62] *People v. Gahi*, 727 Phil. 642, 658 (2014).

[63] *People v. Rivera*, 613 Phil. 660, 668 (2009).

[64] *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

**SO ORDERED.**

*Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin,* and *Perlas-Bernabe, JJ.*, concur.

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**FIRST DIVISION**

[G.R. No. 217210. November 7, 2016]

**REPUBLIC OF THE PHILIPPINES,** *petitioner, vs.* **CAPITAL RESOURCES CORPORATION, ROMEO ROXAS, and the REGISTER OF DEEDS OF THE PROVINCE OF LA UNION,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; NEW ISSUES CAN NO LONGER BE CONSIDERED BY THE APPELLATE COURT BECAUSE A PARTY IS NOT PERMITTED TO CHANGE HIS THEORY ON APPEAL; CASE AT BAR.—** It has been a long-standing principle that issues not timely raised in the proceedings before the lower court are barred by estoppel. As a rule, new issues can no longer be considered by the appellate court because a party is not permitted to change his theory on appeal; to allow him to do so would be offensive to the rules of fair play, justice and due process. x x x As already mentioned above, the allegations of the Complaint were limited to the claim that Blocks 35 and 36 were foreshore lands and/or salvaged zones. Nowhere in the Complaint did petitioner Republic make mention of inconsistencies in TCT No. T-23343 or the ineligibility of respondent CRC. On the basis thereof, only

evidence tending to prove whether or not the said portion of the Subject Property had indeed been consumed by the sea water was presented during trial. Perforce, Respondents were effectively deprived of the opportunity to meet the new allegations and present countervailing evidence to support their defense. Thus, for its failure to timely raise the contested issues, petitioner Republic can no longer rely on the same before this Court.

**2. POLITICAL LAW; 1973 CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY OF THE NATION; PROHIBITION ON CORPORATIONS ACQUIRING "ALIENABLE LANDS" OF THE PUBLIC DOMAIN WILL NOT APPLY IF THE LAND ACQUIRED BY THE CORPORATION IS PRIVATE PROPERTY; CASE AT BAR.— As to the provision of the 1973 Constitution proscribing corporations from acquiring "alienable lands" of the public domain**, the consistent ruling of the Supreme Court is that **the prohibition will not apply if the property acquired by the corporation is private property and not alienable lands of the public domain**. The rule is that once a patent is registered and the corresponding certificate of title is issued, the land covered by it ceases to be part of the public domain and becomes private property. **In the present case, the subject property became private property upon the issuance of OCT No. 137 to Vitaliano Dumuk on August 25, 1924. Necessarily, when the defendants-appellants acquired the subject property in 1982, the same was no longer a part of the alienable lands of the public domain but a private property.** Hence the prohibition will not apply.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioner.
*The Law Firm of Tenefrancia & Associates* for respondents.

## D E C I S I O N

**CAGUIOA, *J.*:**

This is an Appeal by *Certiorari*[1] under Rule 45 of the Rules of Court (Petition) filed by petitioner Republic of the Philippines (Republic) against the respondents herein, questioning the Decision dated February 26, 2015[2] of the Court of Appeals-Fourteenth Division (CA) in CA-G.R. CV No. 98040 (questioned Decision), which affirmed the Decision dated May 31, 2011 rendered by the Regional Trial Court of Bauang, La Union, Branch 33 (RTC) in Civil Case No. 1844-BG.

In this case, petitioner Republic, through the Office of the Solicitor General, is seeking the reversion of a parcel of land situated at Barangay Pugo, Bauang, La Union (Subject Property), which is covered by Transfer Certificate of Title (TCT) No. T-23343 and registered in the name of respondents Capital Resources Corporation (CRC) and Romeo Roxas (collectively, Respondents). The reversion of a portion of the Subject Property declared as foreshore lands has already been ordered by the RTC, and affirmed by the CA. The instant Petition is directed merely towards the remainder of the Subject Property.

### *The Facts*

The antecedents of this case are undisputed. The Court adopts the summary of the CA in the questioned Decision:

> Vitaliano Dumuk submitted Homestead Survey Plan H-6811 covering a parcel of land situated at La Union with an area of 15.8245 hectares [hereafter referred to as the subject property] which was approved by the Bureau of Lands on May 10, 1924. A Homestead Patent was granted to Dumuk on July 26, 1924 which resulted in the issuance of Original Certificate of Title [OCT] No. 137 on August 25, 1924. OCT No. 137 was cancelled and superseded by Transfer

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[1] *Rollo*, pp. 10-23.

[2] *Id*. at 25-40. Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Manuel M. Barrios and Maria Elisa Sempio Diy concurring.

Certificate of Title (TCT) No. T-6603 in the name of spouses Cecilio and Laura Milo. Capital Resources Corporation and Romeo Roxas [Capital Resources and Roxas are hereafter jointly referred to as defendants-appellants] acquired the subject property from spouses Milo resulting in the cancellation of TCT No. T-6603 and the issuance of TCT No. T-23343 on December 16, 1982.

Defendants-appellants then caused the subdivision of the subject property on May 27, 1985 *via* the subdivision plan Psd-1-009891 prepared by Geodetic Engineer Rosario Mercado [Engr. Mercado] and it was subdivided into several blocks, among which are Block 35 (18,079 sq.m.) and Block 36 (16,856 sq.m.). The plan indicated that Block 35 is a "salvage zone" while a portion of Block 36 appeared to overlap a portion of the China Sea. On July 15, 1988, subdivision plan Psd-1-009891 was approved but was subsequently cancelled pursuant to an Order of Cancellation issued by DENR Regional Technical Director Josefino Daquioag on January 25, 2005.

It appears that sometime in 1987, the town of Bauang, La Union was cadastrally surveyed and based on the Cadastral Survey Map, Block 35 (identified therein as Lot No. 400480) and Block 36 (identified therein as Lot No. 400475) were projected therein as part of the identified foreshore land and seabed, respectively.

On March 13, 2003, Alberto Hidalgo ["Hidalgo"] filed a Foreshore Lease Application (FLA) No. 012209-02 over a parcel of land with an area of 0.9971 hectares located at Barangay Pugo, Bauang, La Union. Defendants-appellants filed a formal protest, docketed as Claim Case No. 01-LU-046, on the ground that the parcel of land being applied for encroaches upon a portion of the subject property. In turn, Hidalgo filed a counter Protest assailing the validity of TCT No. T-23343 on the ground that: (1) it covers foreshore land, salvage zone, and portions of the South China Sea; and (2) his right to the foreshore land is prejudiced by the existence of this fraudulent title. The protest and counter-protest were later consolidated under the same docket number and were assigned to Land Management Officer Orlando "Mahar" Santos [Mahar Santos] for investigation.

Thereafter, a Panel of Investigators was organized by the DENR which recommended to the Office of the Regional Executive Director to direct the OPLAN: Anti-Fake Title Investigation Unit to determine the validity of TCT No. T-23343. Thus, a Regional Fact-Finding Committee [hereafter referred to as the Committee] was established. The Committee sought the help of Engr. Santiago Santiago [Engr.

Santiago], Chief of the Field Network and Survey Party (FNSP) of the DENR, who previously conducted a relocation survey of the subject property in the forcible entry case involving defendants-appellants and Hidalgo filed before the RTC [Branch 67; Bauang, La Union; Civil Case No. 1617-BG]. After receiving a copy of Engr. Santiago's relocation survey report, the Committee conducted an ocular inspection on February 26, 2007 and found that Blocks 35 and 36 are within the existing foreshore area.

In its Terminal Report, the Committee concluded that the submission by defendants-appellants of subdivision plan Psd-1-009891 is tantamount to an admission that the northwestern portion of the subject property was eaten up and eroded due to the adverse effects of sea waters. It also concluded that the Order dated January 25, 2005 cancelling subdivision plan Psd-1-009891 is not valid since it was neither accompanied by a standard investigation report nor by any evidence of payment. Further, it pointed out that Capital Resources may not validly acquire the subject property pursuant to Section 119 of Act No. 2874 and the 1973 Constitution. Thus, the Committee recommended that an order be issued revoking the Order of Cancellation dated January 25, 2005 and declaring Homestead Patent H-6811 null and void. It also recommended the filing of appropriate reversion proceedings to effect the cancellation of OCT No. 137 superseded by TCT No. T-6603 and TCT No. T-23343.

Accordingly, on July 27, 2007, DENR-Regional Executive Director Victor Ancheta rendered a Decision recommending that an action be instituted for the cancellation of TCT No. T-23343 and for the reversion of Blocks 35 and 36 to the State. Later on, a Joint Resolution was issued by DENR-Regional Executive Director Ancheta denying Hidalgo's foreshore lease application.

Consequently, the Republic of the Philippines, through the Office of the Solicitor General (OSG), filed a Complaint for *Cancellation of Title and Reversion* against defendants-appellants and the Register of Deeds of La Union before the Regional Trial Court [Bauang, La Union; Branch 33], docketed as Civil Case No. 1844-BG. The Republic alleged that from the time that Homestead Survey Plan H-6811 was approved in 1924 until the cadastral survey in 1987, the northwestern portion of the subject property had been washed out and eaten up by the sea waters. Per the ocular inspection, Blocks 35 to 36 formed part of the public domain. This fact is clearly supported by subdivision plan Psd-1-009891 submitted by defendants-appellants wherein the area already consumed by the sea has already been demarcated or

isolated. Thus, the Republic prayed for judgment: (a) declaring TCT No. T-23343 and its derivative titles as null and void; (b) ordering defendants-appellants to surrender the owner's duplicate of TCT No. T-23343 for cancellation; (c) ordering the defendants, their heirs, agents, assigns or anyone acting in their behalf to cease and desist from exercising acts of ownership over the subject property and to vacate the same, if they are in possession thereof; and (d) ordering the reversion of the subject land to the public domain.

Defendants-appellants filed their Answer wherein they denied the allegations in the Complaint and averred that they, as well as their predecessors-in-interest, had purchased the subject property for valuable consideration and in good faith. They insisted that the cadastral survey map did not indicate that Blocks 35 and 36 had become foreshore land and formed part of the seabed. They had not been washed out and eaten up by the sea though, for a brief period, they have been inundated because of strong precipitation and typhoons. Contrary to what was projected in the cadastral survey map, Blocks 35 and 36 are suitable for agricultural, residential, industrial and commercial purposes and are not alternatively covered and uncovered by the movement of the tide. Further, defendants- appellants posited that the action should be dismissed because it was not filed at the behest of the Director of Lands and that there was a violation of the equal protection of laws since there were other areas adjacent to the sea which were not subjected to reversion proceedings.[3]

*Ruling of the RTC*

On May 31, 2011, after trial on the merits, the RTC rendered its Decision of even date, ordering the cancellation of TCT No. T-23343 and the reversion of Blocks 35 and 36 to the public domain, as follows:

WHEREFORE, in view of the foregoing considerations, the Court renders judgment in FAVOR of [petitioner Republic] and AGAINST [Respondents]:

(1) DECLARING Blocks 35 and 36 embraced in TCT No. T-23343 (Exhibit 'A') in the name of Capital Resources Corporation represented by its President Francisco Joaquin, Jr. and Romeo Roxas as FORESHORE LANDS;

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[3] *Id*. at 26-29.

(2) ORDERING the Register of Deeds of the Province of La Union to **cancel only the portions pertaining to Blocks 35 and 36 embraced in said title which are hereby declared null and void**, and for this purpose, the private defendants are directed to surrender the owner's duplicate copy of TCT No. T-23343 to the Register of Deeds for cancellation;

(3) ORDERING the private defendants, their heirs, agents, assigns or anyone acting on their behalf to cease and desist from exercising acts of ownership over Blocks 35 and 36 thereof; and

(4) **ORDERING Blocks 35 and 36 of the Subdivision Plan Psd-1-009891 reverted to the public domain.**

SO ORDERED.[4] (Emphasis supplied)

On June 30, 2011, petitioner Republic filed a Motion for Partial Reconsideration,[5] raising the following issues, *inter alia*: (i) that there were inconsistencies between TCT No. T-23343 and Psd-1-009891 pertaining to the land area of the Subject Property; and (ii) that respondent CRC, being a corporation, is ineligible to acquire the Subject Property under Act No. 2874, otherwise known as the "Public Land Act".[6]

Notably, the said issues were not included in the Complaint dated May 30, 2008[7] (Complaint) filed by petitioner Republic as well as in the Pre-Trial Order dated January 19, 2009 issued by the RTC. Hence, in its Order dated March 11, 2009,[8] the RTC summed up the main issues as follows: (i) whether or not Blocks 35 and 36 of the Subject Property as reflected in subdivision plan Psd-1-009891 are foreshore lands; and (ii) whether or not Blocks 35 and 36 are salvaged zones and should therefore be reverted to the public domain in accordance with law.[9]

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[4] *Id*. at 26.

[5] *Id*. at 29.

[6] *Id*. at 50.

[7] *Id*. at 56-68.

[8] *Id*. at 69-70.

[9] *Id*. at 69.

Subsequently, in an Order dated October 17, 2011, the RTC modified its Decision dated May 31, 2011 to the extent that Respondents were further directed to surrender the owner's duplicate copy of TCT No. T-23343 to the Register of Deeds for cancellation.[10]

Both parties appealed to the CA.[11]

On appeal, petitioner Republic sought the reversion of the remaining portion of the Subject Property, again invoking the same issues raised in its Motion for Partial Reconsideration dated June 30, 2011.[12] Meanwhile, in their appeal, the Respondents mainly disputed the findings of the RTC insofar as it ruled that Blocks 35 and 36 were foreshore lands and therefore appropriate subjects of an action for reversion.[13]

*Ruling of the CA*

On February 26, 2015, the CA rendered the questioned Decision, affirming the Decision of the RTC dated May 31, 2011. In addition, the CA ordered the conduct of a resurvey of the Subject Property to determine the actual area encompassed by the technical descriptions in TCT No. T-23343 in order to effectively segregate Blocks 35 and 36 therefrom. The Register of Deeds of the Province of La Union was likewise directed to cancel TCT No. T-23343 and thereafter issue a new title reflecting the technical descriptions of the resurvey plan upon approval. The dispositive portion of the questioned Decision stated:

> WHEREFORE, the Decision dated May 31, 2011 of the Regional Trial Court of Bauang, La Union, Branch 33 in Civil Case No. 1844-BG, is hereby AFFIRMED. However, **prior to the cancellation of TCT No. T-23343, the defendants-appellants Capital Resources Corporation and Romeo Roxas are hereby ordered to cause the resurvey of the subject property registered under TCT No.**

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[10] *Id*. at 29-30.

[11] *Id*. at 30.

[12] *Id*.

[13] *Id*.

**T-23343** to determine the actual area encompassed by the technical descriptions on TCT No. T-23343 and to effectively segregate Blocks 35 and 36 therefrom. The costs of the resurvey shall be shouldered by the defendants-appellants and the corresponding resurvey plan shall be subject to the approval of the Land Management Bureau. Thereafter, the **Register of Deeds of the Province of La Union is hereby ordered to cancel TCT No. T-23343 and to issue a new title reflecting the technical descriptions appearing in the approved resurvey plan.**

SO ORDERED.[14] (Emphasis supplied)

Without moving for reconsideration, petitioner Republic filed the instant Petition. Parenthetically, on April 6, 2015, Respondents filed a Motion for Reconsideration of the questioned Decision,[15] which was eventually denied by the CA in a Resolution dated January 15, 2016.[16]

In its Petition, petitioner Republic harps on the same grounds alleged in its Motion for Partial Reconsideration dated June 30, 2011, to wit: (i) that there were inconsistencies between TCT No. T-23343 and Psd-1-009891 pertaining to the land area of the Subject Property; and (ii) that respondent CRC, being a corporation, is ineligible to acquire the Subject Property under the Public Land Act.[17]

Meanwhile, in their Comment dated October 7, 2015 (Comment),[18] Respondents pointedly argue that the issues raised in the Petition were not alleged in the Complaint and therefore can no longer be considered on appeal. Particularly, Respondents claim that petitioner Republic raised the said issues for the first time only in its Motion for Partial Reconsideration dated June 30, 2011 and without amending the Complaint.[19] Respondents

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[14] *Id*. at 39-40.

[15] *Id*. at 46.

[16] *Id*. at 78-79.

[17] *Id*. at 14.

[18] *Id*. at 46-55.

[19] *Id*. at 50.

further posit that the mere existence of the alleged discrepancies in various public documents was not a ground to cancel TCT No. T-23343.[20] Finally, anent the issue of ineligibility, Respondents argue that there was no violation of the Public Land Act and that the CA correctly resolved such issue despite being belatedly raised by petitioner Republic.[21]

On May 12, 2016, petitioner Republic filed its Reply dated April 19, 2016.[22]

*Issue*

Stripped of verbiage, the core issues before the Court may be summed up as follows: (i) whether or not the Court may consider the issues raised by petitioner Republic, and (ii) whether or not the remaining portion of the Subject Property may be reverted to the public domain.

*The Court's Ruling*

The Petition is unmeritorious.

It has been a long-standing principle that issues not timely raised in the proceedings before the lower court are barred by estoppel.[23] As a rule, new issues can no longer be considered by the appellate court because a party is not permitted to change his theory on appeal; to allow him to do so would be offensive to the rules of fair play, justice and due process.[24]

In this case, petitioner Republic does not dispute the fact that it failed to raise the contested issues in its Complaint[25] and pre-trial brief. Instead, petitioner Republic argues that such issues are "within the bounds x x x of the initial issues", being "germane

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[20] *Id*. at 52.

[21] *Id*. at 52-53.

[22] *Id*. at 94-100.

[23] *Lazaro v. Court of Appeals*, 423 Phil. 554, 558 (2001); see *Espadera v. Court of Appeals*, 247-A Phil. 445, 448 (1988).

[24] *Balitaosan v. The Secretary of Education*, 457 Phil. 300, 304 (2003).

[25] *Rollo*, pp. 56-68.

to the sole purpose of cancelling [TCT No. T-23343] in its entirety."[26]

Petitioner Republic's contention is not well-taken.

A judicious review of the records reveals that while petitioner Republic's Complaint prayed for the reversion of the **entire** Subject Property, the allegations are predicated merely on their assertion that **Blocks 35 and 36** have become foreshore lands. In this regard, basic is the rule that it is the allegations of the complaint and not the prayer that determines the basis of the plaintiffs relief.[27] In the same vein, the prayer will not be construed as enlarging the complaint so as to embrace a cause of action not pleaded therein.[28] As stated in the Complaint:

> 10. Based on the above findings, DENR Regional Executive Director Victor J. Ancheta, CESO IV, rendered a Decision dated July 27, 2007, recommending that an action be instituted for the cancellation of TCT No. T-23343 and for the **reversion to the State of Blocks 35 and 36, the portion of the subject land found to be within the foreshore area.**
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> x x x x x x x x x
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> 14. From the time Homestead Survey Plan H-6811 was approved until the cadastral survey in 1987, the northwestern portion of the subject land had been washed out and eaten up by sea waters, resulting to erosion. The ocular inspection revealed that the status of the washed out portion has not changed. **Thus, Blocks 35 and 36 of TCT No. T-23343 form part of the public domain.**[29] (Emphasis supplied)

Correspondingly, the Pre-Trial Order dated January 19, 2009 reflected only the following issues:

> 1. Whether or not the land covered by TCT No. 23343 **more specifically blocks 35 and 36 of the subdivision plan**

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[26] *Id*. at 94.

[27] *Asian Transmission Corp. v. Canlubang Sugar Estates*, 457 Phil. 260, 285 (2003); see *Schenker v. Gemperle*, 116 Phil. 194, 199 (1962).

[28] *Id*.

[29] *Rollo*, pp. 61-63.

**H-6811 [Psb(*sic*)-1-009891] are foreshore** and therefore, should be reverted to the public domain in accordance with law;

2. Whether or not the land covered by TCT No. 23343 **more particularly blocks 35 and 36 of the same subdivision plan are salvaged zones** and therefore, should be reverted to the public domain in accordance with law;[30] (Emphasis supplied)

Thus, after trial, in its Decision dated May 31, 2011, the RTC declared Blocks 35 and 36 as foreshore lands and ordered the **cancellation of the portions pertaining to Blocks 35 and 36 only** and not of the entire Subject Property.[31] In the same manner, the CA, in the questioned Decision, affirmed the RTC's Decision dated May 31, 2011 and likewise ordered the issuance of a new title without **Blocks 35 and 36** in favor of Respondents after conducting a resurvey of the technical descriptions in TCT No. T-23343.[32]

As correctly underscored by the Respondents, when petitioner Republic filed its Motion for Partial Reconsideration on June 30, 2011,[33] it was only then that it tendered issues pertinent to the reversion of the **entire** Subject Property, suddenly shifting the focus on alleged inconsistencies between TCT No. T-23343 and Psd-1-009891 and respondent CRC's purported ineligibility to acquire the Subject Property.[34] This, petitioner Republic cannot do without violating the basic rules of fair play and due process as Respondents did not have the opportunity to counteract the new issues.[35]

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[30] *Id*. at 69.

[31] *Id*. at 26.

[32] *Id*. at 39-40.

[33] *Id*. at 29.

[34] *Id*. at 50.

[35] See *Marine Culture, Inc. v. Court of Appeals*, G.R. No. 102417, February 19, 1993, 219 SCRA 148, 152.

As already mentioned above, the allegations of the Complaint were limited to the claim that Blocks 35 and 36 were foreshore lands and/or salvaged zones. Nowhere in the Complaint did petitioner Republic make mention of inconsistencies in TCT No. T-23343 or the ineligibility of respondent CRC. On the basis thereof, only evidence tending to prove whether or not the said portion of the Subject Property had indeed been consumed by the sea water was presented during trial.[36] Perforce, Respondents were effectively deprived of the opportunity to meet the new allegations and present countervailing evidence to support their defense. Thus, for its failure to timely raise the contested issues, petitioner Republic can no longer rely on the same before this Court.

In sum, while the Complaint prayed for the reversion of the entire Subject Property,[37] the allegations contained therein pertained only to Blocks 35 and 36. Hence, considering that the body of the Complaint merely supported the reversion of Blocks 35 and 36, it is of no moment that there was a general prayer for the reversion of the entire Subject Property. Any relief granted beyond the allegations of the Complaint would be baseless and would amount to grave abuse of discretion.[38]

Accordingly, contrary to the asseverations of petitioner Republic in its Reply dated April 19, 2016,[39] the issues raised in its Motion for Partial Reconsideration dated June 30, 2011 cannot be considered as "within the bounds of the original issues."[40]

Moreover, considering the non-inclusion of the contested issues in the Pre-Trial Order dated January 19, 2009, such delimitation made by the RTC had effectively barred the consideration of the said issues, whether during the trial or on

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[36] *Rollo*, p. 34.

[37] *Id*. at 64.

[38] See *Bucal v. Bucal*, G.R. No. 206957, June 17, 2015, 759 SCRA 262.

[39] *Rollo*, pp. 94-100.

[40] *Id*. at 94.

appeal.[41] In fact, as adverted to by the Respondents in their Comment, petitioner Republic likewise failed to proffer such issues in its pre-trial brief.[42] In *Villanueva v. Court of Appeals*, where the petitioners failed to have the issue of prescription and laches included in the pre-trial order *despite* having raised it in their Answer, this Court held that such issues could no longer be considered on appeal, the parties being bound by the stipulations made during pre-trial:

> Petitioners argue that in past instances we have reviewed matters raised for the first time during appeal. True, but we have done so only by way of exception involving clearly meritorious situations. This case does not fall under any of those exceptions. **The fact that the case proceeded to trial, with the petitioners actively participating without raising the necessary objection, all the more requires that they be bound by the stipulations they made at the pre-trial. Petitioners were well aware that they raised the defense of prescription and laches since they included it in their answer.** However, for reasons of their own, they did not include this defense in the pre-trial.
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> x x x Parties are not allowed to flip-flop. Courts have neither the time nor the resources to accommodate parties who choose to go to trial haphazardly. Moreover, **it would be grossly unfair to allow petitioners the luxury of changing their mind to the detriment of private respondents at this late stage. To put it simply, since petitioners did not raise the defense of prescription and laches during the trial, they cannot now raise this defense for the first time on appeal**."[43] (Emphasis supplied)

Thus, following *Villanueva*, it would be highly inequitable for this Court to consider the contested issues raised by petitioner Republic as it had effectively waived such grounds when it failed to have them included in the Pre-Trial Order and in its pre-trial brief. On this score alone and proceeding from the foregoing discussion, the instant Petition may already be denied.

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[41] See *Villanueva v. Court of Appeals*, 471 Phil. 394, 406 (2004).

[42] *Rollo*, p. 50.

[43] *Supra* note 41, at 407-408.

Be that as it may, in light of the Court's policy of deciding cases on the merits rather than technicalities,[44] the Court now proceeds to resolve the substantive aspect of this case.

Petitioner Republic insists that the CA erred in ordering only the reversion of the portion of the Subject Property pertaining to Blocks 35 and 36, on the ground that: (i) there are inconsistencies in the land area of the Subject Property, specifically between TCT No. T-23343 and subdivision plan Psd-1-009891, and (ii) respondent CRC is ineligible to be a "transferor (*sic*)" of a homestead patent.[45] In its questioned Decision, the CA, in response to the first issue, ordered a resurvey of the Subject Property. Likewise, it rejected the second issue and sustained the RTC's Decision dated May 31, 2011.

The Court agrees with, and accordingly affirms the ruling of, the CA.

Anent the first issue, petitioner Republic makes much of the fact that the land area of the Subject Property reflected in TCT No. T-23343 is 158,345 square meters, while in subdivision plan Psd-1-009891, the land area is 165,582 square meters.[46] However, aside from such observations, petitioner Republic failed to allege any legal basis that would warrant the outright cancellation of TCT No. T-23343 and correspondingly, the reversion of the entire Subject Property.

In fact, such discrepancies were already directly addressed by the CA when it ordered the conduct of a resurvey of the Subject Property to determine the actual area encompassed by the technical descriptions on TCT No. T-23343 for the purpose of segregating Blocks 35 and 36 therefrom.[47] Clearly, petitioner Republic's prayer for the cancellation of TCT No. T-23343 based on mere discrepancies is unfounded. Hence, as correctly

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[44] See *Heirs of Amada Zaulda v. Zaulda*, 729 Phil. 639, 651 (2014).

[45] *Rollo*, p. 14.

[46] *Id*.

[47] *Id*. at 39.

observed by Respondents, the cancellation of TCT No. T-23343 on such grounds is neither supported by law nor by jurisprudence.

With respect to the second issue, petitioner Republic insists that respondent CRC is ineligible to acquire the Subject Property under the Public Land Act, which was the law in force at the time OCT No. 137 was issued.[48] Further, petitioner Republic argues that the transfer of the Subject Property to respondent CRC is violative of Section 11 of the 1973 Constitution, which prohibits private corporations from holding alienable lands of the public domain except through a lease agreement.[49]

Petitioner Republic is mistaken.

On this issue, we adopt the following disquisition of the CA in the questioned Decision:

> Anent the eligibility of Capital Resources to acquire the subject property, it should be noted that under Section 121 of CA 141 (which superseded Section 119 of Act No. 2874) a corporation may acquire land granted under the free patent or homestead only if it was with the consent of the grantee and the approval of the Secretary of Natural Resources and the land will be used solely for commercial, industrial, educational, religious or charitable purposes or for a right of way. Nevertheless, as clarified in the case of *Villaflor vs. Court of Appeals*, **Section 121 pertains to acquisitions of public land by a corporation from a grantee. In this particular case, the original grantee was Vitaliano Dumuk and he subsequently transferred the subject property to spouses Cecilio and Laura Milo. In turn, the spouses were the ones who sold the subject property to Capital Resources and Romeo Roxas. Evidently, Capital Resources did not acquire the subject property from the original grantee.** Even if We were to assume that Capital Resources is ineligible to be a transferee, the fact remains that the subject property was purchased by Capital Resources and Romeo Roxas and the latter is an individual who is not barred from acquiring the subject property.
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> **As to the provision of the 1973 Constitution proscribing corporations from acquiring "alienable lands" of the public**

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[48] *Id*. at 17.

[49] *Id*. at 19.

**domain**, the consistent ruling of the Supreme Court is that **the prohibition will not apply if the property acquired by the corporation is private property and not alienable lands of the public domain**. The rule is that once a patent is registered and the corresponding certificate of title is issued, the land covered by it ceases to be part of the public domain and becomes private property. **In the present case, the subject property became private property upon the issuance of OCT No. 137 to Vitaliano Dumuk on August 25, 1924. Necessarily, when the defendants-appellants acquired the subject property in 1982, the same was no longer a part of the alienable lands of the public domain but a private property.** Hence the prohibition will not apply.[50] (Emphasis supplied)

All told, after careful review, this Court finds no cogent reason to disturb the CA's findings — for while petitioner Republic was able to show its entitlement to the reversion of Blocks 35 and 36 to the public domain, it failed to do the same with respect to the remaining portion of the Subject Property.

**WHEREFORE**, premises considered, we **DENY** the Petition for lack of merit and hereby **AFFIRM** the Decision dated February 26, 2015 of the Court of Appeals-Fourteenth Division in CA-G.R. CV No. 98040.

**SO ORDERED.**

*Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin,* and *Perlas-Bernabe, JJ.*, concur.

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[50] *Id*. at 32-33.

**FIRST DIVISION**

[G.R. No. 219430. November 7, 2016]

**JINKY S. STA. ISABEL,** *petitioner, vs.* **PERLA COMPAÑIA**[*] **DE SEGUROS, INC.,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; TO JUSTIFY THE GRANT OF THE EXTRAORDINARY REMEDY OF *CERTIORARI*, THE PETITIONER MUST SATISFACTORILY SHOW THAT THE COURT OR QUASI-JUDICIAL AUTHORITY GRAVELY ABUSED THE DISCRETION CONFERRED UPON IT.—** To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

**2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT BY EMPLOYER; REQUISITES FOR WILLFUL DISOBEDIENCE OR INSUBORDINATION, AS A JUST CAUSE FOR THE DISMISSAL OF AN EMPLOYEE, CITED.—** Insubordination or willful disobedience, is a just cause for termination of employment listed under Article 297 (formerly Article 282) of the Labor Code, x x x Willful disobedience or insubordination, as a just cause for the dismissal of an employee, necessitates the concurrence of at least two (2) requisites, namely: (*a*) the employee's assailed conduct must have been willful, that is,

[*] "Compaña" or "Compania" in some parts of the records.

characterized by a wrongful and perverse attitude; and (*b*) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.

**APPEARANCES OF COUNSEL**

*Atienza Formento & Aquino Law Offices* for petitioner.
*Agnes T. Awanin-Felicidario* for respondent.

**D E C I S I O N**

**PERLAS-BERNABE, *J.*:**

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 25, 2015 and the Resolution[3] dated June 15, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 134676, which nullified and set aside the Decision[4] dated December 26, 2013 and the Resolution[5] dated February 27, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 06-001823-13 and, accordingly, reinstated the Decision[6] dated April 10, 2013 of the Labor Arbiter (LA) in NLRC NCR Case No. 12-17463-12 finding petitioner Jinky S. Sta. Isabel (Sta. Isabel) to have been validly dismissed from employment by respondent Perla Compañia de Seguros, Inc. (Perla).

**The Facts**

On February 27, 2006, Perla, a corporation engaged in the insurance business, hired Sta. Isabel as a Claims Adjuster with

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[1] *Rollo*, pp. 11-56.

[2] *Id.* at 61-78. Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando concurring.

[3] *Id.* at 80.

[4] CA *rollo*, pp. 76-101. Penned by Commissioner Isabel G. Panganiban-Ortiguerra with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves E. Vivar-De Castro concurring.

[5] *Id.* at 103-105.

[6] *Id.* at 510-523. Penned by LA Marcial Galahad T. Makasiar.

the task of handling and settling claims of Perla's Quezon City Branch (QC Branch). Later on, Perla discovered that Sta. Isabel owned a separate insurance agency known as JRS Insurance Agency (JRS). To avoid conflict of interests, Perla instructed its QC Branch manager to: (*a*) allow the licensing of JRS as a licensed agent of the QC Branch at the soonest time possible; and (*b*) forward all claims coded under JRS to Perla's Claims Department at the Head Office for processing, evaluation, and approval.[7]

Pending the resolution of the JRS issue, Sta. Isabel received a Notice to Explain[8] dated October 19, 2012 why no disciplinary action should be taken against her for her poor services towards the clients of PAIS Insurance Agency (PAIS), to which she submitted her written explanation.[9] On October 29, 2012, Sta. Isabel attended a meeting with Perla's officers concerning the JRS and PAIS incidents. On even date, Perla issued a Report on Status of the Hearing for Jinky Sta. Isabel[10] wherein it resolved the foregoing incidents by agreeing that: (*a*) claims under JRS shall be approved by the Head Office; and (*b*) claims under PAIS will be transferred to the Head Office for processing.[11]

On November 9, 2012, Sta. Isabel received another Notice to Explain[12] why no disciplinary action should be taken against her for her poor services towards the clients of Ricsons Consultants and Insurance Brokers, Inc. (Ricsons). In view of Sta. Isabel's failure to submit a written explanation and to appear before the Head Office to explain herself, Perla issued a Final Written Warning[13] dated November 22, 2012 to be more

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[7] *Id*. at 77-78.

[8] *Id*. at 157.

[9] *Id*. at 167-167.

[10] *Id*. at 171.

[11] See *id*. at 78 and 173-174.

[12] *Id*. at 182-183.

[13] *Id*. at 185.

circumspect with her claims servicing, with a stern admonition that "any repetition of the same offense or any acts analogous to the foregoing shall be dealt with more severely and shall warrant drastic disciplinary action including the penalty of Termination in order to protect the interest of the company."[14] On even date, Perla likewise issued a Final Directive to Report to Head Office[15] instructing Sta. Isabel to report to the Head Office and explain her alleged refusal to receive the afore-cited Final Written Warning.

On November 26, 2012, Perla issued the following to Sta. Isabel: (*a*) a Notice to Explain[16] why no disciplinary action should be taken against her for failing to report to the Head Office despite due notice; and (*b*) a Notice of Termination[17] dismissing Sta. Isabel from employment on the ground of insubordination. Consequently, Sta. Isabel filed the instant complaint[18] for: (*a*) illegal dismissal; (*b*) underpayment of wages; (*c*) non-payment of overtime pay, service incentive leave pay, accrued leave pay, and 13th to 16th month pay; (*d*) retirement pay benefits under the corporation's Provident Fund; (*e*) actual, moral, and exemplary damages; and (*f*) attorney's fees against Perla before the NLRC.[19] In relation to her claim for illegal dismissal, Sta. Isabel prayed for the grant of separation pay and backwages, maintaining that there is already strained relations between her and Perla which would render reinstatement impossible.[20]

In support of her complaint, Sta. Isabel claimed that Perla could no longer use the PAIS and Ricsons incidents against her, considering that she was already penalized with multiple

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[14] *Id*.

[15] *Id.* at 186.

[16] *Id.* at 188.

[17] *Id.* at 192.

[18] Not attached to the *rollo*.

[19] CA *rollo*, pp. 81-82.

[20] *Id*. at 84.

warnings to be more circumspect with her claims servicing. She likewise alleged that after receipt of the Final Directive to Report to Head Office dated November 22, 2012, she met with Renato Carino (Carino), Perla's Vice-President for Operations,[21] albeit not at the Head Office, but at a nearby restaurant where Carino himself instructed her to proceed. At the restaurant, Carino asked Sta. Isabel if she would voluntarily resign over the Ricsons incident, to which the latter replied that the incident had already been dealt with. Finally, Sta. Isabel concluded that Perla was bent on easing her out of work, pointing out that the Notice to Explain and Notice of Termination regarding her alleged insubordination was dated on the same day.[22]

In its defense, Perla maintained that it validly terminated Sta. Isabel's employment on the ground of insubordination. It averred that since Sta. Isabel did not submit any written explanation regarding the Notice to Explain dated November 9, 2012 (pertaining to the Ricsons incident), it was constrained to issue the Final Written Warning dated November 22, 2012, which Sta. Isabel refused to accept. Carino then called her *via* telephone to get an explanation and, thereafter, sent a Final Directive to Report to Head Office. Instead of reporting at the Head Office, Sta. Isabel requested for an informal meeting with Carino at a restaurant as she did not want to see the faces of the other officers. Thereat, Carino asked Sta. Isabel if she was willing to voluntarily retire, and at the same time, reminded her to report to the Head Office. In view of Sta. Isabel's recalcitrance in complying with the aforesaid directives, Perla issued a Notice to Explain dated November 26, 2012 charging Sta. Isabel of insubordination. On November 27, 2012, Perla received a letter[23] from Sta. Isabel saying that she will only report to the Head Office if Perla's President, Operations Head, Assistant Vice President, Human Resources Manager, and QC Branch Manager will all be present for a meeting/conference

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[21] See *id*. at 77.

[22] See *id*. at 82-84.

[23] *Id*. at 190.

to clear all issues surrounding her. Thus, on November 28, 2012, Perla terminated Sta. Isabel's employment on the ground of insubordination. In this regard, Perla explained that due to a typographical error, it "wrongly" indicated November 26, 2012 as the date of issuance of Sta. Isabel's Notice of Termination instead of November 28, 2012.[24]

**The LA Ruling**

In a Decision[25] dated April 10, 2013, the Labor Arbiter (LA) dismissed the complaint for lack of merit, but nevertheless, ordered Perla to pay Sta. Isabel the amounts of ₱8,778.00 and ₱7,442.30 representing her unpaid salary and service incentive leave pay, respectively.[26]

The LA found that since Perla's directives for Sta. Isabel to appear before the Head Office were in connection with the administrative proceedings against the latter, her refusal to comply therewith was not tantamount to willful disobedience or insubordination. At the most, it only amounted to a waiver of her opportunity to be heard in said proceedings. Nevertheless, the LA found just cause in terminating Sta Isabel's employment, opining that her disrespectful language in her letter dated November 27, 2012 not only constitutes serious misconduct, but also insubordination as it showed her manifest refusal to cooperate with Perla.[27]

Aggrieved, Sta. Isabel appealed[28] to the NLRC.

**The NLRC Ruling**

In a Decision[29] dated December 26, 2013, the NLRC granted Sta. Isabel's appeal and, accordingly, ordered Perla to pay her

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[24] See *id*. at 85-89.

[25] *Id*. at 510-523.

[26] *Id*. at 520-521.

[27] See *id*. at 514-517.

[28] See Memorandum of Appeal dated May 14, 2013; *id*. at 524-571.

[29] *Id*. at 76-101.

separation pay, backwages, benefits under the Provident Fund, 14th month pay, and attorney's fees equivalent to 10% of all the monetary awards.[30]

The NLRC held that Sta. Isabel's refusal to report to the Head Office was not willful disobedience, considering that the directives were in connection with the administrative proceedings against her and, as such, her failure to appear was only tantamount to a waiver of her opportunity to be heard. Hence, she cannot be dismissed on such cause, which incidentally, was the sole ground for her termination as stated in the Notice of Termination. In this relation, the NLRC ruled that the LA could not use Sta. Isabel's November 27, 2012 letter as a ground for her termination as Perla itself did not invoke the same in the first place. Even assuming that the letter may be used as evidence against Sta. Isabel, the NLRC held that a careful perusal thereof would show that it was not discourteous, accusatory, or inflammatory. At the most, the language in the letter would show that Sta. Isabel had written it out of confusion and frustration over the matter the administrative proceedings against her were being handled, and not out of defiance and arrogance.[31] In sum, the NLRC concluded that Sta. Isabel's dismissal was without just cause, hence, unlawful.[32]

Upon Perla's motion for reconsideration,[33] the NLRC issued a Resolution[34] dated February 27, 2014 affirming its Decision with modification deleting the award of benefits under the Provident Fund. Dissatisfied, Perla filed a petition for *certiorari*[35] before the CA.

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[30] *Id*. at 100.

[31] *Id*. at 95.

[32] See *id*. at 92-98.

[33] Dated January 21, 2014. *Id*. at 646-696.

[34] *Id*. at 103-105.

[35] See Petition for *Certiorari* (with Urgent Prayer for Restraining Order and/or Injunction) dated March 31, 2014; *id*. at 3-71.

**The CA Ruling**

In a Decision[36] dated March 25, 2015, the CA nullified and set aside the NLRC ruling, and reinstated that of the LA.[37] Essentially, it held that the NLRC gravely abused its discretion in failing to appreciate the evidence showing Sta. Isabel's sheer defiant attitude on the orders of Perla and its officers.[38] In this regard, the CA held that Sta. Isabel's conduct towards Perla's officers by deliberately ignoring the latter's directives for her to appear before the Head Office, coupled with her letter dated November 27, 2012, constitutes insubordination or willful disobedience.[39] Thus, the CA concluded that Sta. Isabel's dismissal was valid, it being a valid exercise of management prerogative in dealing with its affairs, including the right to dismiss its erring employees.[40]

Undaunted, Sta. Isabel moved for reconsideration,[41] which was, however, denied in a Resolution[42] dated June 15, 2015; hence, this petition.

**The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the CA correctly ascribed grave abuse of discretion on the part of the NLRC in ruling that Sta. Isabel's dismissal was illegal.

**The Court's Ruling**

The petition is meritorious.

To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-

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[36] *Rollo*, pp. 61-78.

[37] *Id.* at 77.

[38] See *id.*

[39] See *id.* at 75-76.

[40] *Id.* at 71-77.

[41] See motion for reconsideration dated April 16, 2015; CA *rollo*, pp. 864-906.

[42] *Rollo*, p. 80.

judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[43]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[44]

Guided by the foregoing considerations, the Court finds that the CA committed reversible error in granting Perla's *certiorari* petition considering that the NLRC's finding that Sta. Isabel was illegally dismissed from employment is supported by substantial evidence.

As may be gleaned from the records, Sta. Isabel received a total of three (3) Notices to Explain dated October 19, 2012,[45] November 9, 2012,[46] and November 26, 2012.[47]

In the Notice to Explain dated October 19, 2012, Sta. Isabel was charged with serious misconduct for her poor services towards the clients of PAIS.[48] After Sta. Isabel submitted her written explanation and attended the corresponding meeting, Perla resolved the matter through a Report on Status of the Hearing for Jinky Sta. Isabel[49] dated October 29, 2012 wherein

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[43] See *Cebu People's Multi-Purpose Cooperative v. Carbonilla, Jr.*, G.R. No. 212070, January 27, 2016; citation omitted.

[44] See *id.*; citation omitted.

[45] CA *rollo*, p. 157.

[46] *Id.* at 182-183.

[47] *Id.* at 188.

[48] See *id.* at 157.

[49] *Id.* at 171.

she was penalized with a "VERBAL WARNING to improve on the claims servicing of clients in QC Branch."[50] Thus, the proceedings with regard to the PAIS incident should be deemed terminated.

In the Notice to Explain dated November 9, 2012, Sta. Isabel was charged with serious misconduct and gross neglect of duty for her poor services towards the clients of Ricsons.[51] Notwithstanding Sta. Isabel's failure to submit her written explanation despite due notice, Perla went ahead and resolved the matter anyway in the Final Written Warning[52] dated November 22, 2012 wherein it penalized her with a "FINAL WARNING to be more circumspect in [her] claims servicing with agents, brokers, and assureds" with an admonition that "any repetition of the same offense or any acts analogous to the foregoing shall be dealt with more severely and shall warrant drastic disciplinary action including the penalty of Termination in order to protect the interest of the company."[53] Hence, Perla's issuance of the Final Written Warning should have likewise terminated the administrative proceedings relative to the Ricsons incident.

Finally, in the Notice to Explain dated November 26, 2012, Perla charged her of willful disobedience for her failure to appear before the Head Office despite due notice.[54] In the Notice of Termination[55] of even date – although Perla insists that the date indicated therein was a mere typographical error and that it was actually made on November 28, 2012[56] – Sta. Isabel was terminated from work on the ground of insubordination.[57]

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[50] *Id*.

[51] See *id*. at 182-183.

[52] *Id*. at 185.

[53] *Id*.

[54] See *id*. at 188.

[55] *Id*. at 192.

[56] *Id*. at 89.

[57] See *id*.

Since Sta. Isabel was actually dismissed on the ground of insubordination, there is a need to determine whether or not there is sufficient basis to hold her guilty on such ground.

Insubordination or willful disobedience, is a just cause for termination of employment listed under Article 297 (formerly Article 282) of the Labor Code,[58] to wit:

> Article 297 [282]. *Termination by Employer*. – An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> x x x x x x x x x

Willful disobedience or insubordination, as a just cause for the dismissal of an employee, necessitates the concurrence of at least two (2) requisites, namely: (*a*) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (*b*) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.[59]

In this case, a plain reading of the Notice to Explain and Notice of Termination both dated November 26, 2012 reveals that the charge of insubordination against Sta. Isabel was grounded on her refusal to report to the Head Office despite due notice. While Perla's directives for Sta. Isabel to report to the Head Office indeed appear to be reasonable, lawful, and made known to the latter, it cannot be said that such directives pertain to her duties as a Claims Adjuster, *i.e.*, handling and settling claims of Perla's Quezon City Branch, regardless of

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[58] See Department of Labor and Employment's Department Advisory No. 01, series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

[59] *Maersk-Filipinas Crewing, Inc. v. Avestruz*, G.R. No. 207010, February 18, 2015, 751 SCRA 161, 173-174.

whether her refusal to heed them was actually willful or not. The aforesaid directives, whether contained in the Notice to Explain dated November 9, 2012 or the Final Directive to Report to Head Office dated November 22, 2012, all pertain to Perla's investigation regarding the Ricsons incident and, thus, were issued in compliance with the requisites of procedural due process in administrative cases. Otherwise stated, such directives to appear before the Head Office were for the purpose of affording Sta. Isabel an opportunity to be heard regarding the Notice to Explain dated November 9, 2012.[60] As correctly pointed out by the labor tribunals, Sta. Isabel's failure or refusal to comply with the foregoing directives should only be deemed as a waiver of her right to procedural due process in connection with the Ricsons incident, and is not tantamount to willful disobedience or insubordination.

Besides, contrary to Perla's claim that it could not wrap up its investigation on the Ricsons incident due to Sta. Isabel's continuous disregard of said directives,[61] the Final Written Warning dated November 22, 2012 indubitably shows that Perla had already taken care of the Ricsons complaint despite Perla's non-cooperation. To recapitulate, the Final Written Warning stated that Perla: (*a*) took into consideration Sta. Isabel's refusal to appear before the Head Office or to submit her written explanation; (*b*) deemed such refusal as a waiver of her opportunity to be heard; and (*c*) resultantly resolved the matter by penalizing Sta. Isabel with, among others, a "FINAL WARNING to be more circumspect in [her] claims servicing

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[60] "The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. 'To be heard' does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process." (*Vivo v. Phil. Amusement and Gaming Corporation*, 721 Phil. 34, 43 [2013], citing *Casimiro v. Tandog*, 498 Phil. 660, 666-667 [2005].)

[61] See CA *rollo*, pp. 86-87.

with agents, brokers[,] and assureds."[62] Clearly, Perla cannot base the charge of insubordination against Sta. Isabel in her refusal to report to the Head Office in connection with the Ricsons complaint.

As an additional basis for Sta. Isabel's alleged insubordination, Perla argues that Sta. Isabel's letter[63] dated November 27, 2012 signifies her outright defiance of management authority, considering that as an employee, she had no right to impose conditions on management on when and what circumstances she would explain her side.[64]

The Court finds the argument untenable and simply an afterthought to put some semblance of legality to Sta. Isabel's dismissal.

A careful examination of the records reveals that Perla already issued Sta. Isabel's Notice of Termination on November 26, 2012 – the same day the Notice to Explain charging her of insubordination was issued – even before Sta. Isabel wrote them the letter dated November 27, 2012. Evidently, Perla never took this letter into consideration in dismissing Sta. Isabel. In an attempt to cover up this mishap, Perla claimed that the date indicated on the Notice of Termination was only a typographical error, as it was actually issued on November 28, 2012, even presenting the private courier receipt[65] showing that it was only sent to Sta. Isabel on the latter date. While such private courier receipt indeed shows the date when the Notice of Termination was sent, it does not prove that it was made on the same day. More revealing is the fact that this November 27, 2012 letter allegedly showing insubordination on the part of Sta. Isabel was not even mentioned in her Notice of Termination. Verily, Perla's excuse of typographical error in the date indicated on the Notice of Termination is simply unacceptable for being a

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[62] See *id*. at 185.

[63] *Id*. at 190.

[64] See *id*. at 87.

[65] See *id*. at 193.

mere self-serving assertion that deserves no weight in law.[66] Besides, as aptly put by the NLRC, a careful perusal of such letter reveals that the wordings used therein were not discourteous, accusatory, or inflammatory, nor was the letter written out of defiance and arrogance. Rather, it only exhibits Sta. Isabel's confusion and frustration over the way the administrative proceedings against her were being handled.

In sum, the totality of the foregoing circumstances shows that Sta. Isabel was not guilty of acts constituting insubordination, which would have given Perla a just cause to terminate her employment. As such, the CA erred in holding that the NLRC gravely abuse its discretion in ruling that Sta. Isabel's dismissal was illegal; hence, the NLRC ruling must be reinstated. However, since the NLRC erred in reckoning the computation of Sta. Isabel's separation pay from February 27, 2007 instead of the actual date of the commencement of her employment with Perla, a modification of the NLRC ruling to reflect this correction is in order.

**WHEREFORE,** the petition is **GRANTED**. The Decision dated March 25, 2015 and the Resolution dated June 15, 2015 of the Court of Appeals in CA-G.R. SP No. 134676 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated December 26, 2013 and the Resolution dated February 27, 2014 of the National Labor Relations Commission in NLRC LAC No. 06-001823-13 are **REINSTATED** with **MODIFICATION** in that the computation of separation pay due to petitioner Jinky S. Sta. Isabel should be counted from February 26, 2006, the actual date of the commencement of her employment with respondent Perla Compañia de Seguros, Inc., instead of February 27, 2007.

**SO ORDERED.**

*Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin,* and *Caguioa, JJ.,* concur.

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[66] See *People v. Mangune*, 698 Phil. 759, 771 (2012), citing *People v. Espinosa*, 476 Phil. 42, 62 (2004).

**FIRST DIVISION**

[G.R. No. 221897. November 7, 2016]

**ISIDRO QUEBRAL, ALBERTO ESQUILLO, RENANTE SALINSAN, JEROME MACANDOG, EDGARDO GAYORGOR, JIM ROBERT PERFECTO, NOEL PERFECTO, DENNIS PAGAYON, and HERCULANO MACANDOG,** *petitioners, vs.* **ANGBUS CONSTRUCTION, INC. and ANGELO BUSTAMANTE,** *respondents.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION (NLRC); WHEN THE NLRC'S RULING HAS BASIS IN EVIDENCE AND THE APPLICABLE LAW AND JURISPRUDENCE, THEN NO GRAVE ABUSE OF DISCRETION EXISTS; CASE AT BAR.—** Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition. Viewed from these lenses, the Court finds that the NLRC's Decision in this case was supported by substantial evidence and is consistent with law and jurisprudence as to the issues raised in the petition.

**2. REMEDIAL LAW; CIVIL PROCEDURE; FILING AND SERVICE OF PLEADINGS; WHEN PLEADINGS ARE FILED BY REGISTERED MAIL, THE DATE OF MAILING AS SHOWN BY THE POST OFFICE STAMP ON THE**

**ENVELOPE OR THE REGISTRY RECEIPT SHALL BE CONSIDERED AS THE DATE OF FILING; EXPLAINED.** — Section 3, Rule 13 of the Rules of Court provides that where pleadings are filed by registered mail, the date of mailing as shown by the post office stamp on the envelope or the registry receipt shall be considered as the date of filing. Based on this provision, the date of filing is determinable from two sources: (1) from the post office stamp on the envelope or (2) from the registry receipt, either of which may suffice to prove the timeliness of the filing of the pleadings. The Court previously ruled that if the date stamped on one is earlier than the other, the former may be accepted as the date of filing. This presupposes, however, that the envelope or registry receipt and the dates appearing thereon are duly authenticated before the tribunal where they are presented. When the photocopy of a registry receipt bears an earlier date but is not authenticated, the Court held that the later date stamped on the envelope shall be considered as the date of filing.

**3. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT BY EMPLOYER; REGULAR EMPLOYEES MAY BE DISMISSED FOR JUST AND/OR AUTHORIZED CAUSES, WHILE THE SERVICES OF EMPLOYEES WHO ARE HIRED AS PROJECT-BASED EMPLOYEES MAY BE LAWFULLY TERMINATED AT THE COMPLETION OF THE PROJECT.**— x x x Article 295 of the Labor Code, as amended, distinguishes a project employee from a regular employee, x x x A project-based employee is assigned to a project which begins and ends at determined or determinable times. Unlike regular employees who may only be dismissed for just and/or authorized causes under the Labor Code, the services of employees who are hired as project-based employees may be lawfully terminated at the completion of the project. To safeguard the rights of workers against the arbitrary use of the word "project" to preclude them from attaining regular status, jurisprudence provides that employers claiming that their workers are project-based employees have the burden to prove that these two requisites concur: (*a*) the employees were assigned to carry out a specific project or undertaking; and (*b*) the duration and scope of which were specified at the time they were engaged for such project. x x x The Court previously ruled that although the absence of a written contract does not by itself grant regular

status to the employees, it is evidence that they were informed of the duration and scope of their work and their status as project employees at the start of their engagement. When no other evidence is offered, the absence of employment contracts raises a serious question of whether the employees were sufficiently apprised at the start of their employment of their status as project employees. Absent such proof, it is presumed that they are regular employees, thus, can only be dismissed for just or authorized causes upon compliance with procedural due process.

**4. ID.; ID.; OMNIBUS RULES IMPLEMENTING THE LABOR CODE; THE RULES REQUIRES THE EMPLOYER TO KEEP ALL EMPLOYMENT RECORDS IN THE MAIN OR BRANCH OFFICE WHERE THE EMPLOYEES ARE ASSIGNED; NOT ESTABLISHED IN CASE AT BAR.—** Section 11, Rule X, Book III of the Omnibus Rules Implementing the Labor Code (Rules) requires the employer to keep all employment records in the main or branch office where the employees are assigned. It also prohibits the keeping of employees' records elsewhere. In the present case, Angbus has consistently declared in its pleadings, in its General Information Sheet, and the DOLE Reports that its main office is located at 16 Pratt Street, Filinvest 2, Batasan Hills, Quezon City. As aptly ruled by the NLRC, the extension office in the project site in Brgy. Rosario, Pasig City is not a branch office contemplated by the Rules where employees' records may be kept but merely a temporary office. Hence, the Brgy. Rosario Certification, stating that petitioners' employment records were destroyed by flood, does not justify the non-presentation of the employment contracts.

**APPEARANCES OF COUNSEL**

*A.A. Marqueda Law Offices* for petitioners.
*Domingo Vizconde & Associates* for respondents.

## D E C I S I O N

**PERLAS-BERNABE, *J.*:**

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated July 27, 2015 and the Resolution[3] dated November 2, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 138885, which annulled and set aside the Decision[4] dated December 26, 2013 of the National Labor Relations Commission (NLRC) in NLRC NCR Case Nos. 07-10288-12, 07-10636-12, 07-10708-12, and 07-10992-12, declaring that petitioners Isidro Quebral, Alberto Esquillo, Renante Salinsan, Jerome Macandog, Edgardo Gayorgor, Jim Robert Perfecto, Noel Perfecto, Dennis Pagayon, and Herculano Macandog (petitioners) are regular employees of respondent Angbus Construction, Inc. (Angbus) and were illegally dismissed from employment.

### The Facts

Petitioners alleged that Angbus employed them as construction workers on various dates from 2008 to 2011. They claimed to be regular employees since they were engaged to perform tasks which are necessary and desirable to the usual business of Angbus, and that they have rendered services to the latter's construction business for several years already.[5] They were, however, summarily dismissed from work on June 28, 2012 and July 14, 2012 without any just or authorized cause and due process. Thus, they filed consolidated cases for illegal dismissal with prayer for reinstatement and payment of full

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[1] *Rollo*, pp. 3-21.

[2] *Id*. at 63-76. Penned by Associate Justice Franchito N. Diamante with Associate Justices Japar B. Dimaampao and Socorro B. Inting concurring.

[3] *Id*. at 77-79.

[4] *Id*. at 32-42. Penned by Commissioner Isabel G. Panganiban-Ortiguerra with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves E. Vivar-De Castro concurring.

[5] *Id*. at 34.

backwages, salary differential, ECOLA, 13th month pay, service incentive leave pay, overtime and holiday pay, including moral and exemplary damages as well as attorney's fees.[6]

For their part, respondents maintained that petitioners were first employed by Angelfe Management and Consultancy (Angelfe) for a one-time project only. Two or three years after the completion of the Angelfe project, they were then hired by Angbus, which is a separate and distinct business entity from the former. Thus, petitioners were hired only for two project employment contracts – one each with Angelfe and Angbus. Respondents further stated that a long period of time between the first project employment and the other intervened, which meant that petitioners were not re-hired repeatedly and continuously.[7]

However, respondents failed to present petitioners' employment contracts, payrolls, and job application documents either at Angelfe or Angbus. They averred that these documents were completely damaged by the flood caused by the "*habagat*" on August 6 to 12, 2012, as evinced by a Certification issued by the Chairman of Barangay Rosario, Pasig City, (Brgy. Rosario Certification) where Angelfe and later, Angbus purportedly held offices.[8]

**The LA Ruling**

In a Decision[9] dated March 27, 2013, the Labor Arbiter (LA) found that petitioners were not illegally dismissed. The LA observed that despite the non-submission of the project employment contracts between the parties (which were completely damaged by flood as stated in the Brgy. Rosario Certification), there was still sufficient basis to support respondents' claim that petitioners were hired for specific projects

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[6] *Id.*

[7] *Id.* at 35.

[8] *Id.*

[9] *Id.* at 25-30. Penned by LA Romelita N. Rioflorido.

with specific durations by two different companies, *i.e.*, Angbus and Angelfe. In this relation, the LA gave credence to the Establishment Employment Reports submitted to the Department of Labor and Employment (DOLE Reports) which showed that the cause for petitioners' termination was project completion. Finally, the LA pointed out that the hiring of petitioners for a definite period for a certain phase of a project was an industry practice in the construction business.[10]

Separately, however, the LA ordered Angbus and Angelfe to pay petitioners their salary differentials and claims for 13th month pay and holiday pay as these liabilities were admitted by them. Meanwhile, individual respondent Angelo Bustamante, Jr. (Bustamante) was relieved of any liability for want of basis.[11]

Aggrieved, petitioners filed an appeal to the NLRC.

**The NLRC Ruling**

In a Decision[12] dated December 26, 2013, the NLRC reversed the LA's ruling and declared that petitioners were regular employees who were illegally dismissed on June 14, 2012; hence, they are entitled to reinstatement and full backwages, including their other monetary claims.

The NLRC stressed that respondents had control over the company records but failed to present the project employment contracts signed by the workers to rebut petitioners' claim that they were regular employees. The Brgy. Rosario Certification attempting to justify the contracts' non-submission was not given credence as respondents' business address was in Quezon City and not in Rosario, Pasig. Instead, the NLRC observed that a certification from the barangay captain of the place where their business address is located should have been presented.[13]

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[10] *Id*. at 28-29.

[11] *Id*. at 29-30.

[12] *Id*. at 32-42.

[13] *Id*. at 38-39.

Moreover, the NLRC noted that Angbus hired all the petitioners almost at the same time in 2012, giving the impression that these workers were continuously hired in one project after another and that their employment, first with Angelfe and then with Angbus, was uninterrupted. The NLRC did not give any credence to the allegation that Angbus and Angelfe were separate and distinct companies considering that they maintained the same business address, are owned by the same owner, and are engaged in the same construction business, where petitioners were continuously employed. Neither did the NLRC give merit to the DOLE Reports as these were not submitted within 30 days prior to the displacement of the workers.[14]

In a Resolution[15] dated December 29, 2014, the NLRC denied the motion for reconsideration filed by Angbus and Bustamante. On the allegation that petitioners' appeal was filed out of time, the NLRC pointed out that the dates appearing on the mailing envelope on record and on the registry receipt show that the appeal memorandum was mailed on May 20, 2013, which was the last day of the reglementary period. It gave credence to the certification of Postmaster Larry S. Laureta (Laureta's certification), the custodian of records at the Philippine Overseas Employment Administration (POEA) Post Office at the time the mail matter was posted, that confirmed the said mailing date.[16]

On the merits, the NLRC still refused to give weight to the Brgy. Rosario Certification. It added that although the project site is in Pasig City, the employer is required to keep employment records in its main office, not in the temporary project site or extension office. It also upheld the finding that petitioners were regular employees in view of Angbus' failure to substantiate its claim that they were project employees. In examining the entries in the DOLE Reports, the NLRC deduced that the real reason for petitioners' termination from work is retrenchment and not project completion. Thus, Angbus should have filed a

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[14] *Id*. at 39-40.

[15] *Id*. at 53-62. Last page of the Resolution missing.

[16] *Id*. at 55-59.

notice of retrenchment to the DOLE thirty (30) days prior to the employees' actual termination in observance of procedural due process, failing in which amounted to illegal dismissal.[17]

Dissatisfied, respondents elevated their case to the CA on *certiorari*.

**The CA Ruling**

In a Decision[18] dated July 27, 2015, the CA held that the NLRC gravely abused its discretion when it: (*a*) gave due course to petitioners' appeal even though it was filed out of time; and (*b*) ruled that petitioners were regular employees of Angbus.

On the timeliness of the appeal's filing, the CA ascribed no evidentiary value to Registry Receipt No. 2468 (registry receipt) due to the lack of an authenticating affidavit by the person who mailed it. Petitioners presented the registry receipt to prove that they filed their memorandum of appeal together with the appeal fee on the last day of the reglementary period on May 20, 2013. The CA refused to give weight to Laureta's certification that the document covered by the registry return was indeed mailed at the POEA Post Office on the said date. In so ruling, the CA explained that Laureta's certification was issued without authority because it was issued only on February 17, 2014 when Laureta was no longer assigned at the POEA Office. Thus, the NLRC erred in considering the registry receipt as conclusive proof of petitioners' timely filing of their appeal.[19]

On the substantive aspect, the CA reinstated the LA's finding that petitioners were project employees, noting that the absence of a project employment contract does not automatically confer regular status to the employees. It also observed that the Brgy. Rosario Certification adequately explained the non-submission of the employment contracts, and that the DOLE Reports showed

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[17] *Id*. at 59-62.

[18] *Id*. at 63-76. Penned by Associate Justice Franchito N. Diamante with Associate Justices Japar B. Dimaampao and Socorro B. Inting, concurring.

[19] *Id*. at 69-71.

petitioners' status as project employees. Likewise, the CA pointed out that the NLRC erred in treating Angelfe and Angbus as one and the same entity just because the two companies have the same business address, the same owner, and were engaged in the same construction business. Consequently, it ordered respondents to return to petitioners whatever amount the former has received by virtue of the NLRC Decision.[20]

Petitioners filed a motion for reconsideration, which was, however, denied in a Resolution[21] dated November 2, 2015; hence, this petition.

**The Issue Before the Court**

The core issue for the Court's resolution is whether the CA erred in (*a*) holding that petitioners' appeal before the NLRC was filed out of time and (*b*) declaring petitioners as project employees of Angbus and consequently, holding their dismissal to be valid.

**The Court's Ruling**

The petition is meritorious.

Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision.[22]

Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of

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[20] *Id*. at 71-75.

[21] *Id*. at 77-79.

[22] *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 707 (2009).

jurisdiction. To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[23]

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence,[24] which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion.[25] Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition.[26]

Viewed from these lenses, the Court finds that the NLRC's Decision in this case was supported by substantial evidence and is consistent with law and jurisprudence as to the issues raised in the petition. Hence, the CA incorrectly held that the NLRC gravely abused its discretion in giving due course to petitioners' appeal filed before it and in declaring that the petitioners were regular employees of Angbus. Accordingly, the NLRC's ruling must be reinstated.

On the procedural aspect, the Court notes that the issue of the timeliness of the filing of the appeal is a factual issue that requires a review of the evidence presented on when the appeal was actually filed.[27] Thus, it is generally not covered by a Rule 45 review. In this case, however, the conflicting findings

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[23] *Gadia v. Sykes Asia, Inc*., G.R. No. 209499, January 28, 2015, 748 SCRA 633, 641.

[24] *Id.* at 641.

[25] Section 5, Rule 133 of the Rules of Court.

[26] *Fuji Television Network, Inc. v. Espiritu*, G.R. Nos. 204944-45, December 3, 2014, 744 SCRA 31, 63, citing the Dissenting Opinion of Associate Justice Arturo D. Brion in *Abbott Laboratories, Philippines v. Alcaraz*, 714 Phil. 510, 549 (2013).

[27] *Eureka Personnel & Management Services, Inc. v. Valencia*, 610 Phil. 444, 452 (2009).

of the CA and the NLRC on this matter pave the way for the Court to review this factual issue even in a Rule 45 review.[28]

In this case, the CA held that the NLRC should not have given due course to petitioners' appeal for being filed out of time. Although both the registry receipt and the date stamped on the envelope showed that the date of posting was May 20, 2013 or the last day of the reglementary period, the CA was not convinced that the appeal was actually mailed on that date at the POEA Post Office. The CA held that petitioners should have submitted, together with the registry receipt, an authenticating affidavit of the person who mailed the memorandum of appeal. It also refused to give credence to Laureta's certification on the ground that it was issued without authority, having been issued only on February 17, 2014 when Laureta was no longer assigned at the POEA Post Office. It therefore concluded that the NLRC erred in considering the registry receipt as conclusive proof that May 20, 2013 is the date of filing the appeal.

After reviewing the evidence on record, the Court disagrees with the CA that the appeal was not timely filed.

Section 3, Rule 13 of the Rules of Court provides that where pleadings are filed by registered mail, the date of mailing as shown by the post office stamp on the envelope or the registry receipt shall be considered as the date of filing. Based on this provision, the date of filing is determinable from two sources: (1) from the post office stamp on the envelope or (2) from the registry receipt, either of which may suffice to prove the timeliness of the filing of the pleadings.[29]

The Court previously ruled that if the date stamped on one is earlier than the other, the former may be accepted as the date of filing.[30] This presupposes, however, that the envelope or registry receipt and the dates appearing thereon are duly

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[28] *Raza v. Daikoku Electronics Phils, Inc.*, G.R. No. 188464, July 29, 2015, 764 SCRA 132, 150.

[29] *Government Service Insurance System v. NLRC*, 649 Phil. 538, 546 (2010), citing *San Miguel Corporation v. NLRC*, 259 Phil. 765, 769 (1989).

[30] *Id*.

authenticated before the tribunal where they are presented.[31] When the photocopy of a registry receipt bears an earlier date but is not authenticated, the Court held that the later date stamped on the envelope shall be considered as the date of filing.[32]

In the present case, the petitioners submitted these pieces of evidence to show the timeliness of their appeal: (*a*) the registry receipt; (*b*) a copy of the envelope that contained the memorandum of appeal and appeal fee; and (*c*) Laureta's certification. As the CA noted, all three documents indicate May 20, 2013 as the date of mailing at the POEA Post Office in Mandaluyong City. Considering that there is no variance in the dates stated on these documents, there is no reason for the Court to mark another date as the date of mailing.

Laureta's certification corroborates the date of filing specified in the registry receipt and on the envelope. The Court recognizes that, ideally, the incumbent postmaster in the POEA Post Office should be the one to certify the date of mailing based on the post office records, considering that he or she is the person duly authorized to do so. Nevertheless, the Court finds that Laureta's certification as the postmaster at the time of mailing, together with the pieces of evidence earlier mentioned, constitutes substantial compliance with the authentication requirement.

On the substantive aspect, Article 295[33] of the Labor Code,[34] as amended, distinguishes a project employee from a regular employee, to wit:

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[31] *Id*.

[32] *Id*.

[33] Formerly Article 280. As renumbered pursuant to Section 5 of Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011.

[34] Presidential Decree No. 442 entitled "A DECREE INSTITUTING A LABOR CODE, THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND INSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE" (May 1, 1974).

Art. 295 [280]. *Regular and casual employment*.— The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, **except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee** or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

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(Emphasis and underscoring supplied)

A project-based employee is assigned to a project which begins and ends at determined or determinable times.[35] Unlike regular employees who may only be dismissed for just and/or authorized causes under the Labor Code, the services of employees who are hired as project-based employees may be lawfully terminated at the completion of the project.[36]

To safeguard the rights of workers against the arbitrary use of the word "project" to preclude them from attaining regular status, jurisprudence provides that employers claiming that their workers are project-based employees have the burden to prove that these two requisites concur: (*a*) the employees were assigned to carry out a specific project or undertaking; and (*b*) the duration and scope of which were specified at the time they were engaged for such project.[37]

In this case, Angbus failed to discharge this burden. Notably, Angbus did not state the specific project or undertaking assigned to petitioners. As to the second requisite, not only was Angbus unable to produce petitioners' employment contracts, it also failed to present other evidence to show that it informed petitioners of the duration and scope of their work.

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[35] *Gadia v. Sykes Asia, Inc.*, *supra* note 23, citing *Omni Hauling Services, Inc. v. Bon*, G.R. No. 199388, September 3, 2014, 734 SCRA 270, 278.

[36] *Id*. at 278-279.

[37] *Id*. at 279.

The Court previously ruled that although the absence of a written contract does not by itself grant regular status to the employees, it is evidence that they were informed of the duration and scope of their work and their status as project employees at the start of their engagement.[38] When no other evidence is offered, the absence of employment contracts raises a serious question of whether the employees were sufficiently apprised at the start of their employment of their status as project employees.[39] Absent such proof, it is presumed that they are regular employees, thus, can only be dismissed for just or authorized causes upon compliance with procedural due process.[40]

The Court agrees with the NLRC that the Brgy. Rosario Certification cannot be given credence as it was issued by the barangay captain in Rosario, Pasig City rather than in Quezon City.

Section 11, Rule X, Book III of the Omnibus Rules Implementing the Labor Code[41] (Rules) requires the employer to keep all employment records in the main or branch office where the employees are assigned. It also prohibits the keeping of employees' records elsewhere. In the present case, Angbus has consistently declared in its pleadings, in its General Information Sheet, and the DOLE Reports that its main office is located at 16 Pratt Street, Filinvest 2, Batasan Hills, Quezon City. As aptly ruled by the NLRC, the extension office in the project site in Brgy. Rosario, Pasig City is not a branch office contemplated by the Rules where employees' records may be

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[38] *Dacuital v. L.M. Camus Engineering Corporation*, 644 Phil. 158, 171 (2010).

[39] *Id.* at 171.

[40] *Id.* at 171-172.

[41] SECTION 11. *Place of records.* – All employment records of the employees shall be kept and maintained by the employer in or about the premises of the work place. The premises of a work-place shall be understood to mean the main or branch office of the establishment, if any, depending upon where the employees are regularly assigned. The keeping of the employee's records in another place is prohibited. (Emphases supplied)

kept but merely a temporary office. Hence, the Brgy. Rosario Certification, stating that petitioners' employment records were destroyed by flood, does not justify the non-presentation of the employment contracts. Besides, Angbus could still have presented other evidence to prove project employment but it did not do so, relying on the convenient excuse that the documents were destroyed by flood.[42]

The Court further observes that the CA placed unwarranted emphasis on the DOLE Reports or termination reports submitted by Angbus as basis to rule that petitioners were project employees.

Section 2.2 of Department Order No. 19, Series of 1993, entitled "Guidelines Governing the Employment of Workers in the Construction Industry," issued by the DOLE, provides that:

> 2.2 **Indicators of project employment**. – Either one or more of the following circumstances, among others, **may be considered as indicators that an employee is a project employee**.
>
> (a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.
>
> (b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.
>
> (c) The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged.
>
> (d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.
>
> **(e)** The termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations/dismissals/suspensions.
>
> (f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies. (Emphases supplied)

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[42] See *Liganza v. RBL Shipyard Corporation*, 535 Phil. 662, 670 (2006).

Based on the foregoing, it is clear that the submission of the termination report to the DOLE "may be considered" only as an indicator of project employment. By the provision's tenor, the submission of this report, by and of itself, is therefore not conclusive to confirm the status of the terminated employees as project employees, especially in this case where there is a glaring absence of evidence to prove that petitioners were assigned to carry out a specific project or undertaking, and that they were informed of the duration and scope of their supposed project engagement, which are, in fact, attendant to the first two (2) indicators of project employment in the same DOLE issuance above-cited.

All told, since Angbus failed to discharge its burden to prove that petitioners were project employees, the NLRC correctly ruled that they should be considered as regular employees. Thus, the termination of petitioners' employment should have been for a just or authorized cause, the lack of which, as in this case, amounts to illegal dismissal.

As a final point, it may not be amiss to state that petitioners' entitlement to their monetary claims, such as salary differentials, thirteenth month pay, and holiday pay,[43] was not contested further by the parties. Neither did they question the NLRC's computation of the monetary awards due to petitioners. Hence, the Court finds no reason to disturb it.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated July 27, 2015 and the Resolution dated November 2, 2015 of the Court of Appeals in CA-G.R. SP No. 138885 are hereby **REVERSED** and **SET ASIDE**. The Decision dated December 26, 2013 and the Resolution dated December 29, 2014 of the National Labor Relations Commission in NLRC Case Nos. 07-10288-12, 07-10636-12, 07-10708-12 and 07-10992-12 are **REINSTATED**.

**SO ORDERED**.

*Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin,* and *Caguioa, JJ.,* concur.

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[43] *Rollo,* pp. 35-36.

**FIRST DIVISION**

[G.R. No. 222730. November 7, 2016]

**BUENAFLOR CAR SERVICES, INC.,** *petitioner, vs.* **CEZAR DURUMPILI DAVID, JR.,** *respondent*.

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT BY EMPLOYER; THE BURDEN OF PROOF TO PROVE THAT THE DISMISSAL IS VALID RESTS UPON THE EMPLOYER, FAILING IN WHICH, THE LAW CONSIDERS THE MATTER A CASE OF ILLEGAL DISMISSAL.—** Fundamental is the rule that an employee can be dismissed from employment only for a valid cause. The burden of proof rests on the employer to prove that the dismissal was valid, failing in which, the law considers the matter a case of illegal dismissal.

**2. ID.; ID.; ID.; MISCONDUCT AND LOSS OF TRUST AS JUST CAUSES FOR TERMINATION OF EMPLOYMENT; ELEMENTS, CITED; ESTABLISHED IN CASE AT BAR.—** Article 297 of the Labor Code, as renumbered, enumerates the just causes for termination of an employment, x x x Misconduct is defined as an improper or wrong conduct. **It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.** For serious misconduct to be a just cause for dismissal, the concurrence of the following elements is required: (*a*) the misconduct must be serious; (*b*) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (*c*) it must have been performed with wrongful intent. On the other hand, for loss of trust to be a ground for dismissal, the employee must be holding a position of trust and confidence, and there must be an act that would justify the loss of trust and confidence. While loss of trust and confidence should be genuine, it does not require proof beyond reasonable doubt, **it being sufficient that there is some basis for the misconduct and that the nature of the employee's participation therein rendered him unworthy of the trust**

**and confidence demanded by his position**. x x x Case law states that "labor suits require only substantial evidence to prove the validity of the dismissal." Based on the foregoing, the Court is convinced that enough substantial evidence exist to support petitioner's claim that respondent was involved in the afore-discussed scheme to defraud the company, and hence, guilty of serious misconduct and/or willful breach of trust which are just causes for his termination. Substantial evidence is defined as such amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion, which evidentiary threshold petitioner successfully hurdled in this case. As such, the NLRC gravely abused its discretion in holding that respondent was illegally dismissed.

3. **ID.; ID.; NATIONAL LABOR RELATIONS COMMISSION (NLRC); IN DECIDING LABOR CASES, THE RULES OF PROCEDURE AND EVIDENCE PREVAILING IN COURTS OF LAW AND EQUITY SHALL NOT BE CONTROLLING.—** [A]n extrajudicial confession is binding only on the confessant and is **not admissible against his or her co-accused because it is considered as hearsay against them**. However, the NLRC should not have bound itself by the technical rules of procedure as it is allowed to be liberal in the application of its rules in deciding labor cases. The NLRC Rules of Procedure state that "[t]he rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure x x x."

4. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; DOCTRINE OF INDEPENDENTLY RELEVANT STATEMENTS; EVIDENCE AS TO THE MAKING OF SUCH STATEMENT IS NOT SECONDARY BUT PRIMARY, FOR THE STATEMENT ITSELF MAY CONSTITUTE A FACT IN ISSUE OR BE CIRCUMSTANTIALLY RELEVANT TO THE EXISTENCE OF SUCH A FACT; CASE AT BAR.—** "Under the doctrine of independently relevant statements, regardless of their truth or falsity, the fact that such statements have been made is relevant. The hearsay rule does not apply, and the statements are admissible as evidence. Evidence as to the making

of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact." Verily, Del Rosario's extrajudicial confession is independently relevant to prove the participation of respondent in the instant controversy considering his vital role in petitioner's procurement process. The fact that such statement was made by Del Rosario, who was the actual author of the alterations, should have been given consideration by the NLRC as it is directly, if not circumstantially, relevant to the issue at hand.

**APPEARANCES OF COUNSEL**

*Most Law* for petitioner.
*Banzuela & Associates* for respondent.

**D E C I S I O N**

**PERLAS-BERNABE, *J.*:**

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated November 3, 2015 and the Resolution[3] dated February 9, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 139652, which affirmed with modification the Resolutions dated November 28, 2014[4] and February 9, 2015[5] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 11-002727-14, finding respondent Cezar Durumpili David, Jr. (respondent) to have been illegally dismissed, and holding petitioner Buenaflor Car Services, Inc. (petitioner) solely liable for the monetary award.

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[1] *Rollo*, pp. 20-61.

[2] *Id.* at 64-71. Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Romeo F. Barza and Elihu A. Ybañez concurring.

[3] *Id.* at 72-73.

[4] CA *rollo*, pp. 49-53. Penned by Commissioner Pablo C. Espiritu, Jr. with Presiding Commissioner Alex A. Lopez concurring.

[5] *Id.* at 54-55.

**The Facts**

Respondent was employed as Service Manager by petitioner, doing business under the trade name "Pronto! Auto Services." In such capacity, he was in charge of the overall day-to-day operations of petitioner, including the authority to sign checks, check vouchers, and purchase orders.[6]

In the course of its business operations, petitioner implemented a company policy with respect to the purchase and delivery of automotive parts and products. The process begins with the preparation of a purchase order by the Purchasing Officer, Sonny D. De Guzman (De Guzman), which is thereafter, submitted to respondent for his review and approval. Once approved and signed by respondent and De Guzman, the duplicate copy of the said order is given to petitioner's supplier who would deliver the goods/supplies. De Guzman was tasked to receive such goods and thereafter, submit a copy of the purchase order to petitioner's Accounting Assistant, Marilyn A. Del Rosario (Del Rosario), who, in turn, prepares the request for payment to be reviewed by her immediate supervisor,[7] Finance Manager and Chief Finance Officer Ruby Anne B. Vasay (Vasay). Once approved, the check voucher and corresponding check are prepared to be signed by any of the following officers: respondent, Vasay, or Vice President for Operations Oliver S. Buenaflor (Buenaflor).[8] It was company policy that all checks should be issued in the name of the specific supplier and not in "cash," and that the said checks are to be picked up from Del Rosario at the company's office in Muntinlupa City.[9]

On August 8, 2013, Chief Finance Officer Cristina S. David (David) of petitioner's affiliate company, Diamond IGB, Inc., received a call from the branch manager of ChinaBank, SM City Bicutan Branch, informing her that the latter had cleared several checks issued by petitioner bearing the words "OR

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[6] *Id*. at 6.

[7] See *id*. at 103.

[8] See *id*. at 133.

[9] *Id*. at 7.

CASH" indicated after the payee's name. Alarmed, David requested for petitioner's Statement of Account with scanned copies of the cleared checks bearing the words "OR CASH" after the payee's name. The matter was then immediately brought to petitioner's attention through its President, Exequiel T. Lampa (Lampa), and an investigation was conducted.[10]

On August 22, 2013, Lampa and petitioner's Human Resource Manager, Helen Lee (Lee), confronted Del Rosario on the questioned checks. Del Rosario readily confessed that upon respondent's instruction, she inserted the words "OR CASH" after the name of the payees when the same had been signed by all the authorized signatories. She also implicated De Guzman, who was under respondent's direct supervision, for preparing spurious purchase orders that were used as basis in issuing the subject checks, as well as petitioner's messenger/driver, Jayson G. Caranto (Caranto), who was directed to encash some of the checks, with both persons also gaining from the scheme.[11] Her confession was put into writing in two (2) separate letters both of even date (extrajudicial confession).[12]

As a result, respondent, together with Del Rosario, De Guzman, and Caranto, were placed under preventive suspension[13] for a period of thirty (30) days, and directed to submit their respective written explanations. The ensuing investigation revealed that there were twenty-seven (27) checks with the words "OR CASH" inserted after the payee's name, all signed by respondent and either Vasay or Buenaflor, in the total amount of ₱1,021,561.72.[14]

For his part,[15] respondent vehemently denied the charges against him. He claimed that he has no control over the company's finance and billing operations, nor the authority to instruct Del

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[10] *Id.* at 8.

[11] See *id.* at 8 and 51.

[12] *Id.* at 56-57.

[13] *Id.* at 60.

[14] *Id.* at 10-11.

[15] See *Sinumpaang Salaysay* dated January 15, 2014; *id.* at 132-138.

Rosario to make any check alterations, which changes, if any, must be made known to Vasay or Buenaflor.

On September 20, 2013, respondent and his co-workers were served their respective notices of termination[16] after having been found guilty of violating Items B (2), (3) and/or G (3) of the company's Code of Conduct and Behavior, particularly, serious misconduct and willful breach of trust. Aggrieved, respondent, De Guzman, and Caranto filed a complaint[17] for illegal dismissal with prayer for reinstatement and payment of damages and attorney's fees against petitioner, Diamond IGB, Inc., and one Isagani Buenaflor before the NLRC, docketed as NLRC RAB No. NCR-10-13915-13.

In the meantime, Lee, on behalf of petitioner, filed a criminal complaint[18] for twenty-seven (27) counts of Qualified Theft through Falsification of Commercial Documents against respondent, De Guzman, Caranto, and Del Rosario, before the Office of the Muntinlupa City Prosecutor, alleging that the said employees conspired with one another in devising the afore-described scheme. In support thereof, petitioner submitted the affidavits of Buenaflor[19] and Vasay,[20] which stated that at the time they signed the questioned checks, the same did not bear the words "OR CASH," and that they did not authorize its insertion after the payee's name. While the City Prosecutor initially found probable cause only against Del Rosario in a Resolution[21] dated November 25, 2014, the same was reconsidered[22] and all the

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[16] *Id*. at 96-99.

[17] *Id*. at 378-379.

[18] See Complaint-Affidavit dated October 11, 2013; *id*. at 246-260.

[19] *Id*. at 124-125.

[20] *Id*. at 126-128.

[21] *Id*. at 339-345. Signed by Assistant City Prosecutor Donabelle V. Gonzalez, Senior Assistant City Prosecutor Leopoldo B. Macinas, and City Prosecutor Aileen Marie S. Gutierrez.

[22] Resolution dated February 4, 2015; *id*. at 261-264. Signed by Senior Assistant City Prosecutor Leopoldo B. Macinas and approved by City Prosecutor Aileen Marie S. Gutierrez.

four (4) employees were indicted in an Amended Information[23] filed before the Regional Trial Court of Muntinlupa City, docketed as Criminal Case No. 14-1065.

**The LA Ruling**

In a Decision dated September 29, 2014, the Labor Arbiter (LA) ruled that respondent, De Guzman, and Caranto were illegally dismissed, and consequently, awarded backwages, separation pay and attorney's fees.[24] The LA observed that petitioner failed to establish the existence of conspiracy among respondent, De Guzman, Caranto, and Del Rosario in altering the checks and that the latter's extrajudicial confession was informally made and not supported by evidence.[25]

Dissatisfied, petitioner appealed to the NLRC.

**The NLRC Ruling**

In a Resolution[26] dated November 28, 2014, the NLRC affirmed with modification the LA's Decision, finding De Guzman and Caranto to have been dismissed for cause, but sustained the illegality of respondent's termination from work.

In so ruling, the NLRC held that since De Guzman prepared the purchase orders that were the basis for the issuance of the questioned checks, it could not be discounted that the latter may have participated in the scheme, benefited therefrom, or had knowledge thereof. Similarly, it did not give credence to Caranto's bare denial of the illegal scheme, noting that he still encashed the questioned checks upon the instruction of Del Rosario despite knowledge of the company's policy on the matter. On the other hand, the NLRC found Del Rosario's extrajudicial confession against respondent insufficient, holding that the

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[23] *Id*. at 265-267. Signed by Senior Assistant City Prosecutor Tomas Ken D. Romaquin, Jr.

[24] See *rollo*, p. 65.

[25] See CA *rollo*, p. 51.

[26] *Id*. at 49-53.

records failed to show that the latter had a hand in the preparation and encashment of the checks; hence, his dismissal was without cause and therefore, illegal.[27]

Unperturbed, petitioner filed a motion for partial reconsideration,[28] which the NLRC denied in a Resolution[29] dated February 9, 2015, prompting the former to elevate the matter to the CA *via* a petition for *certiorari*.[30]

**The CA Ruling**

In a Decision[31] dated November 3, 2015, the CA found no grave abuse of discretion on the part of the NLRC in holding that respondent was illegally dismissed. It ruled that Del Rosario's extrajudicial confession only bound her as the confessant but constitutes hearsay with respect to respondent and the other co-accused under the *res inter alios acta* rule. Moreover, while respondent was a signatory to the checks in question, the CA noted that at the time these checks were signed, the words "OR CASH" were not yet written thereon. As such, the CA held that no substantial evidence existed to establish that respondent had breached the trust reposed in him.

However, the CA absolved petitioner's corporate officer, Isagani Buenaflor, from payment of the monetary awards for failure to show any malicious act on his part, stating the general rule that obligations incurred by the corporation, acting thru its directors, officers, and employees, are its sole liabilities. In the same vein, Diamond IGB, Inc. was also absolved from liability, considering that, as a subsidiary, it had a separate and distinct juridical personality from petitioner.[32]

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[27] *Id*. at 51-53.

[28] Dated December 17, 2014; *id*. at 301-314.

[29] *Id*. at 54-55.

[30] *Id*. at 3-48.

[31] *Rollo*, pp. 64-71.

[32] *Id*. at 67-71.

Petitioner moved for partial reconsideration,[33] which the CA denied in a Resolution[34] dated February 9, 2016; hence, the instant petition.

**The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the CA committed reversible error in upholding the NLRC's ruling that respondent was illegally dismissed.

**The Court's Ruling**

The petition is meritorious.

Fundamental is the rule that an employee can be dismissed from employment only for a valid cause. The burden of proof rests on the employer to prove that the dismissal was valid, failing in which, the law considers the matter a case of illegal dismissal.[35]

Article 297 of the Labor Code, as renumbered,[36] enumerates the just causes for termination of an employment, to wit:

ART. 297. **Termination by Employer.** An employer may terminate an employment for any of the following causes:

(a) **Serious misconduct** or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or **willful breach by the employee of the trust reposed in him by his employer or duly authorized representative**;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
(e) Other causes analogous to the foregoing. (Emphases supplied)

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[33] Dated March 20, 2015; CA *rollo*, pp. 449-456.

[34] *Rollo*, pp. 72-73.

[35] *Surigao Del Norte Electric Cooperative, Inc. v. Gonzaga*, 710 Phil. 676, 687 (2013).

[36] See Department of Labor and Employment's Department Advisory No. 1, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED," dated July 21, 2015.

In the case at bar, respondent's termination was grounded on his violation of petitioner's Code of Conduct and Behavior, which was supposedly tantamount to (*a*) serious misconduct and/or (*b*) willful breach of the trust reposed in him by his employer.

Misconduct is defined as an improper or wrong conduct. **It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.**[37] For serious misconduct to be a just cause for dismissal, the concurrence of the following elements is required: (*a*) the misconduct must be serious; (*b*) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (*c*) it must have been performed with wrongful intent.[38]

On the other hand, for loss of trust to be a ground for dismissal, the employee must be holding a position of trust and confidence, and there must be an act that would justify the loss of trust and confidence.[39] While loss of trust and confidence should be genuine, it does not require proof beyond reasonable doubt, **it being sufficient that there is some basis for the misconduct and that the nature of the employee's participation therein rendered him unworthy of the trust and confidence demanded by his position**.[40]

Petitioner's claims of serious misconduct and/or willful breach of trust against respondent was hinged on his alleged directive to petitioner's Accounting Assistant, Del Rosario, to insert the word "OR CASH" in the checks payable to petitioner's supplier/s

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[37] *Imasen Philippine Manufacturing Corporation v. Alcon*, G.R. No. 194884, October 22, 2014, 739 SCRA 186, 196.

[38] See *Universal Robina Sugar Milling Corporation v. Ablay*, G.R. No. 218172, March 16, 2016.

[39] *Jerusalem v. Keppel Monte Bank*, 662 Phil. 676, 686 (2011).

[40] *P.J. Lhuillier, Inc. v. Velayo*, G.R. No. 198620, November 12, 2014, 740 SCRA 147, 162.

after the same had been sigued by the authorized officers contrary to company policy. Accordingly, respondent was accused of conspiring with his co-employees in the irregular issuance of twenty-seven (27) checks which supposedly resulted in the defraudation of the company in the total amount of ₱1,021,561.72.[41]

While there is no denying that respondent holds a position of trust as he was charged with the overall day-to-day operations of petitioner, and as such, is authorized to sign checks, check vouchers, and purchase orders, he argues, in defense, that he had no control over the company's finance and billing operations, and hence, should not be held liable. Moreover, he asserts that he had no power to instruct Del Rosario to make any check alterations, which changes, if any, must be made known to Vasay or Buenaflor.

Although respondent's statements may be true, the Court, nonetheless, observes that it is highly unlikely that respondent did not have any participation in the above-mentioned scheme to defraud petitioner. It is crucial to point out that the questioned checks would not have been issued if there weren't any spurious purchase orders. As per company policy, the procurement process of petitioner begins with the preparation of purchase orders by the Purchasing Officer, De Guzman. **These purchase orders have to be approved by respondent himself before the delivery and payment process can even commence.** It is only after the issuance of the approved purchase orders that petitioner's suppliers are directed to deliver the ordered goods/supplies, and from there, requests for payment and the issuance of checks (through Del Rosario) would be made. Thus, being the approving authority of these spurious purchase orders, respondent cannot disclaim any culpability in the resultant issuance of the questioned checks. Clearly, without the approved purchase orders, there would be no delivery of goods/supplies to petitioner, and consequently, the payment procedure would not even begin. These purchase orders were, in fact, missing from the records,

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[41] *Rollo*, p. 27.

and respondent, who had the primary authority for their approval, did not, in any manner, account for them.

Notably, the fact that respondent signed the checks prior to their alterations does not discount his participation. To recall, the checks prepared by Del Rosario were first reviewed by her immediate supervisor, Finance Manager and Chief Finance Officer, Vasay, and once approved, the check vouchers and corresponding checks were signed by respondent, followed by either Vasay, or Vice President for Operations Buenaflor. To safeguard itself against fraud, the company implemented the policy that all checks to its suppliers should be issued in their name and not in "cash." Thus, if the checks would be altered prior to the signing of all these corporate officers, then they would obviously not pass petitioner's protocol. It is therefore reasonable to conclude that the alterations were calculated to be made after all the required signatures were obtained; otherwise, the scheme would not come into fruition.

Respondent was directly implicated in the controversy through the extrajudicial confession of his co-employee, Del Rosario, who had admitted to be the author of the checks' alterations, although mentioned that she did so only upon respondent's imprimatur. The NLRC, as affirmed by the CA, however, deemed the same to be inadmissible in evidence on account of the *res inter alios acta* rule, which, as per Section 30,[42] Rule 130 of the Rules of Court, provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. Consequently, an extrajudicial confession is binding only on the confessant and is **not admissible against his or her co-accused because it is considered as hearsay against them**.[43]

However, the NLRC should not have bound itself by the technical rules of procedure as it is allowed to be liberal in the

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[42] **SEC. 30.** *Admission by conspirator*. – The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

[43] *People v. Cachuela*, 710 Phil. 728, 741 (2013).

application of its rules in deciding labor cases.[44] The NLRC Rules of Procedure state that "[t]he rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure x x x."[45]

In any case, even if it is assumed that the rule on *res inter alios acta* were to apply in this illegal dismissal case, the treatment of the extrajudicial confession as hearsay is bound by the exception on independently relevant statements. "Under the doctrine of independently relevant statements, regardless of their truth or falsity, the fact that such statements have been made is relevant. The hearsay rule does not apply, and the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact."[46] Verily, Del Rosario's extrajudicial confession is independently relevant to prove the participation of respondent in the instant controversy considering his vital role in petitioner's procurement process. The fact that such statement was made by Del Rosario, who was the actual author of the alterations, should have been given consideration by the NLRC as it is directly, if not circumstantially, relevant to the issue at hand.

Case law states that "labor suits require only substantial evidence to prove the validity of the dismissal."[47] Based on the foregoing, the Court is convinced that enough substantial evidence exist to support petitioner's claim that respondent was involved in the afore-discussed scheme to defraud the company, and hence, guilty of serious misconduct and/or willful breach

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[44] *Opinaldo v. Ravina*, 719 Phil. 584, 598 (2013).

[45] *Id.*, citing Section 10, Rule VII of the 2011 NLRC Rules of Procedure.

[46] *People v. Estibal*, G.R. No. 208749, November 26, 2014, 743 SCRA 215, 240.

[47] *Paulino v. NLRC*, 687 Phil. 220, 226 (2012).

of trust which are just causes for his termination. Substantial evidence is defined as such amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion,[48] which evidentiary threshold petitioner successfully hurdled in this case. As such, the NLRC gravely abused its discretion in holding that respondent was illegally dismissed. Perforce, the reversal of the CA's decision and the granting of the instant petition are in order. Respondent is hereby declared to be validly dismissed and thus, is not entitled to backwages, separation pay, as well as attorney's fees.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated November 3, 2015 and the Resolution dated February 9, 2016, of the Court of Appeals in CA-G.R. SP No. 139652 are hereby **REVERSED** and **SET ASIDE**.

**SO ORDERED.**

*Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin*, and *Caguioa, JJ.*, concur.

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**FIRST DIVISION**

[G.R. No. 223290. November 7, 2016]

**WOODROW B. CAMASO,** *petitioner, vs.* **TSM SHIPPING (PHILS), INC., UTKILEN, and/or JONES TULOD,** *respondents*.

**SYLLABUS**

**REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PAYMENT OF DOCKET FEES; WHILE THE COURT**

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[48] *Travelaire & Tours Corp. v. NLRC*, 355 Phil. 932, 936 (1998).

**ACQUIRES JURISDICTION OVER ANY CASE ONLY UPON THE PAYMENT OF THE PRESCRIBED DOCKET FEES, ITS NON-PAYMENT AT THE TIME OF FILING OF THE INITIATORY PLEADING DOES NOT AUTOMATICALLY CAUSE ITS DISMISSAL; REQUISITES, CITED.—** Section 3, Rule 46 of the Rules of Court provides that in original actions filed before the CA, such as a petition for *certiorari*, the payment of the corresponding docket fees is required, and that the failure to comply with the same shall be sufficient ground for the dismissal of such action. In *Bibiana Farms & Mills, Inc. v. NLRC*, the Court nevertheless explained that while non-payment of docket fees may indeed render an original action dismissible, the rule on payment of docket fees may be relaxed whenever the attending circumstances of the case so warrant: x x x Verily, the failure to pay the required docket fees *per se* should not necessarily lead to the dismissal of a case. It has long been settled that while the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees, its non-payment at the time of filing of the initiatory pleading does not automatically cause its dismissal provided that: *(a)* the fees are paid within a reasonable period; and *(b)* there was no intention on the part of the claimant to defraud the government.

**APPEARANCES OF COUNSEL**

*Linsangan Linsangan & Linsangan Law Offices* for petitioner.
*Del Rosario & Del Rosario Law Offices* for respondents.

**D E C I S I O N**

**PERLAS-BERNABE, *J.*:**

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated August 12, 2015[2] and March 4, 2016[3] of the

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[1] *Rollo*, pp. 10-19.

[2] *Id*. at 24. Minute Resolution signed by Special Thirteenth Division Clerk of Court Abigail S. Domingo-Laylo.

[3] *Id.* at 25-28. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Agnes Reyes-Carpio and Ma. Luisa C. Quijano-Padilla concurring.

Court of Appeals (CA) in CA-G.R. SP No. 141278-UDK which dismissed petitioner Woodrow B. Camaso's (Camaso) petition for *certiorari* before it for non-payment of the required docket fees.

**The Facts**

Camaso alleged that on July 15, 2014, he signed a contract of employment with respondents TSM Shipping (Phils), Inc., Utkilen, artd Jones Tulod (respondents) to work as a Second Mate on-board the vessel "M/V Golfstraum," for a period of six (6) months and with basic monthly salary of US$1,178.00.[4] On October 18, 2014, he joined his vessel of assignment.[5] Prior to said contract, Camaso claimed to have been working for respondents for almost five (5) years and boarded eight (8) of their vessels.[6]

Sometime in November 2013, Camaso complained of a noticeable obstruction in his throat which he described as akin to a "fishbone coupled [with] coughing."[7] By February 2014, his situation worsened as he developed lymph nodules on his jawline, prompting him to request for a medical check-up while in Amsterdam. As Camaso was initially diagnosed with tonsillar cancer, he was recommended for medical repatriation to undergo extensive treatment. Upon repatriation to the Philippines on September 8, 2014, he reported at respondents' office and was referred to a certain Dr. Nolasco of St. Luke's Medical Center for testing. After a series of tests, it was confirmed that Camaso was indeed suffering from tonsillar cancer.[8] Consequently, he underwent eight (8) chemotherapy sessions and radiation therapy for 35 cycles which were all paid for by respondents. He likewise received sickwage allowances from the latter.[9] Thereafter,

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[4] *Id*. at 12.

[5] *Id*. at 13.

[6] *Id*.

[7] *Id*.

[8] See *id*.

[9] See *id*. at 14.

respondents refused to shoulder Camaso's medical expenses, thus, forcing the latter to pay for his treatment. Believing that his sickness was work-related and that respondents remained silent on their obligation, Camaso filed the instant complaint for disability benefits, sickwage allowance, reimbursement of medical and hospital expenses, and other consequential damages before the National Labor Relations Commission (NLRC), docketed as NLRC Case No. OFW (M) 07-09270-14. After efforts for an amicable settlement between the parties failed, they were ordered to file their respective position papers.[10]

**The LA and NLRC Rulings**

In a Decision[11] dated November 28, 2014, the Labor Arbiter (LA) ruled in Camaso's favor and, accordingly, ordered respondents to pay him his total and permanent disability benefits in the amount of US$60,000.00, plus ten percent (10%) of the total money claims as attorney's fees. However, the LA dismissed his other monetary claims for lack of merit.[12]

On appeal, docketed as NLRC LAC No. (OFW-M) 01-000088-15,[13] the NLRC promulgated a Decision[14] dated March 19, 2015 reversing the LA ruling and, consequently, dismissed Camaso's complaint for lack of merit. Camaso moved for its reconsideration, but was denied in a Resolution[15] dated April 28, 2015. Aggrieved, he filed a petition for *certiorari* before the CA.[16]

**The CA Ruling**

In a Resolution[17] dated August 12, 2015, the CA dismissed Camaso's petition "for non-payment of the required docketing

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[10] See *id*.

[11] Not attached to the *rollo*.

[12] See *rollo*, pp. 14-15.

[13] *Id*. at 26.

[14] Not attached to the *rollo*.

[15] Not attached to the *rollo*.

[16] See *rollo*, p. 15.

[17] *Id*. at 24.

fees as required under Section 3, Rule 46 of the Revised Rules of Court."[18]

Dissatisfied, Camaso filed a Motion for Reconsideration[19] dated August 29, 2015, arguing, *inter alia*, that a check representing the payment of the required docket fees was attached to a copy of his petition filed before the CA. He further claimed that upon verification of his counsel's messenger, the Division Clerk of Court admitted that it was simply overlooked.[20]

In a Resolution[21] dated March 4, 2016, the CA denied Camaso's motion for lack of merit. Citing the presumption of regularity of official duties, the CA gave credence to the explanation of Myrna D. Almira, Officer-in-Charge of the CA Receiving Section, that there was no cash, postal money order, or check attached to Camaso's petition when it was originally filed before the CA. In any event, the CA held that assuming that a check was indeed attached to the petition, such personal check, *i.e.*, Metrobank check dated July 6, 2015 under the personal account of a certain Pedro L. Linsangan, is not a mode of payment sanctioned by the 2009 Internal Rules of the Court of Appeals (2009 IRCA), which allows only payment in cash, postal money order, certified, manager's or cashier's checks payable to the CA.[22]

Hence, this petition.

**The Issue Before the Court**

The primordial issue for the Court's resolution is whether or not the CA correctly dismissed Camaso's petition for *certiorari* before it for non-payment of docket fees.

**The Court's Ruling**

The petition is meritorious.

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[18] *Id*.

[19] *Id*. at 29-33.

[20] *Id*. at 29.

[21] *Id*. at 25-28.

[22] *Id*. at 27-28.

Section 3, Rule 46 of the Rules of Court provides that in original actions filed before the CA, such as a petition for *certiorari*, the payment of the corresponding docket fees is required, and that the failure to comply with the same shall be sufficient ground for the dismissal of such action, *viz.*:

> Section 3. *Contents and filing of petition, effect of non-compliance with requirements*.– The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.
>
> In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.
>
> x x x x x x x x x
>
> **The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court** and deposit the amount of ₱500.00 for costs at the time of the filing of the petition.
>
> **The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.** (Emphases and underscoring supplied)

In *Bibiana Farms & Mills, Inc. v. NLRC*,[23] the Court nevertheless explained that while non-payment of docket fees may indeed render an original action dismissible, the rule on payment of docket fees may be relaxed whenever the attending circumstances of the case so warrant:

> Under the foregoing rule, non-compliance with any of the requirements shall be a sufficient ground for the dismissal of the petition. Corollarily, **the rule is that a court cannot acquire jurisdiction over the subject matter of a case, unless the docket fees are paid. And where the filing of the initiatory pleading is not accompanied by payment of the docket fees, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period**.

[23] 536 Phil. 430 (2006).

In several cases, however, the Court entertained certain exceptions due to the peculiar circumstances attendant in these cases, which warrant a relaxation of the rules on payment of docket fees. It was held in *La Salette College v. Pilotin* [463 Phil. 785 (2003)], that **the strict application of the rule may be qualified by the following: first, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; second, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances**.

Thus, in *Villamor v.* [*CA*] [478 Phil. 728 (2004)], the Court sustained the decision of the CA to reinstate the private respondents', appeal despite having paid the docket fees almost one year after the notice of appeal was filed, finding that there is no showing that the private respondents deliberately refused to pay the requisite fee within the reglementary period and abandon their appeal. The Court also found that it was imperative for the CA to review the ruling of the trial court to avoid a miscarriage of justice. Thus, the Court concluded, "**Under the circumstances obtaining in the case at bar, we see no cogent reason to reverse the resolutions of the respondent court. It is the policy of the court to encourage hearing of appeals on their merits. To resort to technicalities which the petitioner capitalizes on in the instant petition would only tend to frustrate rather than promote substantial justice**."[24] (Emphases and underscoring supplied)

Verily, the failure to pay the required docket fees *per se* should not necessarily lead to the dismissal of a case. It has long been settled that while the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees, its non-payment at the time of filing of the initiatory pleading does not automatically cause its dismissal provided that: (*a*) the fees are paid within a reasonable period; and (*b*) there was no intention on the part of the claimant to defraud the government.[25]

Here, it appears that when Camaso filed his *certiorari* petition through his counsel and via mail, a Metrobank check dated

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[24] *Id.* at 436-437, citations omitted.

[25] See *Unicapital, Inc. v. Consing, Jr.*, 717 Phil. 689, 708 (2013), citations omitted.

July 6, 2015 under the account name of Pedro L. Linsangan was attached thereto to serve as payment of docket fees.[26] Although this was not an authorized mode of payment under Section 6, Rule VIII[27] of the 2009 IRCA, the attachment of such personal check shows that Camaso exerted earnest efforts to pay the required docket fees. Clearly, this exhibits good faith and evinces his intention not to defraud the government. In this relation, the assertion of the Officer-in-Charge of the CA Receiving Section that there was no check attached to Camaso's *certiorari* petition is clearly belied by the fact that when it was examined at the Office of the Division Clerk of Court, the check was found to be still stapled thereto.[28]

In light of the foregoing circumstances, the Court deems it appropriate to relax the technical rules of procedure in the interest of substantial justice and, hence, remands the instant case to the CA for the resolution of its substantial merits.[29] Upon remand, the CA is directed to order Camaso to pay the required docket fees within a reasonable period of thirty (30) days from notice of such order.

**WHEREFORE**, the petition is **GRANTED**. The Resolutions dated August 12, 2015 and March 4, 2016 of the Court of Appeals (CA) in CA- G.R. SP No. 141278-UDK are hereby **SET ASIDE**. Accordingly, the instant case is **REMANDED** to the CA for further proceedings as discussed in this Decision.

**SO ORDERED.**

*Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin,* and *Caguioa, JJ.*, concur.

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[26] See *rollo*, p. 27.

[27] Section 6, Rule VIII of the 2009 IRCA reads:

Sec. 6. *Payment of Docket and Other Lawful Fees and Deposit for Costs*. – Payment of docket and other lawful fees and deposit for costs may be made in cash, postal money order, certified checks or manager's or cashier's checks payable to the Court [of Appeals]. Personal checks shall be returned to the payor.

[28] *Rollo*, pp. 16 and 29.

[29] See *Bibiana Farms & Mills, Inc. v. NLRC*, *supra* note 23, at 439-440.

**EN BANC**

[A.M. No. P-15-3368. November 8, 2016]
(Formerly A.M. No. 15-04-39-MTC)

**OFFICE OF THE COURT ADMINISTRATOR,** *complainant, vs.* **EVANGELINE E. PANGANIBAN, CLERK OF COURT II, MUNICIPAL TRIAL COURT (MTC), BALAYAN, BATANGAS,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; CLERKS OF COURT; FAILURE TO REMIT THE COURT FUNDS IS TANTAMOUNT TO GROSS NEGLECT OF DUTY, DISHONESTY AND GRAVE MISCONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.—** As custodians of court funds and revenues, Clerks of Court have the duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody. Such functions are highlighted by OCA Circular Nos. 50-95 and 113-2004 and Administrative Circular No. 35-2004 which mandate Clerks of Court to timely deposit judiciary collections as well as to submit monthly financial reports on the same. The Court already held, in the case of *OCA v. Recio, et al.*, that the failure of the Clerk of Court to remit the court funds is tantamount to gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service.

**2. ID.; ID.; ID.; THE PROPER PENALTY FOR THE TRANSGRESSIONS AND NUMEROUS VIOLATIONS OF THE COURT'S ADMINISTRATIVE CIRCULARS, THE 2002 REVISED MANUAL FOR CLERKS OF COURT AND THE CODE OF CONDUCT FOR COURT PERSONNEL IS DISMISSAL FROM SERVICE; CASE AT BAR.—** [I]t is evident that the respondent showed carelessness or indifference in the performance of her duties. Her failure to manage and properly document the cash collections allocated for the various court funds, as well as her action of misappropriating them for her personal use, constitute serious dishonesty, grave misconduct and serious neglect of duty which undermine the public's faith

in courts and in the administration of justice as a whole, and render her unfit for the position of clerk of court. Restitution of the missing amounts will not even relieve the respondent of her liability. This is the reason why the Court has emphasized countless times that all persons working in the judiciary, from the presiding judge to the lowliest clerk, are tasked with a heavy burden of responsibility. Their conduct must at all times be characterized by propriety and decorum, and above all beyond suspicion. The Judiciary demands the best possible individuals in the service and it had never and will never tolerate nor condone any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system. For the respondent's transgressions and numerous violations of the Court's administrative circulars, the 2002 Revised Manual for Clerks of Courts and the Code of Conduct for Court Personnel, the Court is left with no other recourse but to recommend her dismissal from the service, pursuant to Section 52 (A) (1-3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service.

## D E C I S I O N

***PER CURIAM*:**

This is an administrative matter stemming from the Report on the Financial Audit conducted in the Municipal Trial Court (MTC) of Balayan, Batangas,[1] on the books of accounts of Evangeline E. Panganiban (respondent), Clerk of Court II, covering the period from August 1, 2005 to September 30, 2014.

In the course of the fiscal audit examination, the audit team uncovered irregularities in the handling of the financial transactions of the court as well as shortages in its financial accountabilities. There were shortages of substantial amounts from the collection of various court funds handled by the respondent totalling ₱484,991.90 listed as follows: Fiduciary Fund (FF) — ₱323,000.00; Judiciary Development Fund —

[1] *Rollo,* pp. 3-11.

₱47,497.90; Special Allowance for the Judiciary Fund — ₱43,494.00; Mediation Fund — ₱56,000.00; and Sheriffs Trust Fund (STF) — ₱15,000.00.[2]

According to the report, an examination of the FF disclosed a tentative cash shortage of ₱323,000.00 due to non-remittance of collections covered by tampered Official Receipts (ORs) in the total amount of ₱284,000.00. The report said that tampering of ORs was very rampant during the time of the respondent as evidenced by the copies of ORs attached to the case records. In various cases, it was discovered that mere photocopies of the original ORs were used to acknowledged collections. All collections covered by the tampered ORs were neither recorded in the cashbooks nor deposited to the FF account and were never reported at all. It was also the respondent's practice not to put a date on the face of the duplicate and triplicate copies of the receipts, so as not to detect the delay in the remittance of collections, and she would only put a date once the collection is deposited.[3]

There were also unauthorized withdrawals of cash bonds which resulted in misappropriation of ₱38,000.00. Based on the inventory of pending cases as of August 31, 2014, several cases were still undergoing trial but the respondent had already withdrawn the cash bonds posted for the said cases. An examination of the withdrawal documents disclosed that the signatures of the bondsmen in the acknowledgment receipts were forged as the signatures were totally different from the signatures in the retrieved case records, and there was no court order authorizing such withdrawal.[4]

During the audit team's exit conference with Presiding Judge Dennis U. Magsombol, the respondent did not refute the team's findings of financial irregularities in her accounts and even insinuated her desire to resign from the service.[5]

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[2] *Id.* at 1.

[3] *Id.* at 5-6.

[4] *Id.* at 7.

[5] *Id.* at 9.

In the Resolution[6] dated August 17, 2015, the Court adopted the findings of the Office of the Court Administrator (OCA) and resolved as follows:

> (2) **PLACE** [the respondent] under **PREVENTIVE SUSPENSION** pending resolution of this administrative matter;
>
> (3) **DIRECT** [the respondent] to:
>
> (3.1) **RESTITUTE** the cash shortages incurred in the [FF], Judiciary Development Fund, Special Allowance of the Judiciary Fund and Mediation Fund and [STF] in the amount of ₱323,000.00, ₱47,497.90, ₱43,494.00, ₱56,000.00 and ₱15,000.00, respectively, or a total of ₱484,991.90 and **SUBMIT** to the Fiscal Monitoring Division, Court Management Office (FMD-CMO), the corresponding machine validated deposit slips as proof of compliance;
>
> (3.2) **EXPLAIN** in writing within ten (10) days from notice why she should not be administratively and criminally charged for:
>
> (3.2.a) her non-remittance of collections for the different judiciary funds;
>
> (3.2.b) her issuance of mere photocopies of original receipts to acknowledge the following FF collections, which resulted in the misappropriation of ₱156,000.00, to wit:
>
> x x x x x x x x x
>
> (3.2.c) her [un]authorized FF withdrawals totaling ₱38,000.00, to wit:
>
> x x x x x x x x x
>
> (3.2.d) her unaccounted FF withdrawal of ₱1,000.00 on October 29, 2008;
>
> (4) **DIRECT** Presiding Judge Dennis U. Magsombol, MTC, Balayan, Batangas, to **PROPERLY MONITOR** the financial transactions of the incumbent Officer-in-Charge; and

[6] *Id*. at 45-48.

(5) **ISSUE** a **HOLD DEPARTURE ORDER** against [the respondent] to prevent her from leaving the country.[7]

The respondent filed a Motion for Extension of Time to File Answer[8] dated September 28, 2015, requesting for a 90-day extension to comply with the Court's Resolution dated August 17, 2015, which the Court granted in its Resolution[9] dated December 9, 2015.

However, instead of submitting her compliance, the respondent filed a Motion for Additional Extension of Time to File Answer[10] dated December 15, 2015, asking for an additional 90 days from December 17, 2015 to submit her answer reasoning that she is still looking for other documents and possible means of restitution. This motion was belatedly granted by the Court in its Resolution[11] dated April 13, 2016.

Eventually, the respondent submitted her Answer[12] dated February 12, 2016. In her Answer, the respondent admitted the findings of the audit team and explained that: (1) her non-remittance of judiciary collections was due to great financial problem as medical crisis plagued her family which she alone had to shoulder, *i.e.* her husband suffered strokes, her father died of lung and bone cancer and all her children were hospitalized one by one;[13] and (2) to solve her financial dilemma, she resorted to the issuance of mere photocopies of ORs to acknowledge the FF collections with the plan of replacing them with the original copy by the time that she has cash for deposit.[14]

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[7] *Id*. at 45-47.

[8] *Id*. at 63.

[9] *Id*. at 68-69.

[10] *Id*. at 75.

[11] *Id*. at 153-154.

[12] *Id*. at 80-86.

[13] *Id*. at 82-84.

[14] *Id*. at 84-85.

The respondent also said that she had already restituted partial shortages amounting to ₱57,780.00.[15]

In addition, the respondent requested that her remaining financial accountabilities be deducted from her withheld salaries and other benefits due her from January 2015 to September 14, 2015. She also requested that the monetary value of her earned leave credits be applied to her financial accountabilities to allow her to use whatever portion will be left.[16] Lastly, the respondent expressed her sincere repentance and pleaded for utmost consideration and leniency and for the Court's compassion and mercy to lift her suspension and allow her to return to work for the sake of her family, as she has served the judiciary for more than 31 years.[17]

On June 29, 2016, the Fiscal Monitoring Division, Court Management Office of the OCA received a Letter[18] dated June 10, 2016 from Maria Rafaela R. Maderse, Officer-in-Charge, MTC of Balayan, Batangas, requesting for guidance relative to the request for release of cash bond of Celerio Gazmen (Gazmen). Based on the documents presented by Gazmen, he posted a cash bond of ₱40,000.00 under OR No. 4509989 at the MTC of Balayan, Batangas on February 7, 2012 for Criminal Case No. 11-0930 entitled *People of the Philippines v. Celerio Gazmen*, for *Estafa* filed before the Regional Trial Court of Parañaque City. However, upon verification from the triplicate copy of the OR, it turned out that OR No. 4509989 was issued to Ariel Contreras for Criminal Case No. 7671, entitled *People of the Philippines v. Adolfo Rubia y Alano* for Reckless Imprudence Resulting to Homicide in the amount of ₱30,000.00 on December 5, 2011, and the cash bond posted by Gazmen was under OR No. 4509990 in the amount of ₱10,000.00 only. Thus, ₱30,000.00 will have to be added to the respondent's accountability.

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[15] *Id*. at 84.

[16] *Id*. at 82.

[17] *Id*. at 84.

[18] *Id*. at 163.

Succeeding examinations conducted on the books of accounts of the MTC of Balayan, Batangas on March 29, 2016 disclosed that the cash shortage of ₱15,000.00 in the STF account was already deposited on June 11, 2014; hence, the respondent is now cleared from financial responsibility in the STF account.[19]

The OCA now summarized the respondent's accountability to ₱410,991.90, as follows:[20]

| FUNDS | AMOUNT |
|---|---|
| Fiduciary Fund (FF) | ₱ 264,000.00 |
| Judiciary Development Fund (JDF) | 47,497.90 |
| Special Allowance for the Judiciary Fund (SAJF) | 43,494.00 |
| Mediation Fund (MF) | 56,000.00 |
| TOTAL | ₱ 410,991.90 ========== |

Unfortunately, the respondent failed to restitute the shortages within the period given to her allegedly due to sickness and lack of means to pay for being jobless.[21]

**The Issue**

The only issue in this case is whether or not the respondent should be held administratively liable for Serious Dishonesty.

**Ruling of the Court**

The Court agrees with the findings and recommendation of the OCA, with the modification of holding the respondent also administratively liable of Grave Misconduct and Gross Neglect of Duty. The Court has already ruled that:

> Clerks of Court perform a delicate function as designated custodians of the court's funds, revenues, records, properties, and premises. As such, they are generally regarded as treasurer, accountant, guard,

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[19] *Id.* at 158.

[20] *Id.* at 158-159.

[21] *Id.* at 159.

and physical plant manager thereof. It is the duty of the Clerks of Court to faithfully perform their duties and responsibilities. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of Court are officers of the law who perform vital functions in the prompt and sound administration of justice. x x x.[22] (Citation omitted)

As custodians of court funds and revenues, Clerks of Court have the duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody. Such functions are highlighted by OCA Circular Nos. 50-95[23] and 113-2004[24] and Administrative Circular No. 35-2004[25] which mandate Clerks of Court to timely deposit judiciary collections as well as to submit monthly financial reports on the same.[26] The Court already held, in the case of *OCA v. Recio, et al.*,[27] that the failure of the Clerk of Court to remit the court funds is tantamount to gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service.

In this case, by her own admission, the respondent intentionally used the various court funds in her custody to settle her medical and hospitalization expenses and that of her family members.

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[22] *Re: Report on the Financial Audit Conducted at the Municipal Trial Court, Baliuag, Bulacan,* A.M. No. P-15-3298, February 4, 2015, 749 SCRA 495, 501.

[23] The circular provides that all collections from bail bonds, rental deposits, and other fiduciary collections shall be deposited within 24 hours by the Clerk of Court concerned, upon receipt thereof with the Land Bank of the Philippines.

[24] The circular prescribes that all monthly reports of collections, deposits and withdrawals shall be submitted not later than the 10th day of each succeeding month to the Chief Accountant of the Supreme Court.

[25] The circular sets the procedural guidelines in the daily collections of the legal fees.

[26] *OCA v. Viesca,* A.M. No. P-12-3092, Apri1 14, 2015, 755 SCRA 385, 392-394.

[27] 665 Phil. 13 (2011).

While this Court sympathizes with the respondent's illness and that of her family, the Court does not see it as satisfactory reason to justify her acts of using the judiciary funds. Indeed, the use of court funds for purposes other than for what it is expected constitutes malversation.

Moreover, the report of the audit team reveals that there were unremitted collections covered by tampered ORs in the amount of ₱284,000.00. The fact that the respondent tampered with numerous ORs of the cash collections, even creating a way to further obscure her misdeed by not putting a date on the face of the duplicate and triplicate copies of ORs so as not to detect delay in the remittance of collections and making it appear that a lower amount had been paid than what was actually received, demonstrates a serious corruption on her integrity. Tampering with official court receipts in violation of OCA Circular No. 22-94[28] is a serious matter which demonstrates a deliberate attempt to mislead the Court.

From the foregoing, it is evident that the respondent showed carelessness or indifference in the performance of her duties. Her failure to manage and properly document the cash collections allocated for the various court funds, as well as her action of misappropriating them for her personal use, constitute serious dishonesty, grave misconduct and serious neglect of duty which undermine the public's faith in courts and in the administration of justice as a whole, and render her unfit for the position of clerk of court. Restitution of the missing amounts will not even relieve the respondent of her liability.

This is the reason why the Court has emphasized countless times that all persons working in the judiciary, from the presiding judge to the lowliest clerk, are tasked with a heavy burden of responsibility. Their conduct must at all times be characterized by propriety and decorum, and above all beyond suspicion.[29]

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[28] OCA Circular No. 22-94 provides that the DUPLICATE and TRIPLICATE copies of court receipt must be carbon reproductions in all respects of whatever may have been written in the ORIGINAL.

[29] *OCA v. Bernardino*, 490 Phil. 500, 520, 522 (2005).

The Judiciary demands the best possible individuals in the service and it had never and will never tolerate nor condone any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system.[30] For the respondent's transgressions and numerous violations of the Court's administrative circulars, the 2002 Revised Manual for Clerks of Courts and the Code of Conduct for Court Personnel, the Court is left with no other recourse but to recommend her dismissal from the service, pursuant to Section 52(A)(1-3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service.

**WHEREFORE**, premises considered, the Court finds respondent Evangeline E. Panganiban, Clerk of Court II, Municipal Trial Court of Balayan, Batangas, **GUILTY** of serious dishonesty, grave misconduct and gross neglect of duty and is hereby **DISMISSED** from the service with forfeiture of all retirement benefits, excluding accrued leave credits, and with prejudice to re-employment in the government, including government-owned and controlled corporations.

The Court also **ORDERS**, as follows:

1. The Financial Management Office, Office of the Court Administrator is DIRECTED to:

a. **PROCESS** the money value of the terminal leave pay of the respondent and **DEDUCT** therefrom the total shortages of ₱410,991.90, dispensing with the usual documentary requirements:

| FUNDS | AMOUNT |
|---|---|
| Fiduciary Fund | ₱264,000.00 |
| Judiciary Development Fund | 47,497.90 |
| Special Allowance for the Judiciary Fund | 43,494.00 |
| Mediation Fund | 56,000.00 |
| TOTAL | ₱410,991.90 |

[30] *OCA v. Viesca*, *supra* note 26, at 398.

b. **SET ASIDE** the amount of ₱200,000.00 from the money value of the terminal leave pay of the respondent to be deposited in escrow to the Fiduciary Fund account, to answer for her financial accountability, which may arise in the future;

2. The Cash Division, FMO-OCA is DIRECTED to:

a. **DEPOSIT** the amounts of ₱47,497.90, ₱43,494.00, and ₱56,000.00 to the Judiciary Development Fund, Special Allowance for the Judiciary Fund, and Mediation Fund accounts, respectively, within two (2) days from receipt of the checks from the Disbursement Division, FMO-OCA; and

b. **FURNISH** immediately the Fiscal Monitoring Division, Court Management Office, OCA and Maria Rafaela R. Maderse, Officer-in-Charge, MTC of Balayan, Batangas, with copies of machine validated deposit slips as proof that the amounts deducted from the money value of the earned leave credits of the respondent were deposited to the respective accounts, as payment of the shortages in said accounts;

3. Maria Rafaela R. Maderse, Officer-in-Charge, MTC of Balayan, Batangas, is **DIRECTED to DEPOSIT** the amount of ₱464,000.00 to the Fiduciary Fund Savings Account No. 2681-0032-77 with the Land Bank of the Philippines, the corresponding machine validated deposit slip and a certified true copy of the passbook reflecting the deposits made as proof of compliance;

4. The Office of Administrative Services, OCA is **DIRECTED** to furnish the FMO-OCA with the Official Service Record, Certification of Leave Credits and Notice of Salary Adjustments of the respondent so that it can process/comply with the directives hereunder; and

5. Presiding Judge Dennis U. Magsombol of the MTC of Balayan, Batangas, is **DIRECTED to STRICTLY MONITOR** Maria Rafaela R. Maderse, Officer-in-Charge, MTC of Balayan, Batangas, to ensure strict compliance with the circulars and issuances of the Court, particularly in the handling of judiciary funds; otherwise, he shall be held equally liable for the infractions committed by the employee/s under his command/supervision.

**SO ORDERED.**

*Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza,* and *Caguioa, JJ.*, concur.

*Velasco, Jr., J.*, on official leave.

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**EN BANC**

[G.R. No. 225973. November 8, 2016]

**SATURNINO C. OCAMPO, TRINIDAD H. REPUNO, BIENVENIDO LUMBERA, BONIFACIO P. ILAGAN, NERI JAVIER COLMENARES, MARIA CAROLINA P. ARAULLO, M.D., SAMAHAN NG EX-DETAINEES LABAN SA DETENSYON AT ARESTO (SELDA), represented by DIONITO CABILLAS, CARMENCITA M. FLORENTINO, RODOLFO DEL ROSARIO, FELIX C. DALISAY, and DANILO M. DELA FUENTE,*** *petitioners, vs.* **REAR ADMIRAL ERNESTO C. ENRIQUEZ (in his capacity as the Deputy Chief of Staff for Reservist and Retiree Affairs, Armed Forces of the Philippines), The Grave Services Unit (Philippine Army), and GENERAL RICARDO R. VISAYA (in his capacity as the Chief of Staff, Armed Forces of the Philippines), DEFENSE SECRETARY DELFIN LORENZANA, and HEIRS OF FERDINAND E. MARCOS, represented by his surviving spouse Imelda Romualdez Marcos,** *respondents.*

**RENE A.V. SAGUISAG, SR., RENE A.Q. SAGUISAG, JR., RENE A.C. SAGUISAG III,** *intervenors.*

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* Rene A.V. Saguisag, *et al.* filed a petition for *certiorari*-in-intervention.

[G.R. No. 225984. November 8, 2016]

**REP. EDCEL C. LAGMAN, in his personal and official capacities and as a member of Congress and as the Honorary Chairperson of the Families of Victims of Involuntary Disappearance (FIND); FAMILIES OF VICTIMS OF INVOLUNTARY DISAPPEARANCE (FIND), represented by its Co-Chairperson, NILDA L. SEVILLA; REP. TEDDY BRAWNER BAGUILAT, JR.; REP. TOMASITO S. VILLARIN; REP. EDGAR R. ERICE; and REP. EMMANUEL A. BILLONES,** *petitioners, vs.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA; DEFENSE SECRETARY DELFIN N. LORENZANA; AFP CHIEF OF STAFF LT. GEN. RICARDO R. VISAYA; AFP DEPUTY CHIEF OF STAFF REAR ADMIRAL ERNESTO C. ENRIQUEZ; and HEIRS OF FERDINAND E. MARCOS, represented by his surviving spouse IMELDA ROMUALDEZ MARCOS,** *respondents.*

[G.R. No. 226097. November 8, 2016]

**LORETTA ANN PARGAS-ROSALES, HILDA B. NARCISO, AIDA F. SANTOS-MARANAN, JO-ANN Q. MAGLIPON, ZENAIDA S. MIQUE, FE B. MANGAHAS, MA. CRISTINA P. BAWAGAN, MILA D. AGUILAR, MINERVA G. GONZALES, MA. CRISTINA V. RODRIGUEZ, LOUIE G. CRISMO, FRANCISCO E. RODRIGO, JR., LIWAYWAY D. ARCE, and ABDULMARI DE LEON IMAO, JR.,** *petitioners, vs.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, AFP DEPUTY CHIEF OF STAFF REAR ADMIRAL ERNESTO C. ENRIQUEZ, AFP CHIEF OF STAFF LT. GEN. RICARDO R. VISAYA, and PHILIPPINE VETERANS AFFAIRS OFFICE (PVAO) Administrator Lt. Gen. Ernesto G. Carolina (Ret.),** *respondents.*

[G.R. No. 226116. November 8, 2016]

**HEHERSON T. ALVAREZ, JOEL C. LAMANGAN, FRANCIS X. MANGLAPUS, EDILBERTO C. DE JESUS, BELINDA O. CUNANAN, CECILIA GUIDOTE ALVAREZ, REX DEGRACIA LORES, SR., ARNOLD MARIE NOEL, CARLOS MANUEL, EDMUND S. TAYAO, DANILO P. OLIVARES, NOEL F. TRINIDAD, JESUS DELA FUENTE, REBECCA M. QUIJANO, FR. BENIGNO BELTRAN, SVD, ROBERTO S. VERZOLA, AUGUSTO A. LEGASTO, JR., and JULIA KRISTINA P. LEGASTO,** *petitioners, vs.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, AFP CHIEF OF STAFF LT. GEN. RICARDO R. VISAYA, AFP DEPUTY CHIEF OF STAFF REAR ADMIRAL ERNESTO C. ENRIQUEZ, and PHILIPPINE VETERANS AFFAIRS OFFICE (PVAO) of the DND,** *respondents.*

[G.R. No. 226117. November 8, 2016]

**ZAIRA PATRICIA B. BANIAGA, JOHN ARVIN BUENAAGUA, JOANNE ROSE SAÇE LIM, JUAN ANTONIO RAROGAL MAGALANG,** *petitioners, vs.* **SECRETARY OF NATIONAL DEFENSE DELFIN N. LORENZANA, AFP CHIEF OF STAFF RICARDO R. VISAYA, ADMINISTRATOR OF THE PHILIPPINE VETERANS AFFAIRS OFFICE ERNESTO G. CAROLINA,** *respondents.*

[G.R. No. 226120. November 8, 2016]

**ALGAMAR A. LATIPH,** *petitioner, vs.* **SECRETARY DELFIN N. LORENZANA, sued in his capacity as Secretary of National Defense, LT. GEN. RICARDO R. VISAYA, in his capacity as Chief of Staff of the Armed Forces of the Philippines and LT. GEN. ERNESTO G. CAROLINA (ret.), in his capacity as Administrator, Philippine Veterans Affairs Office (PVAO),** *respondents.*

[G.R. No. 226294. November 8, 2016]

**LEILA M. DE LIMA, in her capacity as SENATOR OF THE REPUBLIC and as TAXPAYER,** *petitioner, vs.* **HON. SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, AFP CHIEF OF STAFF LT. GEN. RICARDO R. VISAYA, UNDERSECRETARY ERNESTO G. CAROLINA, in his capacity as PHILIPPINE VETERANS AFFAIRS OFFICE (PVAO) ADMINISTRATOR and B/GEN. RESTITUTO L. AGUILAR, in his capacity as SHRINE CURATOR AND CHIEF, VETERANS MEMORIAL AND HISTORICAL DIVISION and HEIRS OF FERDINAND EDRALIN MARCOS,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUISITES FOR JUDICIAL INQUIRY.—** It is well settled that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless the following requisites for judicial inquiry are present; (*a*) there must be an actual case or controversy calling for the exercise of judicial power; (*b*) the person challenging the act must have the standing to question the validity of the subject act or issuance; (*c*) the question of constitutionality must be raised at the earliest opportunity; and (*d*) the issue of constitutionality must be the very *lis mota* of the case.

**2. ID.; ID.; ID.; ID.; ID.; CONCEPT OF JUSTICIABLE CONTROVERSY.—** An "actual case or controversy" is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Related to the requisite of an actual case or controversy is the requisite of "ripeness," which means that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence

of an immediate or threatened injury to itself as a result of the challenged action."

**3. ID.; ID.; ID.; ID.; THE PRESIDENT'S DECISION TO HAVE THE REMAINS OF MARCOS INTERRED AT THE LIBINGAN NG MGA BAYANI (LNMB) INVOLVES A POLITICAL QUESTION THAT IS NOT A JUSTICIABLE CONTROVERSY AND IS OUTSIDE THE AMBIT OF JUDICIAL REVIEW.—** The Court agrees with the OSG that President Duterte's decision to have the remains of Marcos interred at the LNMB involves a political question that is not a justiciable controversy. In the exercise of his powers under the Constitution and the Executive Order (E.O.) No. 292 (otherwise known as the Administrative Code of 1987) to allow the interment of Marcos at the LNMB, which is a land of the public domain devoted for national military cemetery and military shrine purposes, President Duterte decided a question of policy based on his wisdom that it shall promote national healing and forgiveness. There being no taint of grave abuse in the exercise of such discretion, as discussed below, President Duterte's decision on that political question is outside the ambit of judicial review.

**4. ID.; ID.; ID.; ID.; *LOCUS STANDI*, DEFINED AND EXPLAINED; PETITIONERS, IN THEIR DIFFERENT CAPACITIES, HAVE NO LEGAL STANDING TO FILE THE PRESENT PETITIONS AS THEY FAILED TO SHOW THAT THEY SUFFERED OR WILL SUFFER DIRECT AND PERSONAL INJURY AS A RESULT OF INTERMENT OF MARCOS AT THE LNMB.—** Defined as a right of appearance in a court of justice on a given question, *locus standi* requires that a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. Unless a person has sustained or is in imminent danger of sustaining an injury as a result of an act complained of, such proper party has no standing. Petitioners, who filed their respective petitions for *certiorari*, prohibition and mandamus, in their capacities as citizens, human rights violations victims, legislators, members of the Bar and taxpayers, have no legal standing to file such petitions because they failed to show that they have suffered or will suffer

direct and personal injury as a result of the interment of Marcos at the LNMB.

**5. ID.; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; CONCEPT; PETITIONER VIOLATED THE PRINCIPLE BY FAILING TO SEEK RECONSIDERATION OF THE ASSAILED MEMORANDUM AND TO ELEVATE THE MATTER BEFORE THE OFFICE OF THE PRESIDENT.—** Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, one should have availed first of all the means of administrative processes available. If resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. For reasons of comity and convenience, courts of justice shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case. While there are exceptions to the doctrine of exhaustion of administrative remedies, petitioners failed to prove the presence of any of those exceptions. Contrary to their claim of lack of plain, speedy, adequate remedy in the ordinary course of law, petitioners should be faulted for failing to seek reconsideration of the assailed memorandum and directive before the Secretary of National Defense. The Secretary of National Defense should be given opportunity to correct himself, if warranted, considering that AFP Regulations G 161-375 was issued upon his order. Questions on the implementation and interpretation thereof demand the exercise of sound administrative discretion, requiring the special knowledge, experience and services of his office to determine technical and intricate matters of fact. If petitioners would still be dissatisfied with the decision of the Secretary, they could elevate the matter before the Office of the President which has control and supervision over the Department of National Defense (*DND*).

**6. REMEDIAL LAW; COURTS; HIERARCHY OF COURTS; IN THE ABSENCE OF EXCEPTIONAL CIRCUMSTANCE, DIRECT RESORT TO THE SUPREME COURT IS NOT**

**ALLOWED.—** [W]hile direct resort to the Court through petitions for the extraordinary writs of *certiorari*, prohibition and mandamus are allowed under exceptional cases, which are lacking in this case, petitioners cannot simply brush aside the doctrine of hierarchy of courts that requires such petitions to be filed first with the proper Regional Trial Court (*RTC*). The RTC is not just a trier of facts, but can also resolve questions of law in the exercise of its original and concurrent jurisdiction over petitions for *certiorari*, prohibition and mandamus, and has the power to issue restraining order and injunction when proven necessary.

**7. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF THE PRESIDENTIAL DECISION ALLOWING THE INTERMENT OF THE LATE FORMER PRESIDENT MARCOS AT THE LNMB; THERE IS NO DIRECT OR INDIRECT PROHIBITION UNDER THE CONSTITUTION TO MARCOS' INTERMENT AT THE LNMB.—** Petitioners' reliance on Sec. 3(2) of Art. XIV and Sec. 26 of Art. XVIII of the Constitution is also misplaced. Sec. 3(2) of Art. XIV refers to the constitutional duty of educational institutions in teaching the values of patriotism and nationalism and respect for human rights, while Sec. 26 of Art. XVIII is a transitory provision on sequestration or freeze orders in relation to the recovery of Marcos' ill-gotten wealth. Clearly, with respect to these provisions, there is no direct or indirect prohibition to Marcos' interment at the LNMB. The second sentence of Sec. 17 of Art. VII pertaining to the duty of the President to "*ensure that the laws be faithfully executed,*" which is identical to Sec. 1, Title I, Book III of the Administrative Code of 1987, is likewise not violated by public respondents. Being the Chief Executive, the President represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his or her department. Under the Faithful Execution Clause, the President has the power to take "necessary and proper steps" to carry into execution the law. The mandate is self-executory by virtue of its being inherently executive in nature and is intimately related to the other executive functions. It is best construed as an imposed obligation, not a separate grant of power. The provision simply underscores the rule of law and, corollarily, the cardinal principle that the President is not above the laws but is obliged to obey and execute them.

**8. ID.; ID.; ID.; THE BURIAL OF MARCOS AT THE LNMB DOES NOT CONTRAVENE R.A. NO. 298, R.A. NO. 10368 AND THE INTERNATIONAL AGREEMENTS CITED BY PETITIONERS.—** Petitioners x x x miserably failed to provide legal and historical bases as to their supposition that the LNMB and the National Pantheon are one and the same. This is not at all unexpected because the LNMB is distinct and separate from the burial place envisioned in R.A. No. 289. The parcel of land subject matter of President Quirino's Proclamation No. 431, which was later on revoked by President Magsaysay's Proclamation No. 42, is different from that covered by Marcos' Proclamation No. 208. The National Pantheon does not exist at present. x x x This Court cannot subscribe to petitioners' logic that the beneficial provisions of R.A. No. 10368 are not exclusive as it includes the prohibition on Marcos' burial at the LNMB. It would be undue to extend the law beyond what it actually contemplates. With its victim-oriented perspective, our legislators could have easily inserted a provision specifically proscribing Marcos' interment at the LNMB as a "reparation" for the HRVVs, but they did not. As it is, the law is silent and should remain to be so. This Court cannot read into the law what is simply not there. It is irregular, if not unconstitutional, for Us to presume the legislative will be supplying material details into the law. That would be tantamount to judicial legislation. Considering the foregoing, the enforcement of the HRVVs' rights under R.A. No. 10368 will surely not be impaired by the interment of Marcos at the LNMB. x x x Petitioners argue that the burial of Marcos at the LNMB will violate the rights of the HRVVs to "full" and "effective" reparation, x x x. We do not think so. The ICCPR, as well as the U.N. principles on reparation and to combat impunity, call for the enactment of legislative measures, establishment of national programmes, and provision for administrative and judicial recourse, in accordance with the country's constitutional processes, that are necessary to give effect to human rights embodied in treaties, covenants and other international laws. x x x The Philippines is more than compliant with its international obligations. When the Filipinos regained their democratic institutions after the successful People Power Revolution that culminated on February 25, 1986, the three branches of the government have done their fair share to respect, protect and fulfill the country's human rights obligations.

**9. ID.; ID.; ID.; THE INTERMENT OF MARCOS DOES NOT CONSTITUTE A VIOLATION OF THE PHYSICAL, HISTORICAL, AND CULTURAL INTEGRITY OF THE LNMB AS A NATIONAL MILITARY SHRINE.—** P.D. No. 105 strictly prohibits and punishes by imprisonment and/or fine the desecration of national shrines by disturbing their peace and serenity through digging, excavating, defacing, causing unnecessary noise, and committing unbecoming acts within their premises. x x x Contrary to the dissent, P.D. No. 105 does not apply to the LNMB. Despite the fact that P.D. No. 208 predated P.D. No. 105, the LNMB was not expressly included in the national shrines enumerated in the latter. The proposition that the LNMB is implicitly covered in the catchall phrase *"and others which may be proclaimed in the future as National Shrines"* is erroneous[.] x x x Assuming that P.D. No. 105 is applicable, the descriptive words *"sacred and hallowed"* refer to the LNMB as a place and not to each and every mortal remains interred therein. Hence, the burial of Marcos at the LNMB does not diminish said cemetery as a revered and respected ground. Neither does it negate the presumed individual or collective "heroism" of the men and women buried or will be buried therein. The *"nation's esteem and reverence for her war dead,"* as originally contemplated by President Magsaysay in issuing Proclamation No. 86, still stands unaffected. That being said, the interment of Marcos, therefore, does not constitute a violation of the physical, historical, and cultural integrity of the LNMB as a national military shrine.

**10. ID.; ID.; ID.; PRESIDENT DUTERTE IS NOT BOUND BY THE 1992 AGREEMENT BETWEEN PRESIDENT RAMOS AND MARCOS FAMILY TO HAVE THE REMAINS OF MARCOS INTERRED IN BATAC, ILOCOS NORTE.—** The presidential power of control over the Executive Branch of Government is a self-executing provision of the Constitution and does not require statutory implementation, nor may its exercise be limited, much less withdrawn, by the legislature. This is why President Duterte is not bound by the alleged 1992 Agreement between former President Ramos and the Marcos family to have the remains of Marcos interred in Batac, Ilocos Norte. As the incumbent President, he is free to amend, revoke or rescind political agreements entered into by his predecessors, and to determine policies which he considers, based on informed

judgment and presumed wisdom, will be most effective in carrying out his mandate.

**11. ID.; ID.; ID.; THE ALLOTMENT OF A CEMETERY PLOT AT THE LNMB FOR MARCOS SATISFIES THE PUBLIC USE REQUIREMENT; PETITIONERS FAILED TO ESTABLISH THEIR CLAIM THAT THE CHIEF EXECUTIVE WAS ACTUALLY MOTIVATED BY *UTANG NA LOOB* AND *BAYAD UTANG* TO THE MARCOSES.—** [U]nder the Administrative Code, the President has the power to reserve for public use and for specific public purposes any of the lands of the public domain and that the reserved land shall remain subject to the specific public purpose indicated until otherwise provided by law or proclamation. At present, there is no law or executive issuance specifically excluding the land in which the LNMB is located from the use it was originally intended by the past Presidents. The allotment of a cemetery plot at the LNMB for Marcos as a former President and Commander-in-Chief, a legislator, a Secretary of National Defense, a military personnel, a veteran, and a Medal of Valor awardee, whether recognizing his contributions or simply his status as such, satisfies the public use requirement. The disbursement of public funds to cover the expenses incidental to the burial is granted to compensate him for valuable public services rendered. Likewise, President Duterte's determination to have Marcos' remains interred at the LNMB was inspired by his desire for national healing and reconciliation. Presumption of regularity in the performance of official duty prevails over petitioners' highly disputed factual allegation that, in the guise of exercising a presidential prerogative, the Chief Executive is actually motivated by *utang na loob* (*debt of gratitude*) and *bayad utang* (*payback*) to the Marcoses. As the purpose is not self-evident, petitioners have the burden of proof to establish the factual basis of their claim. They failed. Even so, this Court cannot take cognizance of factual issues since We are not a trier of facts.

**12. ID.; ID.; ID.; AFP REGULATIONS G 161-375 REMAINS TO BE THE SOLE AUTHORITY IN DETERMINING WHO ARE ENTITLED AND DISQUALIFIED TO BE INTERRED AT THE LNMB AND ITS VALIDITY MUST BE SUSTAINED IN THE ABSENCE OF A CLEAR SHOWING THAT IT HAS BEEN ISSUED WITH GRAVE ABUSE OF**

**DISCRETION.—** In the absence of any executive issuance or law to the contrary, the AFP Regulations G 161-375 remains to be the sole authority in determining who are entitled and disqualified to be interred at the LNMB. x x x The validity of AFP Regulations G 161-375 must, therefor, be sustained for having been issued by the AFP Chief of Staff acting under the direction of the Secretary of National Defense, who is the alter ego of the President. x x x It has been held that an administrative regulation adopted pursuant to law has the force and effect of law and, until set aside, is binding upon excecutive and administrative agencies, including the President as the chief executor of laws. x x x AFP Regulations G 161-375 should not be stricken down in the absence of clear and unmistakable showing that it has been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Neither could it be considered *ultra vires* for purportedly providing incomplete, whimsical, and capricious standards for qualification for burial at the LNMB.

**13. ID.; ID.; ID.; ID.; THE PURPOSE OF LNMB HAS NEITHER BEEN TO CONFER TO THE PEOPLE BURIED THERE THE TITLE OF A "HERO" NOR TO REQUIRE THAT ONLY THOSE INTERRED THEREIN SHOULD BE TREATED AS A "HERO"; THE ASSAILED REGULATIONS MERELY RECOGNIZE AND REWARD THE MILITARY SERVICES OF THE DECEASED; APPLICATION.—** [I]t is glaring that x x x the AFP Regulations G 161-375 on the LNMB, as a general rule, recognize and reward the military services or military related activities of the deceased. x x x It is not contrary to the "well-established custom," as the dissent described it, to argue that the word *"bayani"* in the LNMB has become a misnomer since while a symbolism of heroism may attach to the LNMB as a national shrine for military memorial, the same does not automatically attach to its future as a military cemetery and to those who were already laid or will be laid therein. As stated, the purpose of the LNMB, both from the legal and historical perspectives, has neither been to confer to the people buried there the title of "hero" nor to require that only those interred therein should be treated as a "hero." x x x Petitioners did not dispute that Marcos was a former President and Commander-in-Chief, a legislator, a Secretary of National Defense, a military personnel, a veteran, and a Medal of Valor awardee. For his alleged human rights abuses and corrupt

practices, we may disregard Marcos as a President and Commander-in-Chief, but we cannot deny him the right to be acknowledged based on the other positions he held or the awards he received. In this sense, We agree with the proposition that Marcos should be viewed and judged in his totality as a person. While he was not all good, he was not pure evil either. Certainly, just a human who erred like us. Our laws give high regard to Marcos as a Medal of Valor awardee and a veteran. R.A. No. 9049 declares the policy of the State "*to consistently honor its military heroes in order to strengthen the patriotic spirit and nationalist consciousness of the military*."

**14. ID.; ID.; ID.; ID.; NOT HAVING BEEN CONVICTED BY FINAL JUDGMENT OF AN OFFENSE INVOLVING MORAL TURPITUDE OR DISHONORABLY DISCHARGED FROM ACTIVE MILITARY SERVICE, MARCOS IS ELIGIBLE AND IS NOT DISQUALIFIED FOR BURIAL AT THE LNMB.—** Aside from being eligible for burial at the LNMB, Marcos possessed none of the disqualifications stated in AFP Regulations G 161-375. He was neither convicted by final judgment of the offense involving moral turpitude nor dishonorably separated/reverted/discharged from active military service. x x x [T]he fact remains that Marcos was not convicted by final judgment of any offense involving moral turpitude. No less than the 1987 Constitution mandates that a person shall not be held to answer for a criminal offense without due process of law[.] x x x Marcos was honorably discharged from military service. PVAO expressly recognized him as a retired veteran pursuant to R.A. No. 6948, as amended. Petitioners have not shown that he was dishonorably discharged from military service.

**15. ID.; ID.; ID.; ID.; ID.; MARCOS' OUSTER FROM THE PRESIDENCY DURING THE EDSA REVOLUTION IS NOT TANTAMOUNT TO DISHONORABLE DISCHARGE FROM THE MILITARY SERVICE; DISHONORABLE DISCHARGE THROUGH A SUCCESSFUL REVOLUTION IS AN EXTRA-CONSTITUTIONAL AND DIRECT SOVEREIGN ACT OF THE PEOPLE WHICH IS BEYOND THE AMBIT OF JUDICIAL REVIEW.—** [I]t cannot be conveniently claimed that Marcos' ouster from the presidency during the EDSA Revolution is tantamount to his dishonorable separation, reversion or discharge from the military service.

The fact that the President is the Commander-in-Chief of the AFP under the 1987 Constitution only enshrines the principle of supremacy of civilian authority over the military. Not being a military person who may be prosecuted before the court martial, the President can hardly be deemed *"dishonorably separated/ reverted/discharged from the service"* as contemplated by AFP Regulations G 161-375. Dishonorable discharge through a successful revolution is an extra-constitutional and direct sovereign act of the people which is beyond the ambit of judicial review, let alone a mere administrative regulation. It is undeniable that former President Marcos was forced out of office by the people through the so-called EDSA Revolution. Said political act of the people should not be automatically given a particular legal meaning other than its obvious consequence – that of ousting him as president. To do otherwise would lead the Court to the treacherous and perilous path of having to make choices from multifarious inferences or theories arising from the various acts of the people. It is not the function of the Court, for instance, to divine the exact implications or significance of the number of votes obtained in elections, or the message from the number of participants in public assemblies. If the Court is not to fall into the pitfalls of getting embroiled in political and oftentimes emotional, if not acrimonious, debates, it must remain steadfast in abiding by its recognized guiding stars – clear constitutional and legal rules – not by the uncertain, ambiguous and confusing messages from the actions of the people.

**BRION, *J., separate concurring opinion*:**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; DOES NOT EMPOWER THE COURT, EVEN UNDER ITS EXPANDED JURISDICTION, TO DIRECTLY PASS UPON ALLEGATIONS INVOLVING VIOLATIONS OF STATUTES.—** The Court's expanded jurisdiction, however, affects only the *means* of invoking judicial review, and does not change the nature of this power at all. The power of judicial review pertains to the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution. As a requirement for its *direct exercise* by this Court, the "grave abuse of discretion" that triggers the Court's expanded jurisdiction must necessarily involve a violation of

the Constitution. In other words, the Court's direct authority to exercise its expanded jurisdiction is limited to the determination of the *constitutionality* of a governmental act. Grave abuse of discretion arising from mere violations of statutes cannot, as a rule, be the subject of the Court's direct exercise of its expanded jurisdiction. *The petitioners' recourse in this situation lies with other judicial remedies or proceedings, allowed under the Rules of Court, that may arrive in due course at the Court's portals for review.* In the context of the present case, for the Court to directly exercise its expanded jurisdiction, the petitioners carry the burden of proving, *prima facie*, that the President's decision to inter Marcos at the LNMB violates the Constitution. This view is not only in accord with existing pronouncements on judicial review and the exercise of judicial power; it is also the more prudent and practicable option for the Court. Opening the Court's direct exercise of its expanded jurisdiction to acts that violate statutes, however grave the abuse of the statute might be, significantly dilutes the doctrines of *hierarchy of courts, primary jurisdiction,* and *exhaustion of administrative remedies.* In short, the necessity for the application of these doctrines diminishes when recourse to the Court is immediately and directly made available.

**2. ID.; ID.; ID.; ID.; PRESIDENT DUTERTE'S ALLEGED STATUTORY VIOLATIONS WHEN HE ALLOWED THE BURIAL OF MARCOS AT THE LIBINGAN NG MGA BAYANI (LNMB) ARE NOT THE PROPER SUBJECT OF JUDICIAL REVIEW.—** [P]etitioners' allegations equating President Duterte's alleged statutory violations (when he issued his burial order) to grave abuse of discretion, are not the proper subject of judicial review under the Court's *direct* exercise of its expanded jurisdiction. Assuming, hypothetically, that several statutes have indeed been erroneously applied by the President, the remedy for the petitioners is not the *direct and immediate* recourse to this Court for the nullification of the illegal acts committed. Violations of statutes by the Executive may be assailed through administrative bodies that possess the expertise on the applicable laws and that possess as well the technical expertise on the information subject of, or relevant to, the dispute. For these statutory violations, recourse may be made before the courts through an appeal of the administrative body's ruling, or by filing for a petition for declaratory relief before the lower court with jurisdiction over the matter. Only when these lower

courts have rendered their decisions should these matters be elevated to this Court by appeal or *certiorari*; even then, the issues the petitioners may present are limited to questions of law, not to questions of fact.

**3. ID.; ID.; EXECUTIVE DEPARTMENT; EXECUTIVE POWER; THE PRESIDENT'S DUTY "TO ENSURE THAT THE LAWS BE FAITHFULLY EXECUTED" PERTAINS TO HIS POWER OF SUPERVISION OVER THE EXECUTIVE BRANCH; IT CANNOT BE USED AS BASIS TO CONSTITUTIONALLY QUESTION THE MANNER BY WHICH THE PRESIDENT EXERCISES HIS EXECUTIVE POWER.—** [W]e have recognized that [Article VI, Section 17 of the 1987 Constitution] vests in the President the *power of control and supervision* over all the executive departments, bureaus, and offices. The first sentence pertains to the President's *power of control*, while the latter, to his *power of supervision*. His duty to "ensure that the laws be faithfully executed" pertains to his power (and duty) of supervision over the executive branch, and when read with Section 4, Article X of the 1987 Constitution, over local government units. x x x How laws are to be "faithfully executed" provides a broad standard generally describing the expectations on how the President is to execute the law. The nature and extent of the constitutionally-granted presidential powers, however, negate the concept that this standard can be used as basis to constitutionally question the ***manner*** by which the President exercises executive power. To hold otherwise is inconsistent with the ***plenary*** nature of executive power that the Constitution envisions. The Constitution intends as well a tripartite system of government where each branch is co-equal and supreme in its own sphere. These intents could be defeated if the standard of "faithfulness" in executing our laws would be a constitutional standard measuring the manner of the President's implementation of the laws. In the first place, it places the Court in the position to pass upon the scope and parameters of the vague and not-easily determinable "faithfulness" standard. Putting the Court in this position (especially when considered with the Court's expanded jurisdiction) amounts to placing it in a higher plane from where it can dictate how laws should be implemented. In fact, it is hard to discern how the Court can apply a standard for the faithful execution of the laws, without determining ***how*** the law should be implemented in the first place. Additionally,

characterizing the failure to ensure faithful execution of the laws as a constitutional violation can prove to be an unreasonably restricting interpretation. It could possibly paralyze executive discretion, and expose the Executive to constant lawsuits based on acts of grave abuse of discretion he or she allegedly committed. Thus, the duty to "ensure that laws are faithfully executed" *should not be read as the constitutional standard to test the legality of the President's acts so that a legal error in the implementation of a law becomes a constitutional violation of his faithful execution duty.*

**4. ID.; ID.; ID.; ID.; THE PRESIDENT'S BURIAL ORDER DOES NOT VIOLATE INTERNATIONAL LAW OBLIGATIONS; THERE IS NO SPECIFIC TREATY OBLIGATION PROHIBITING MARCOS' BURIAL AT THE LNMB.—** While I agree that these international agreements (except for the UDHR, which is a non-binding document with provisions attaining the status of customary international law) had been ratified by the Philippine government and hence have the force and effect of law in the Philippines, the petitioners failed to point to any specific treaty obligation prohibiting Marcos' burial at the LNMB or at any other public cemetery. x x x The petitioners assert that the burial order amounts to a state-sanctioned narrative that violates the Philippines' duty to provide a "full and effective reparation" for human rights violations victims. The petitioners cite as legal bases Principle 22 and Principle 23 of the Basic Principles and Guidelines on the right to a remedy; Reparation for Victims of Gross Violations of International Human Rights Law (*IHRL*); Serious Violations of International Humanitarian Law (*IHL*); and Principle 2 and Principle 3 of the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity. These principles, however, do not create *legally binding obligations.* They are not international agreements that states accede to and ratify, as states have not agreed to formally be bound by them. Declarations, principles, plans of action and guidelines are considered "soft law" because they do not bind states, although they may carry considerable political and legal weight. They are considered statements of moral and political intent that, at most, may subsequently ripen into international norms. x x x Without any specific and legally binding prohibition limiting the President's actions, no basis exists to nullify his order and to disregard the presumption of regularity that exists in the performance of his duties.

**5. ID.; ID.; ID.; ID.; WITHOUT ANY SPECIFIC PROVISION ALLEGED TO HAVE BEEN VIOLATED BY THE PRESIDENT'S BURIAL ORDER, CONSTITUTIONAL INTENTS CANNOT BE USED AS A MEASURE TO RESOLVE THE ISSUES IN THESE CASES; NO EXPRESS CONSTITUTIONAL BAR TO INTERMENT.—** While constitutional intent serves as a valuable guide in undertaking our adjudicatory duties, *it does not embody a right and, by itself, is not a basis for the enforcement of a right.* Neither does it provide a standard on how the President should act and enforce the laws, without prior reference to specific provisions or legislations applying the intent of the Constitution. In the context of the present petitions, without any specific provision alleged to have been violated by the burial order, the constitutional intents that the petitioners brought to light cannot be used as a measure to resolve the issues that bedevil us in these cases. Specifically, they cannot be used as basis to determine the existence of grave abuse of discretion under the Court's expanded jurisdiction. As we have done by long established practice, we rely on intent only to settle ambiguities that cross our paths in the course of reading and considering constitutional provisions. To go to the concrete and the specific demands of the issues at hand, we cannot use the faithful execution clause as basis to question the manner by which the Executive implements a law. x x x The Constitution was undeniably forged out of the ashes of the Marcos regime. Its enactment after the Marcos regime collapsed, however, does not suggest and cannot be translated into an implied command preventing his burial at the LNMB or in a shrine of national significance. Had such prohibition been the intent, the Constitution's transitory provisions would have specifically so provided in the manner these provisions incorporated terms that the framers wanted to implement within intended and foreseeable time frames.

**BERSAMIN, *J., concurring opinion*:**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; POLITICAL QUESTION; THE EXERCISE BY PRESIDENT DUTERTE OF HIS DISCRETION WHEN HE ALLOWED THE INTERMENT OF MARCOS IN THE LIBINGAN NG MGA**

**BAYANI (LNMB) IS BEYOND JUDICIAL REVIEW; IT IS A POLITICAL QUESTION WHICH IS WITHIN THE DOMAIN OF THE CHIEF EXECUTIVE.—** [T]he exercise by President Duterte of his discretion upon a matter under his control like the interment of the remains of President Marcos in the LNMB is beyond review by the Court. He has not thereby transgressed any legal boundaries. President Marcos – being a former President of the Philippines, a Medal of Valor awardee, a veteran of World War II, a former Senator and Senate President, and a former Congressman – is one of those whose remains are *entitled* to be interred in the LNMB under the terms of AFP Regulations G 161-375. President Duterte was far from whimsical or arbitrary in his exercise of discretion. I believe that interment of any remains in the LNMB is a political question within the exclusive domain of the Chief Executive. The Court must defer to his wisdom and must respect his exercise of discretion. In other words, his directive to Secretary Lorenzana is unassailable.

**2. ID.; ID.; ID.; ID.; LAWS CITED BY PETITIONERS ARE NOT RELEVANT TO LNMB; NO SPECIFIC PROVISION OF THE CONSTITUTION OR OTHER EXISTING LAWS THAT EXPRESSLY PROHIBITS THE INTERMENT OF MARCOS IN THE LNMB.—** [T]he several laws the petitioner have invoked to prevent the interment are not relevant to the LNMB. x x x Republic Act No. 289, x x x stipulated the establishment of the National Pantheon as the final resting place for former Presidents of the Philippines, national heroes and patriots to perpetuate their memory as sources of inspiration and emulation for the future generations. x x x [T]he Solicitor General has clarified that the LNMB is not the National Pantheon referred to by Republic Act No. 289. Indeed, Proclamation No. 431 x x x would locate the National Pantheon in East Avenue, Quezon City, but the establishment of the National Pantheon was later on discontinued. In contrast, the LNMB is the former Republic Memorial Cemetery as expressly provided in Executive Order No. 77[.] x x x The Republic Memorial Cemetery *was* reserved as the final resting place for the war dead of World War II, but President Magsaysay renamed it to LNMB on October 27, 1954. The history of the LNMB refutes the petitioners' reliance on Republic Act No. 289. Verily, the LNMB is not the same as the National Pantheon. Republic Act No. 10368 has also been cited by the petitioners. This law recognizes the victims of Martial Law and makes reparations for their sufferings

by appropriating ₱10,000,000,000.00 as compensation for them. How such law impacts on the interment of the remains of President Marcos has not been persuasively shown. The petitioners have not laid out any legal foundation for directly testing the issuance of the challenged executive issuances. They have not cited any specific provision of either the Constitution or other existing laws that would expressly prohibit the interment in the LNMB of the remains of one like President Marcos.

**3. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE REGULATION; AFP REGULATIONS G 161-375; MARCOS IS NOT DISQUALIFIED TO HAVE HIS REMAINS INTERRED IN THE LNMB.—** AFP Regulations G 161-375 lists those who are disqualified to have their remains interred in the LNMB, to wit: a. Personnel who were dishonorably separated/ reverted/discharged from the service. b. Authorized personnel who were convicted by final judgment of an offense involving moral turpitude. None of the disqualifications can apply to the late President Marcos. He had not been dishonorably separated or discharged from military service, or convicted by final judgment of any offense involving moral turpitude. The contention that he had been ousted from the Presidency by the 1986 People Power revolution was not the same as being dishonorably discharged because the discharge must be from the military service. In contrast, and at the risk of being redundant, I remind that he had been a two-term President of the Philippines, a Medal of Valor awardee, a veteran of World War II, a former Senator and Senate President, and a former Congressman, by any of which he was qualified to have his remains be interred in the LNMB.

**PEREZ*, J., separate opinion*:**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NO GRAVE ABUSE OF DISCRETION COMMITTED BY PRESIDENT DUTERTE WHEN HE ORDERED TO IMPLEMENT HIS ELECTION PROMISE TO HAVE THE REMAINS OF MARCOS BURIED IN THE *LIBINGAN NG MGA BAYANI*.—** President Rodrigo R. Duterte did not gravely abuse his discretion, was neither whimsical nor capricious when upon assumption of the office to which he was elected he forthwith proceeded to implement his election promise to have the remains of the late President Ferdinand E. Marcos buried in the *Libingan ng mga Bayani*. x x x The petitioners

objected against the publicly announced Marcos *Libingan* burial; they protested the pronouncement. Indeed the issue was made public and was resolved through a most political process, a most appropriate process: the election of the President of the Republic. A juxtaposition of two concepts, people and suffrage, show this. x x x The people or the qualified voters elected as president of the Philippines the candidate who made the election pronouncement, objected to by the persons who are now the petitioners, that he will allow the burial of former President Ferdinand Marcos at the *Libingan ng mga Bayani*. x x x The Marcos interment at *Libingan*, borrowing the petitioners' words, was a principled commitment which President Duterte firmly believed was so when he offered it to the Filipino voters whom he considered capable of intelligent choice such that upon election he had to "implement his election promise." That, precisely, resulted in the filing of the consolidated petitions before the Court. Quite obviously, the petitions were submitted because the petitioners did not prevail in the political exercise that was the National Elections of 2016. Right away, we have the reason why the petitions should be dismissed. The petitions with premises and prayer no different from those that were publicly debated, for or against, between and among the people including petitioners themselves proceeding to a conclusion unacceptable to them, cannot be pursued in lieu of the failed public submission.

**2. ID.; ID.; ID.; ID.; WHETHER THERE IS GRAVE ABUSE OF EXECUTIVE DISCRETION OR NOT IS ANSWERED BY THE SUBSTANTIAL MARCOS VOTE DURING THE 2016 NATIONAL ELECTIONS; THE ELECTION RESULT IS A SHOWING THAT THERE IS NO LONGER A NATIONAL DAMNATION OF PRESIDENT MARCOS.—** Whether the policy of healing and reconciliation "over and above the pain and suffering of the human rights victims" is in grave abuse of executive discretion or not is answered by the evidently substantial Marcos vote during the fresh and immediately preceding national elections of 2016. The election result is a showing that, while there may have once been, there is no longer a national damnation of President Ferdinand E. Marcos; that the "constitutionalization" of the sin and its personification is no longer of national acceptance. A Marcos vote came out of the elections, substantial enough to be a legitimate consideration in the executive policy formulation. To go back, a *Libingan* Burial for Marcos was a promise made by President Duterte,

which promise was opposed by petitioners, inspite of which opposition, candidate Duterte was elected President.

**MENDOZA, *J., separate opinion*:**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; POLITICAL QUESTION; THE PRESIDENT'S DECISION ALLOWING MARCOS TO BE INTERRED AT THE LIBINGAN NG MGA BAYANI (LNMB) IS A POLITICAL QUESTION WHICH IS BEYOND THE AMBIT OF JUDICIAL REVIEW.** — The expanded judicial power bestowed by the Constitution is an offshoot of the prevalence, during the Marcos regime, of invoking the political question doctrine every time government acts were questioned before the courts. The present Constitution, thus, empowered the courts to settle controversies if there would be grave abuse of discretion. Notwithstanding the expanded power of the courts, the political question doctrine remains operative. The present provision on judicial power does not mean to do away with the political question doctrine itself, and so "**truly political questions"** are still recognized. x x x [A] political question will not be considered justiciable if there are no constitutionally imposed limits on powers or functions conferred upon the political bodies. Nonetheless, even in cases where matters of policy may be brought before the courts, there must be a showing of grave abuse of discretion on the part of any branch or instrumentality of the government before the questioned act may be struck down. **"If grave abuse is not established, the Court will not substitute its judgment for that of the official concerned and decide a matter which by its nature or by law is for the latter alone to decide."** "We cannot, for example, question the President's recognition of a foreign government, no matter how premature or improvident such action may appear. We cannot set aside a presidential pardon though it may appear to us that the beneficiary is totally undeserving of the grant. Nor can we amend the Constitution under the guise of resolving a dispute brought before us because the power is reserved to the people." Guided by the foregoing, it is my considered view that the decision of President Duterte to allow President Marcos to be interred in the LNMB is beyond the ambit of judicial review.

**2. ID.; ID.; EXECUTIVE DEPARTMENT; EXECUTIVE POWER; PRESIDENT DUTERTE'S AUTHORITY IN ALLOWING THE INTERMENT OF MARCOS AT THE LNMB IS DERIVED FROM THE RESIDUAL POWERS OF THE EXECUTIVE.—** [T]he authority of President Duterte to allow the interment of President Marcos in the LNMB is derived from the **residual powers** of the executive. In the landmark case of *Marcos v. Manglapus*, the Court had expounded on the residual powers of the President, to wit: x x x **The power involved is the President's residual power to protect the general welfare of the people. It is founded on the duty of the President, as steward of the people.** x x x To reiterate, President Duterte's rationale in allowing the interment of President Marcos in the LNMB was for national healing, reconciliation and forgiveness amidst our fragmented society, so that the country could move forward in unity far from the spectre of the martial law regime.

**3. ID.; ID.; ID.; ID.; NO GRAVE ABUSE OF DISCRETION COMMITTED BY THE PRESIDENT WHEN HE ALLOWED THE INTERMENT OF MARCOS AT THE LNMB; THERE IS NO VIOLATION OF ANY CONSTITUTIONAL PROVISION OR LAW.—** Granting that the discretionary act of President Duterte was covered by the expanded scope of judicial power, the petitions would still lack merit. There is absolutely no showing that the acts of the public respondents are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. x x x In the situation at hand, no grave abuse of discretion is manifest as there is no violation of any constitutional provision or law. In fact, the public respondents were guided by, and complied with, the law. x x x In the absence of any law to the contrary, AFP Regulation G 161-375 remains to be the sole legal basis in determining who are qualified to be buried in the LNMB. When the public respondents based their decision on the applicable laws and regulations, they cannot be said to have committed grave abuse of discretion. x x x Moreover, the decision to allow the interment of President Marcos in the LNMB is not contrary to R.A. No. 289 and R.A. No. 10368. As explained by the public respondents, the National Pantheon mentioned in R.A. No. 289 was quite different from the LNMB. As such, the standards claimed by the petitioners in R.A. No. 289 are not applicable to the LNMB. Likewise, the interment of President Marcos in the LNMB is

not repugnant to the avowed policy of R.A. No. 10368, which seeks to recognize the heroism of human rights violation victims *(HRVV)* during martial law. *First*, R.A. No. 10368 neither expressly nor impliedly prohibits his burial in the LNMB. *Second*, his interment is not incongruous with honoring HRVVs considering that the burial is not intended to confer upon him the title of a hero. *Third*, the State can continue to comply with its obligation under R.A. No. 10368 to provide recognition and reparation, monetary or non-monetary, to the HRVVs, notwithstanding his burial in the LNMB.

**SERENO, *C.J., dissenting opinion*:**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; THE COURT'S BOUNDEN DUTY IS NOT ONLY TO PRESERVE THE CONSTITUTION BUT ALSO ITSELF.—** For the implications of this case goes to the very fulcrum of the powers of Government: the Court must do what is right by correctly balancing the interests that are present before it and thus preserve the stability of Philippine democracy. If the Court unduly shies away from addressing the principal question of whether a decision to bury the former President would contradict the anti-Martial Law and human rights underpinnings and direction of the 1987 Constitution, it would, wittingly or unwittingly, weaken itself by diminishing its role as the protector of the constitutional liberties of our people. It would dissipate its own moral strength and progressively be weakened, unable to promptly speak against actions that mimic the authoritarian past, or issue judicial writs to protect the people from the excesses of government. This Court must, perforce, painstakingly go through the process of examining whether any claim put forth herein by the parties genuinely undermines the intellectual and moral fiber of the Constitution. And, by instinct, the Court must defend the Constitution and itself.

**2. ID.; ID.; ID.; THE 1987 CONSTITUTION IS THE EMBODIMENT OF THE FILIPINOS' ENDURING VALUES, WHICH THE COURT MUST ZEALOUSLY PROTECT.—** Countless times, this Court has said in so many words that the 1987 Constitution embodies the Filipinos' enduring values. The protection of those values has consequently become the duty of the Court. That this is the legal standard by which to measure whether it has properly comported itself in

its constitutional role has been declared in various fashions by the Court itself. x x x Any conclusion in this case that betrays a lack of enthusiasm on the part of this Court to protect the cherished values of the Constitution would be a judicial calamity. That the Judiciary is designed to be passive relative to the "active" nature of the political departments is a given. But when called upon to discharge its relatively passive role, the post-1986 Supreme Court has shown zealousness in the protection of constitutional rights, a zealousness that has been its hallmark from then up to now. It cannot, in the year 2016, be reticent in asserting this brand of protective activism.

**3. ID.; ID.; ID.; POWER OF JUDICIAL REVIEW; WITH THE EXPANDED CONCEPT OF JUDICIAL REVIEW IN THE 1987 CONSTITUTION, RESPONDENTS CAN NO LONGER UTILIZE THE TRADITIONAL POLITICAL QUESTION DOCTRINE TO IMPEDE THIS POWER.—** The 1987 Constitution has expanded the concept of judicial review by expressly providing in Section 1, Article VIII, as follows: Section 1. The Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. The above provision delineates judicial power and engraves, for the first time, the so-called *expanded certiorari jurisdiction* of the Supreme Court. The first part of the provision represents the traditional concept of judicial power involving the settlement of conflicting rights as conferred by law. The second part represents the expansion of judicial power to enable the courts of justice to review what was before forbidden territory; that is, the discretion of the political departments of the government. As worded, the new provision vests in the judiciary, particularly in the Supreme Court, the power to rule upon even the wisdom of the decisions of the executive and the legislature, as well as to declare their acts invalid for lack or excess of jurisdiction, should they be tainted with grave abuse of discretion. x x x The expansion of judicial power resulted in constricting the reach of the political question doctrine. *Marcos v. Manglapus* was the first case that squarely dealt with the issue of the scope of judicial power

*vis-a-vis* the political question doctrine under the 1987 Constitution. In that case, the Court explained: The present Constitution limits resort to the political question doctrine and broadens the scope of judicial inquiry into areas which the Court, under previous constitutions, would have normally left to the political departments to decide. x x x When political questions are involved, the Constitution limits the determination to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned. x x x Notably, the present Constitution has not only vested the judiciary with the *right* to exercise judicial power, but made it a *duty* to proceed therewith – a duty that cannot be abandoned "by the mere specter of this creature called the political question doctrine." This duty must be exercised "to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions."

**4. ID.; ID.; EXECUTIVE DEPARTMENT; THE PRESIDENT ACTED WITH GRAVE ABUSE OF DISCRETION AND IN VIOLATION OF HIS DUTY TO FAITHFULLY EXECUTE THE LAWS WHEN HE ORDERED THE BURIAL OF MARCOS IN THE *LIBINGAN NG MGA BAYANI* (LMB); OUR ORGANIC AND STATUTORY LAWS DECLARED MARCOS AS A PLUNDERER AND A PERPETRATOR OF HUMAN RIGHTS VIOLATIONS.—** As soon as the EDSA Revolution succeeded in 1986, the revolutionary government – installed by the direct exercise of the power of the Filipino people – declared its objective to immediately recover the ill-gotten wealth amassed by Marcos, his family, and his cronies. The importance of this endeavor is evident in the fact that it was specifically identified in the 1986 Provisional Constitution as part of the mandate of the people. x x x Pursuant to this mandate, then President Corazon Aquino issued three executive orders focused entirely on the recovery of the ill-gotten wealth taken by Marcos and his supporters[.] x x x All three executive orders affirmed that Marcos, his relatives and supporters had acquired assets and properties through the improper or illegal use of government funds or properties by

taking undue advantage of their office, authority, influence, or connections. These acts were proclaimed to have caused "grave damage and prejudice to the Filipino people and the Republic of the Philippines." The gravity of the offenses committed by former President Marcos and his supporters even prompted the Court to describe the mandate of the PCGG as the recovery of "the tremendous wealth plundered from the people by the past regime in the most execrable thievery perpetrated in all history." The importance of this mandate was further underscored by the sovereign Filipino people when they ratified the 1987 Constitution[.] x x x Apart from being declared a plunderer, Marcos has likewise been pronounced by the legislature as a perpetrator of human rights violations. In Republic Act No. (R.A.) 10368, the state recognized the following facts: a) Human rights violations were committed during the Martial Law period "from September 21, 1972 to February 25, 1986 by persons acting in an official capacity and/or agents of the State;" and b) A number of these human rights violations occurred because of decrees, declarations or issuances made by Marcos; and by "acts of force, intimidation or deceit" done by him, his spouse, Imelda Marcos, and their immediate relatives by consanguinity or affinity, associates, cronies and subordinates. Because of the human rights violations perpetrated by Marcos and his associates, the legislature has decreed that victims are entitled to both monetary and non-monetary reparations to be principally sourced from the funds transferred to the Philippine government by virtue of the Order of the Swiss Federal Supreme Court. Those funds were earlier declared part of the ill-gotten wealth of the Marcos family and forfeited in favor of the Philippine government. **The statements in the above laws were clear indictments by both the revolutionary government and the legislature against the massive plunder and the countless abuses committed by Marcos and his cronies during his tenure as President. These laws not only condemn him as a thief; they equally recognize his criminal liability for the atrocities inflicted on innumerable victims while he was in power.**

**5. ID.; ID.; ID.; ID.; DECISIONS OF THE SUPREME COURT HAVE DENOUNCED THE ABUSES COMMITTED BY MARCOS DURING THE MARTIAL LAW PERIOD.—** Apart from earning the condemnation of the legislature, Marcos and the Martial Law regime have likewise received harsh criticism from this Court. In dozens of decisions, it denounced

the abuses he had committed; the pernicious effects of his dictatorship; and the grave damage inflicted upon the nation by his corruption, thievery, and contempt for human rights. Foremost among these denunciations are found in are four cases ordering the forfeiture of the ill-gotten wealth he amassed with the assistance of his relatives and cronies. In *Republic v. Sandiganbayan*, the Court forfeited a total of USD 658 million in favor of the government. These funds, contained in Swiss deposit accounts in the name of certain foundations, were declared ill-gotten, as they were manifestly out of proportion to the known lawful income of the Marcos family. The Court used the same reasoning in *Marcos, Jr. v. Republic* to justify the forfeiture of the assets of Arelma, S.A., valued at USD 3,369,975 in 1983. On the other hand, in *Republic v. Estate of Hans Menzi* and in *Yuchengco v. Sandiganbayan*, the Court scrutinized the beneficial ownership of certain shares of Bulletin Publishing Corporation and Philippine Telecommunications Investment Corporation, respectively. The Court concluded in the two cases that the shares, although registered in the names of cronies and nominees of Marcos, were part of the ill-gotten wealth of the dictator and were subject to forfeiture. It must be emphasized that in the preceding cases, the Court noted the grand schemes employed by Marcos and his supporters to unlawfully amass wealth and to conceal their transgressions. x x x In addition to the plunder of the public coffers, Marcos was harshly condemned by this Court for the human rights abuses committed during the Martial Law period [i]n *Mijares v. Ranada, et al.* x x x Marcos himself was severely criticized for abuses he had **personally** committed while in power. For instance, he was found to have unlawfully exercised his authority for personal gain in the following cases: (a) *Tabuena v. Sandiganbayan*, in which he ordered the general manager of the Manila International Airport Authority to directly remit to the Office of the President the amount owed by the agency to the Philippine National Construction Corporation; (b) *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, in which Marcos made a marginal note prohibiting the foreclosure of the mortgaged assets of Mindanao Coconut Oil Mills and waiving the liabilities of the corporation and its owners to the National Investment and Development Corporation; and (c) *Republic v. Tuvera*, in which Marcos himself granted a Timber License Agreement to a company owned by the son of his longtime aide, in violation

of the Forestry Reform Code and Forestry Administrative Order No. 11. Marcos was likewise deemed **personally** responsible for the corruption of the judicial process in *Galman v. Sandiganbayan.* Affirming the findings of a commission created to receive evidence on the case[.] x x x Because of the abuses committed, the Court condemned the Marcos years as a "dark chapter in our history," a period of "national trauma" dominated by a "well-entrenched plundering regime," which brought about "colossal damage wrought under the oppressive conditions of the Martial Law period." The attempt by the dictator to return to the country after the EDSA Revolution was even described by the Court as "the case of a dictator forced out of office and into exile after causing twenty years of political, economic and social havoc in the country." The foregoing pronouncements are considered part of the legal system of the Philippines and must be considered binding, since they are integral parts of final and immutable judgments.

**6. ID.; ID.; ID.; ID.; THE PRESIDENT MAY NOT CONTRADICT OR RENDER INEFFECTIVE THE CITED STATUTES AND JURISPRUDENCE FOR THEY EFFECTIVELY PROHIBIT HIM FROM GRANTING MARCOS ANY FORM OF HONOR.—** It is the obligation of the President to give effect to the pronouncements of the Legislature and the Judiciary as part of his duty to faithfully execute the laws. At the very least, the President cannot authorize an act that runs counter to the letter and the spirit of the law. In this case, the foregoing statutes and jurisprudence condemning Marcos and his regime effectively prohibit the incumbent President from granting him any form of tribute or honor. The President's discretion in this matter is not unfettered. **Contrary to the assertions of respondents, the President cannot arbitrarily and whimsically decide that the acts attributed to Marcos during Martial Law are irrelevant, solely because "he possessed the title to the presidency until his eventual ouster from office." Indeed, it would be the height of absurdity for the Executive branch to insist on paying tribute to an individual who has been condemned by the two other branches of government as a dictator, a plunderer, and a human rights violator. Whether Marcos is to be buried in the LMB as a hero, soldier, or former President is of little difference. The most important fact is that the burial would accord him honor. For the Court to pretend otherwise is**

**to sustain a delusion, as this controversy would not have arisen if not for this reality.**

**7. ID.; ID.; ID.; ID.; THE AFP DOES NOT HAVE THE POWER TO DETERMINE WHICH PERSONS ARE QUALIFIED FOR INTERMENT AT THE LMB; THE AUTHORITY PERTAINS TO CONGRESS WHICH HAS THE POWER TO DEAL WITH PUBLIC PROPERTY INCLUDING THE RIGHT TO SPECIFY THE PURPOSES FOR WHICH THE PROPERTY MAY BE USED.—** The argument of respondents that the burial is permitted under AFP Regulations 161-375 is unavailing, as the AFP does not have the authority to select which persons are qualified to be buried in the LMB. For this reason, the enumeration contained in AFP Regulations 161-375 must be deemed invalid. In Proclamation No. 208, then President Marcos reserved a certain parcel of land in Taguig – the proposed site of the LMB – for "national shrine purposes." This parcel of land was placed "under the administration" of the National Shrines Commission (NSC). The NSC was later transferred to the Department of National Defense (from the Department of Education) and then abolished through the Integrated Reorganization Plan. The functions of the former NSC were then transferred to the National Historical Institute (NHI). On 26 January 1977, Presidential Decree No. (P.D.) 1076 created the Philippine Veterans Affairs Office (PVAO) under the Department of National Defense. The PVAO was tasked to, among others, "administer, maintain and develop military memorials and battle monuments proclaimed as national shrines." P.D. 1076 also abolished the NHI and transferred its functions to the PVAO. The transferred functions pertained to military memorials, including the authority to "administer" the LMB. The authority of the PVAO to administer, maintain and develop the *LMB* pertains purely to the management and care of the cemetery. Its power does not extend to the determination of which persons are entitled to be buried there. **This authority pertains to Congress, because the power to deal with public property, including the right to specify the purposes for which the property may be used, is legislative in character.** Accordingly, the provision in AFP Regulations 161-375 enumerating the persons qualified to be interred in the LMB cannot bind this Court.

**8. ID.; ID.; ID.; ID.; THE BURIAL OF MARCOS AT THE LMB CANNOT BE JUSTIFIED BY MERE REFERENCE TO**

**THE PRESIDENT'S RESIDUAL POWER; SUCH POWER MAY BE EXERCISED ONLY IN CONFORMITY WITH THE CONSTITUTION.—** [R]espondents attempted to justify the decision of the President to allow the burial primarily on the basis of his residual power. Citing *Marcos v. Manglapus and Sanlakas v. Executive Secretary,* they argued that the President is vested with powers other than those enumerated in the Constitution and statutes, and that these powers are implicit in the duty to safeguard and protect the general welfare. It must be emphasized that the statement in *Marcos v. Manglapus* acknowledging the "**President's residual power to protect the general welfare of the people" was not unconditional.** The Court, in fact, explicitly stated that **only acts "not forbidden" by the Constitution or the laws were permitted** under this concept[.] x x x Clearly, the residual power of the President cannot be used to justify acts that are contrary to the Constitution and the laws. To allow him to exercise his powers in disregard of the law would be to grant him unbridled authority in the guise of inherent power. Clearly, that could not have been the extent of the residual powers contemplated by the Court in *Marcos v. Manglapus.* To reiterate, the President is not above the laws but is, in fact, obliged to obey and execute them. This obligation is even more paramount in this case because of historical considerations and the nature of the norms involved, i.e., peremptory norms of human rights that are enshrined both in domestic and international law.

**9. ID.; ID.; ID.; ID.; TO ALLOW MARCOS TO BE BURIED IN THE LMB WOULD VIOLATE INTERNATIONAL HUMAN RIGHTS LAW; THE PLANNED INTERMENT MUST BE ENJOINED IN LIGHT OF THE PRINCIPLE OF *PACTA SUNT SERVANDA* UNDER ARTICLE II, SECTION 2 OF THE CONSTITUTION.—** An examination of the vast body of international human rights law establishes a duty on the part of the state to provide the victims of human rights violations during the Marcos regime a range of effective remedies and reparations. This obligation is founded on the state's duty to ensure respect for, and to protect and fulfill those rights. Allowing the proposed burial of Marcos in the LMB would be a clear violation of the foregoing international law obligations. Consequently, the planned interment must be enjoined in light of Article II, Section II of the Constitution, the established principle of *pacta sunt servanda,* and the fact

that the state has already acknowledged these duties and incorporated them in our domestic laws.

**10. ID.; ID.; ID.; ID.; THE BURIAL OF MARCOS AT THE LNMB WOULD NEGATE THE REMEDIES UNDER R.A. 10368 WHICH PROVIDES REPARATIONS TO VICTIMS OF HUMAN RIGHTS VIOLATIONS DURING THE MARCOS REGIME.—** R.A. 10368 acknowledged the "moral and legal obligation [of the State] to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime." x x x The law also recognized the binding nature of the Decision of the US Federal District Court of Honolulu, Hawaii, by creating a *conclusive presumption* that the claimants in the case against the Estate of Ferdinand Marcos were human rights violations victims. In that case, compensatory and exemplary damages were awarded to (a) the class plaintiffs who were declared to have been tortured; or (b) the heirs and beneficiaries of those who were summarily executed, or who disappeared while in the custody of Philippine military or paramilitary groups. Several petitioners in the present case were claimants therein and are thus conclusively considered victims of human rights during the Marcos regime. Both monetary and non-monetary forms of reparations were provided for in R.A. 10368. x x x [T]he intent is that not only must material reparation be provided by the state to human rights victims, the prohibition against public acts and symbolisms that degrade the recognition of the injury inflicted – although not expressly mentioned in the statute – are likewise included in the obligation of the state. Therefore, while the passage of legislative measures and the provision of government mechanisms in an effort to comply with this obligation are lauded, the State's duty does not end there. Contrary to the implications of the *ponencia,* the statutes, issuances, and rules enacted by the different branches of government to promote human rights cannot suffice for the purpose of fulfilling the state's obligation to the human rights victims of former President Marcos. These enactments cannot erase the violations committed against these victims, or the failure of the state to give them justice; more important, these enactments cannot negate the further violation of their rights through the proposed burial. It must be emphasized that the obligation owed by the Philippine government to the victims of human rights violations during Martial Law is distinct from

the general obligation to avoid further violations of human rights. As distinct species of obligations, the general duty to prevent further human rights violations cannot offset the right of past victims to full and holistic reparations. Their rights under international law have already been violated; they have already disappeared, been tortured or summarily executed. The government cannot choose to disregard their specific claims and assert that it has fulfilled its obligation to them merely by enacting laws that apply in general to future violations of human rights.

**11. ID.; ID.; ID.; ID.; ID.; THE CREATION OF A MEMORIAL IN THE FORM OF A BURIAL PLOT FOR MARCOS WOULD ACCOMPLISH THE EXACT OPPOSITE OF WHAT IS INTENDED BY SYMBOLIC REPARATION; TO HONOR THE VERY PERPETRATOR OF HUMAN RIGHTS ATROCITIES WOULD BE TO VIOLATE THE VICTIMS' RIGHT TO SYMBOLIC REPARATIONS.—** In the present case, the dispute also involves the creation of a memorial in the form of a burial plot located at the LMB. Instead of commemorating victims, however, the memorial proposes to honor Marcos, the recognized perpetrator of countless human rights violations during the Martial Law regime. The establishment of this memorial would accomplish the exact opposite of what is intended by symbolic reparation, and would consequently violate the obligations of the Philippines under international human rights law. For reasons previously discussed, the burial of Marcos would be more than a simple matter of the interment of his remains, because it would involve his victims' right to symbolic reparations. Undoubtedly, to honor the very perpetrator of human rights atrocities would be the direct opposite of the duty of the state to respect, promote, and fulfil human rights. x x x **[T]he victims of human rights violations have expressed their objection to the proposed burial of Marcos in the LMB. They assert that the burial would constitute a state-sanctioned narrative that would confer honor upon him. This, in turn, would subject his human rights victims to the same indignity, hurt, and damage that they have already experienced under his regime.** These opinions must be given paramount consideration by the state in compliance with its duty to provide symbolic reparations to victims of human rights atrocities. For the President to allow the burial in disregard of these views would constitute a clear contravention of international human rights law and would amount to grave abuse of discretion.

**12. ID.; ID.; ID.; ID.; THE BURIAL OF MARCOS WOULD CONTRAVENE THE PUBLIC PURPOSE OF THE LMB; BEING AN OUSTED DICTATOR AND DISGRACED PRESIDENT, MARCOS IS CLEARLY NOT WORTHY OF COMMENDATION BY THE STATE AND NO PUBLIC PURPOSE WOULD BE SERVED BY HIS INTERMENT IN THE LMB.—** The government in this case proposes to shoulder the expenses for the burial of Marcos in the LMB, a military cemetery maintained on public property and a declared national shrine. The expenses contemplated are comprised of the cost of a plot inside a military cemetery, the maintenance expenses for the gravesite, and the cost of military honors and ceremonies. x x x Formerly known as the Republic Memorial Cemetery, the LMB was designated by former President Ramon M. Magsaysay as the national cemetery for the nation's war dead in 1954. Through Executive Order No. 77, he ordered that the remains of the war dead interred at the Bataan Memorial Cemetery and other places be transferred to the LMB to accord honor to dead war heroes; improve the accessibility of the burial grounds to relatives of the deceased; and consolidate the expenses of maintenance and upkeep of military cemeteries. He thereafter issued Proclamation No. 86, which renamed the cemetery to "*Libingan ng mga Bayani,*" because the former name was "not symbolic of the cause for which our soldiers have died, and does not truly express the nation's esteem and reverence for her war dead." It is therefore evident that the LMB is no ordinary cemetery, but a burial ground established on public property to honor the nation's war dead and fallen soldiers. Further, the designation of the cemetery as a national shrine confirms its sacred character and main purpose, that is, to serve as a symbol for the community and to encourage remembrance of the honor and valor of great Filipinos. Respondents themselves acknowledged this fact when they argued that the LMB implements a public purpose because it is a military shrine and a military memorial. To allow the LMB to fulfill the foregoing purposes, it has been and continues to be the recipient of public funds and property. Not only was the cemetery established on land owned by the government, public funds are also being utilized for the cost of maintenance and other expenses. The use of these resources is justified because of the public purpose of the site. As a necessary consequence of this principle, an expenditure that does not further this public purpose is invalid. Applying the foregoing standards, the proposed expenditures for the burial of Marcos in the LMB must be

considered invalid. **As earlier discussed, Marcos was an ousted dictator and disgraced president. Consequently, he is clearly not worthy of commendation from the state and no public purpose would be served by his interment therein. In fact, his burial in the LMB would result in a contravention of the public purpose of the site as it would no longer be a sacred symbol of honor and valor.**

**13. ID.; ID.; ID.; ID.; ID.; THE BURIAL WOULD ONLY PROMOTE THE PRIVATE INTEREST OF THE MARCOS FAMILY AND THE PERSONAL OBJECTIVE OF THE PRESIDENT TO FULFILL A PLEDGE TO HIS POLITICAL ALLIES.—** The circumstances surrounding the order of the President to allow the burial likewise reveal the political color behind the decision. In their Comment, respondents admit that the President ordered the burial to fulfill a promise made during his presidential campaign. It must be pointed out, however, that the President made that pledge not at any random location, but while campaigning in Ilocos Norte, a known stronghold of the Marcos family. During the oral arguments held in this case, it was also revealed that the preparations for the burial were prompted by a letter sent by the Marcos heirs to Secretary Lorenzana, urging him to issue the orders required for the interment at the earliest opportunity. Needless to state, the private interest of the Marcos family and the personal objective of the President to fulfill a pledge to his political allies will not justify the proposed public expenditure for the burial. **Indeed, it is completely unseemly for the Marcos family to expect the Filipino people to bear the financial and emotional cost of burying the condemned former President even while this country has yet to recover all the ill-gotten wealth that he, his family, and unrepentant cronies continue to deny them. It is wrong for this Government and the Marcos family to refer human rights victims to the financial reparation provided by Republic Act 10386 as recompense, which moneys will come, not from the private wealth of the Marcos family, but from the money they illegally acquired while in office, and on which the Philippine state spent fortunes to recover. Every Filipino continues to suffer because of the billions of unwarranted public debt incurred by the country under the Marcos leadership; and every Filipino will incur more expenses, no matter how modest, for the proposed burial. No situation can be more ironic indeed.**

**CARPIO, *J., dissenting opinion*:**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE REGULATION; AFP REGULATION G 161-375, CONSTRUED; MARCOS IS DISQUALIFIED FROM BEING INTERRED AT THE LIBINGAN NG MGA BAYANI (LNMB).—** Assuming that Marcos was qualified to be interred at the LNMB as a Medal of Valor Awardee, and as a former President of the Philippines and Commander-in-Chief, he ceased to be qualified when he was ousted from the Presidency by the non-violent People Power Revolution on 25 February 1986. AFPR G 161-375, which respondents rely on to justify the interment of Marcos at the LNMB, specifically provides that "**personnel who were dishonorably separated/reverted/ discharged from the service**" are not qualified to be interred at the LNMB. Marcos, who was forcibly ousted from the Presidency by the sovereign act of the Filipino people, falls under this disqualification.

**2. ID.; ID.; ID.; ID.; ID.; THE FORCIBLE OUSTER OF MARCOS FROM THE PRESIDENCY BY THE SOVEREIGN ACT OF THE FILIPINO PEOPLE IS THE STRONGEST FORM OF DISHONORABLE DISCHARGE FROM THE OFFICE; CIRCULAR NO. 17 CANNOT BE USED TO JUSTIFY MARCOS' HONORABLE SEPARATION FROM THE SERVICE; A MERE ADMINISTRATIVE ISSUANCE OF A DEPARTMENT SECRETARY CANNOT PREVAIL OVER THE SOVEREIGN ACT OF THE PEOPLE.—** In *Marcos v. Manglapus*, the Court described Marcos as "a dictator **forced out of office and into exile** after causing twenty years of political, economic and social havoc in the country." In short, he was ousted by the Filipino people. Marcos was forcibly removed from the Presidency by what is now referred to as the People Power Revolution. This is the **strongest form of dishonorable discharge** from office since it is meted out by the direct act of the sovereign people. Marcos was separated from service with finality, having been forcibly ousted by the Filipino people on 25 February 1986. Circular 17, issued **more than one year after** such separation from office, cannot be made to apply retroactively to Marcos. When Circular 17 was issued, Marcos had already been finally discharged, terminated, and ousted – as President and Commander-in-Chief – by the Filipino people.

Circular 17 requires certain administrative procedures and guidelines in the discharge of **incumbent or serving** military personnel. There is a physical and legal impossibility to apply to Marcos Circular 17 since it was issued long after Marcos had been separated from office. x x x [E]ven assuming that Circular 17 can be given retroactive effect, Marcos was still dishonorably discharged from service since Circular 17 cannot prevail over the sovereign act of the Filipino people. Marcos was ousted by the direct act of the Filipino people. The sovereign people is the ultimate source of all government powers. The Constitution specifically declares that "sovereignty resides in the people and all government authority emanates from them." Thus, the act of the sovereign people in removing Marcos from the Presidency, which is now beyond judicial review, and thus necessarily beyond administrative review, cannot be overturned by a mere administrative circular issued by a department secretary. The reality is, more than one year before Circular 17 was issued, Marcos had already been removed with finality from office by the sovereign people for reasons that are far from honorable. Circular 17, a mere administrative issuance of a department secretary, cannot be applied retroactively to undo a final act by the sovereign people. The power of all government officials, this Court included, emanates from the people. Thus, any act that runs afoul with the direct exercise of sovereignty by the people, such as the removal of a dictator, plunderer and human rights violator, cannot be countenanced. The sovereign act of the Filipino people obviously prevails over a mere administrative circular issued by a department secretary.

**3. ID.; ID.; ID.; ID.; TO ARGUE THAT THE DISQUALIFICATIONS UNDER AFP REGULATION G 161-375 SHOULD APPLY ONLY TO MILITARY PERSONNEL AND THAT THE PRESIDENT, EVEN AS COMMANDER-IN-CHIEF, IS NOT MILITARY PERSONNEL SUBJECT TO SUCH DISQUALIFICATIONS WOULD BE A PATENT VIOLATION OF EQUAL PROTECTION CLAUSE.—** The disqualifications prescribed under AFPR G 161-375 are reasonable *per se* considering that the LNMB is a national shrine. Proclamation No. 86 renamed the Republic Memorial Cemetery to LNMB to make it more "symbolic of the cause for which Filipino soldiers have died" and "to truly express the nation's esteem and reverence for her war dead." The disqualifications are safeguards to ensure that those interred

at the LNMB indeed deserve such honor and reverence. However, to submit to respondents' view that the disqualifications under AFPR G 161-375 apply only to military personnel, and that the President, even as Commander-in-Chief, is not a military personnel subject to such disqualifications, negates the purpose for which the LNMB was originally established, which is to honor Filipino soldiers who fought for freedom and democracy for our country. Indeed, Marcos is the very anti-thesis of freedom and democracy because he was a dictator as declared by this Court. Respondents' view will discriminate against military personnel who are subject to the disqualifications. Applying only to military personnel the disqualifications will unduly favor non-military personnel who will always be eligible, regardless of crimes committed against the State or humanity, to be interred at the LNMB as long as they are included in the list of those qualified. x x x AFPR G 161-375 would be a patent violation of the Equal Protection Clause as it would indiscriminately create unreasonable classifications between civilian and military personnel for purposes of interment at the LNMB.

**4. ID.; ID.; ID.; DND MEMORANDUM DATED AUGUST 7, 2016 IS VOID FOR HAVING BEEN ISSUED WITH GRAVE ABUSE OF DISCRETION; MARCOS' INTERMENT AT THE LNMB IS CONTRARY TO PUBLIC POLICY.—** Jurisprudence defines public policy as "that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good." The Constitution grants the Legislative branch the power to enact laws and establish the public policy behind the law. The public policy is prescribed by the Legislature and is implemented by the Executive. The Executive must implement the law by observing the highest standards of promoting the public policy. These standards are embedded in the Constitution, international law and municipal statutes. By these standards, the DND Memorandum ordering the interment of Marcos at the LNMB is contrary to public policy. Section 11, Article II of the 1987 Constitution provides that the State values the dignity of every human person and guarantees full respect for human rights. This public policy is further established in Section 12 of Article III which prohibits the use of torture, force, violence, threat, intimidation, or any other means which vitiate free will and mandates the rehabilitation of victims of torture or similar practices. Also, following the doctrine of incorporation, the

Philippines adheres to the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and the Convention Against Torture. Through the provisions of the Constitution and international law, the State binds itself to enact legislation recognizing and upholding the rights of human rights victims. Congress, by enacting Republic Act No. 10368 or "The Human Rights Victims Reparation and Recognition Act of 2013," established as a "**policy of the State**" to recognize the heroism and sacrifices of victims of (a) summary execution; (b) torture; (c) enforced or involuntary disappearance; and (d) other gross human rights violations during the Marcos regime. x x x R.A. No. 10368 mandates that it is the "moral and legal obligation" of the State to recognize the sufferings and deprivation of the human rights victims of Marcos' martial law regime. Interring Marcos on the hallowed grounds of the LNMB, which was established to show "the nation's esteem and reverence" for those who fought for freedom and democracy for our country, extols Marcos and exculpates him from human rights violations. This starkly negates the "moral and legal obligation" of the State to recognize the sufferings and deprivations of the human rights victims under the dictatorship of Marcos. The legislative declarations must be implemented by the Executive who is sworn under the Constitution to "faithfully execute the law." The Executive, in implementing the law, must observe the standard of recognizing the rights of human rights victims. Marcos' interment at the LNMB will cause undue injury particularly to human rights victims of the Marcos regime, as well as the sovereign people who ousted Marcos during the People Power Revolution. Marcos' interment at the LNMB is thus contrary to public policy.

**LEONEN, *J., dissenting opinion*:**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE ORDERS; REPUBLIC ACT NO. 289; THE ORDERS TO HAVE THE REMAINS OF MARCOS TRANSFERRED TO THE LIBINGAN NG MGA BAYANI ARE VOID FOR BEING ULTRA VIRES.—** Republic Act No. 289 creates a National Pantheon "to perpetuate the memory of all the Presidents of the Philippines, national heroes and patriots for the inspiration and emulation of this generation and of generations still unborn[.]" x x x The clear intention of

the legislature in enacting Republic Act No. 289 was to create a burial place to perpetuate the memory of the Presidents of the Philippines, national heroes, and patriots, for the inspiration and emulation of generations of the Filipino People. An examination of the evolution of what is now known as the Libingan ng mga Bayani shows that it is precisely the burial ground covered by Republic Act No. 289. The legislative policy in Republic Act No. 289 includes delegating the powers related to the National Pantheon to a specially constituted board composed of the Secretary of the Interior, the Secretary of Public Works and Communications, the Secretary of Education, and two (2) private citizens appointed by the President, with the consent of the Commission on Appointments (Board). Under Republic Act No. 289, it is the Board—not the President directly nor the Secretary of National Defense—that has the power to perform all the functions necessary to carry out the purposes of the law. x x x However, the Lorenzana Memorandum and the Enriquez Orders to have the remains of Ferdinand E. Marcos transferred to the Libingan ng mga Bayani, today's National Pantheon, were made without the authority of the Board. Consequently, the Lorenzana Memorandum and the Enriquez Orders are void for being ultra vires. There is no showing that the Board recommended to the President the burial of the remains of Ferdinand E. Marcos at the Libingan. The issuances of public respondents are ultra vires and have no effect whatsoever. The continued implementation of these issuances would be an act beyond their jurisdiction, or grave abuse of discretion, because they violate existing law.

**2. ID.; ID.; ID.; ID.; MARCOS DOES NOT MEET THE STANDARD LAID DOWN IN RA 289 TO QUALIFY FOR INTERMENT AT THE LIBINGAN NG MGA BAYANI; HIS LIFE IS NOT WORTHY OF "INSPIRATION AND EMULATION." —** Under Section 1 of Republic Act No. 289, those buried at the Libingan ng mga Bayani must have led lives worthy of "inspiration and emulation." Ferdinand E. Marcos does not meet this standard. Our jurisprudence clearly shows that Ferdinand E. Marcos does not even come close to being one who will inspire. His example should not be emulated by this generation, or by generations yet to come. Ferdinand E. Marcos has been characterized as an ***authoritarian*** by this Court in nine (9) Decisions and 9 Separate Opinions. He was called a ***dictator*** in 19 Decisions and 16 Separate Opinions. That he

was unceremoniously deposed as President or dictator by a direct act of the People was stressed in 16 Decisions and six (6) Separate Opinions. This Court has also declared that the amount of US$658,175,373.60, in Swiss deposits under the name of the Marcoses, was ill-gotten wealth that should be forfeited in favor of the State. x x x This cursory review of our jurisprudence relating to the consequences of the Marcos regime establishes a climate of gross human rights violations and unabated pillage of the public coffers. It also reveals his direct participation, leadership, and complicity. x x x The Court's findings in a catena of cases in its jurisprudence, a legislative determination in Republic Act No. 10368, the findings of the National Historical Commission, and the actual testimony of petitioners during the Oral Arguments clearly show that the life of Ferdinand E. Marcos either as President or as a soldier is bereft of inspiration. Ferdinand E. Marcos should not be the subject of emulation of this generation, or of generations yet to come.

**3. ID.; ID.; ID.; ID.; THE ASSAILED ORDERS TO INTER MARCOS AT THE LIBINGAN NG MGA BAYANI WERE ISSUED WITH GRAVE ABUSE OF DISCRETION.—** Assuming without accepting that Republic Act No. 289 authorized public respondents to determine who has led a life worthy of "inspiration and emulation," and assuming further that it was under this authority that they directed Ferdinand E. Marcos' interment, the President's verbal orders, the Lorenzana Memorandum, and the Enriquez Orders were still issued with grave abuse of discretion because they were whimsical and capricious. Considering the state of existing law and jurisprudence as well as the findings of the National Historical Commission, there was no showing that respondents conducted any evaluation process to determine whether Ferdinand E. Marcos deserved to be buried at the Libingan ng mga Bayani. Respondents' actions were based upon the President's verbal orders, devoid of any assessment of fact that would overcome what had already been established by law and jurisprudence. x x x The capriciousness of the decision to have him buried at the Libingan ng mga Bayani, is obvious, considering how abhorrent the atrocities during Martial Law had been. Likewise, the effects of the Marcos regime on modern Philippine history are likewise too pervasive to be overlooked. The Filipino People themselves deemed Marcos an unfit President and discharged him from office through a direct exercise of their sovereign power. This has been repeatedly

recognized by this Court. x x x Public respondents neglect to examine the entirety of Ferdinand E. Marcos' life, despite the notoriety of his latter years. The willful ignorance of the pronouncements from all three branches of government and of the judgment of the People themselves can only be characterized as so arbitrary and whimsical as to constitute grave abuse of discretion.

**4. ID.; ID.; REPUBLIC ACT NO. 10368; BURYING THE REMAINS OF MARCOS AT THE LIBINGAN NG MGA BAYANI IS ILLEGAL AS IT CLEARLY VIOLATES RA 10368; THE STATE'S ACT OF ACCORDING ANY HONOR TO MARCOS GROSSLY CONTRADICTS ITS OWN POLICIES TO RECOGNIZE THE HEROISM AND SACRIFICES OF THE MARTIAL LAW VICTIMS.—** Republic Act No. 10368, otherwise known as the Human Rights Victims Reparation and Recognition Act of 2013, contains a legislative finding that gross human rights violations were committed during the Marcos regime. It provides for both the recognition of the sufferings of human rights victims as well as the provision for effective remedies. x x x In clear and unmistakable terms, the law recognizes the culpability of Ferdinand E. Marcos for acts of summary execution, torture, enforced or involuntary disappearances, and other gross violations of human rights. The law likewise implies that not only was he the President that presided over those violations, but that he and his spouse, relatives, associates, cronies, and subordinates were active participants. Burying the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani violates Republic Act No. 10368 as the act may be considered as an effort "to conceal abuses during the Marcos regime" or to "conceal . . . the effects of Martial Law." Its symbolism is unmistakable. It undermines the recognition of his complicity. Clearly, it is illegal. x x x The State's act of according any honor to Ferdinand E. Marcos grossly contradicts, and is highly irreconcilable with, its own public policies to recognize the heroism and sacrifices of the Martial Law victims and restore these victims' honor and dignity. To allow Ferdinand E. Marcos' burial is inconsistent with honoring the memory of the Martial Law victims. It conflicts with their recognized heroism and sacrifice and as most of them testified, it opens an avenue for their re-traumatization. These victims' honor, which the State avowed to restore, is suddenly questionable because the State

is also according honor and allotting public property to the person responsible for their victimization.

**5. ID.; ID.; ID.; RA 10368 *VIS-A-VIS* INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW; ACCORDING STATE'S FUNDS AND PUBLIC PROPERTY TO HONOR MARCOS AS A FORMER PRESIDENT AND A MILITARY MAN IS NOT THE ADEQUATE AND EFFECTIVE REMEDY FOR THE VICTIMS OF HUMAN RIGHTS VIOLATIONS.—** The Basic Principles is clear that Satisfaction must include a "public apology, including acknowledgement of the facts and acceptance of responsibility," "judicial and administrative sanctions against persons liable for the violations," and an "inclusion of an accurate account of the violations that occurred . . . in educational material at all levels." The Guarantee of Non-Repetition requires the State to "provide, on a priority and continued basis, human rights and international humanitarian law education to all sector of society," and "review and reform laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law." The transfer of the remains of Ferdinand E. Marcos negates all these aspects of Satisfaction and Guarantee of Non-Repetition. There has been no sufficient public apology, full acknowledgement of facts, or any clear acceptance of responsibility on the part of Ferdinand E. Marcos or his Heirs. Neither was Ferdinand E. Marcos sanctioned specifically for human rights violations. Now that he is dead, the victims can no longer avail themselves of this recourse. To add insult to this injury, the President decided to acknowledge the heroic acts and other favorable aspects of Ferdinand E. Marcos, the person primarily responsible for these human rights violations. This affects the accuracy of the accounts of the violations committed on the victims. It reneges on the State's obligation to provide human rights education and humanitarian law education to the Filipino People. It contributes to allowing violations of international human rights law and encourages impunity. If the State chooses to revere the person responsible for human rights violations, the perception of its People and the rest of the world on the gravity and weight of the violations is necessarily compromised.

**6. ID.; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENT'S RESIDUAL POWERS; IN THE EXERCISE**

**THEREOF, THERE MUST BE A CLEAR LACK OF LEGISLATIVE POLICY TO GUIDE EXECUTIVE POWER; THERE WAS NO URGENCY AND NO DISTURBANCE TO THE PUBLIC PEACE THAT WOULD JUSTIFY THE EXERCISE OF PRESIDENT'S RESIDUAL POWER IN CASES AT BAR.—** The exercise of the President's powers may not be justified by invoking the executive's residual powers. An exercise of the President's residual powers is appropriate only if there is no law delegating the power to another body, and if there is an exigency that should be addressed immediately or that threatens the existence of government. These involve contingencies that cannot await consideration by the appropriate branches of government. In *Gonzales v. Marcos*, this Court recognized the residual power of the President to administer donations specifically in the absence of legislative guidelines. x x x In *Marcos v. Manglapus*, the government was unstable and was threatened by various forces, such as elements within the military, who were among the rabid followers of Ferdinand E. Marcos. Thus, the residual power of the President to bar the return of Ferdinand E. Marcos' body was recognized by this Court as borne by the duty to preserve and defend the Constitution and ensure the faithful execution of laws. x x x Further, this Court recognized the President's residual powers for the purpose of, and necessary for, ***maintaining peace***. x x x In these cases, the residual powers recognized by this Court were directly related to the President's duty to attend to a present contingency or and urgent need to act in order to preserve domestic tranquility. In all cases of the exercise of residual power, there must be a clear lack of legislative policy to guide executive power. This is not the situation in these consolidated cases. As discussed, there are laws violated. At the very least, there was no urgency. There was no disturbance to the public peace.

**7. ID.; ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THE POSTULATE THAT GRAVE ABUSE OF DISCRETION FROM VIOLATIONS OF STATUTES CANNOT BE MADE A MATTER OF JUDICIAL REVIEW UNDER THE COURT'S EXPANDED JURISDICTION IS UNFOUNDED. —** Associate Justice Brion opines that this Court's expanded jurisdiction under the Constitution does not empower this Court to review allegations involving violations and misapplication of statutes. He claims that the remedies available to petitioners are those found in the Rules of Court, which address errors of

law. He claims that this Court can only check whether there is grave abuse of discretion on the part of another branch or instrumentality of government when there is a violation of the Constitution. x x x He insists that the Court's authority, under its expanded jurisdiction, is limited to determining the constitutionality of governmental act. Grave abuse of discretion from violations of statutes cannot be made a matter of judicial review under this Court's expanded jurisdiction. Associate Justice Brion's interpretation proceeds from the theory that there is a hierarchy of breach of the normative legal order and that only a breach of the Constitution will be considered grave abuse of discretion. In my view, this reading is not supported by the text of the provision or by its history. Article VIII, Section 1 of the Constitution is clear. This Court is possessed of the duty to exercise its judicial power to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of government. This provision does not state that this Court may exercise its power of judicial review exclusively in cases of violations of the Constitution. An illegal act is an illegal act, no matter whether it is illegal as a result of the violation of a constitutional provision or a violation of a valid and existing law. It is the exercise of *discretion* that must be subjected to review, and it is the discretion of *any* branch or instrumentality of government.

**8. ID.; ID.; ID.; ID.; *LOCUS STANDI*; BEING HUMAN RIGHTS VICTIMS DURING THE MARCOS REGIME, PETITIONERS ARE VESTED WITH MATERIAL INTEREST IN THE PRESIDENT'S ACT IN ALLOWING THE MARCOS BURIAL AT THE LIBINGAN NG MGA BAYANI.—** The requirement of *locus standi* requires that the party raising the issue must have "a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result." x x x Several petitioners allege that they are human rights victims during the Marcos regime who had filed claims under Republic Act No. 10368. In their Petitions, they claim that respondents' questioned acts affect their right to reparation and recognition under Republic Act No. 10368 and international laws. As petitioners have an interest against Ferdinand E. Marcos and have claims against the State in connection with the violation of their human rights, petitioners are vested with material interest in the President's act in allowing the Marcos burial at the Libingan ng mga Bayani.

**9. ID.; ID.; ID.; ID.; IT IS WITHIN THE COURT'S POWER TO PREVENT IMPUNITY FOR GROSS VIOLATIONS OF HUMAN RIGHTS, SYSTEMATIC PLUNDER BY THOSE WHOM WE ELECT TO PUBLIC OFFICE, AND ABUSE OF POWER AT THE EXPENSE OF TOILING MASSES.—** Ferdinand E. Marcos' "errors" were not errors that a President is entitled to commit. They were exceptional in both severity and scale. They were inhuman acts. Ferdinand E. Marcos provided the atmosphere of impunity that allowed the molestations, rape, torture, death, and disappearance of thousands of Filipinos. Ferdinand E. Marcos was the President who, rather than preserve and protect the public trust, caused untold anguish upon thousands of Filipino families. Their trauma, after all these years, still exists. Ferdinand E. Marcos plundered the nation's coffers. The systematic plunder was exceptional and outrageous that even after being ousted, he and his family brought more than ₱27,000,000.00 in freshly printed notes, 23 wooden crates, 12 suitcases and bags, and various boxes of jewelry, gold brick, and enough clothes to fill 57 racks with them to their exile in Hawaii. These were not accidents that humans, like us, commit. These were deliberate and conscious acts by one who abused his power. To suggest that Ferdinand E. Marcos was "just a human who erred like us" is an affront to those who suffered under the Marcos regime. To suggest that these were mere errors is an attempt to erase Ferdinand E. Marcos' accountability for the atrocities during Martial Law. It is an attempt to usher in and guarantee impunity for them as well as for those who will commit the same in the future. It is within the power of this Court to prevent impunity for gross violations of human rights, systematic plunder by those whom we elect to public office, and abuse of power at the expense of our toiling masses. We should do justice rather than characterize these acts as the "mere human error" of one whom We have characterized as a dictator and an authoritarian.

**CAGUIOA, *J., dissenting opinion*:**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; POLITICAL QUESTION; PRESIDENT DUTERTE'S DECISION ALLOWING THE BURIAL OF MARCOS AT THE LIBINGAN NG MGA BAYANI (LNMB) DOES NOT RAISE A POLITICAL QUESTION; THE EXERCISE OF PRESIDENTIAL POWERS AND PREROGATIVES IS**

**SUBJECT TO CONSTITUTIONAL AND LEGAL LIMITATIONS.—** As early as the landmark case of *Tañada v. Cuenco*, the Court has already recognized that, while the action of the executive or legislative department may be dictated by public or political policy, or may involve a question of policy or its wisdom, the judiciary is nonetheless charged with the special duty of determining the limitations which the law places on all official action x x x[.] A mere invocation of the wisdom of the President's actions and orders does not make them untrammeled, as indeed, the exercise of Presidential powers and prerogatives is not without limitations — the exercise of the Presidential power and prerogative under the Constitution and the Administrative Code, which the public respondents invoke, is circumscribed within defined constitutional, legal, and public policy standards. In fact, the reliance by the Solicitor General on the powers of the President under the Constitution and the 1987 Revised Administrative Code ("RAC") to justify his decision to inter the remains of former President Marcos in the LNMB necessarily calls into play any and all underlying constitutional and legal **limitations** to such powers. Within this paradigm, judicial review by the Court is justifiable, if not called for. There is, thus, no truly political question in relation to the assailed action of the President if this is justified to have been made allegedly pursuant to his purported powers under the Constitution and the RAC.

**2. ID.; ID.; ID.; ID.; REQUISITES OF JUDICIAL REVIEW; THE CASE PRESENTS AN ACTUAL CONTROVERSY RIPE FOR ADJUDICATION.—** Before the Court may hear and decide a petition assailing the constitutionality of a law or any governmental act, the following must first be satisfied: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case. x x x [T]his case presents an actual case or controversy that is ripe for adjudication. The antagonistic claims on the legality of the interment of former President Marcos at the LNMB as shown in petitioners' assertion of legally

enforceable rights that may be infringed upon by the subject interment, on the one hand, and the Solicitor General's insistence on the President's prerogative to promote national healing, on the other, clearly satisfy the requirement for contrariety of legal rights. Furthermore, the issues in this case are also ripe for adjudication because it has not been denied that initial preparations and planning for the subject interment have already been undertaken by public respondents.

**3. ID.; ID.; ID.; ID.; ID.; *LOCUS STANDI* AS A RIGHT OF APPEARANCE IN A COURT OF JUSTICE ON A GIVEN QUESTION, EXPLAINED; PETITIONERS HAVE *LOCUS STANDI*.—** *Locus standi* is defined as a right of appearance in a court of justice on a given question. It refers to a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act. To satisfy the requirement of legal standing, one must allege such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. x x x (1) Victims of human rights violations during martial law have the requisite legal standing to file their respective petitions. Their personal and direct interest to question the interment and burial of former President Marcos at the LNMB rests on their right to a full and effective remedy and entitlement to monetary and non-monetary reparations guaranteed by the State under the Constitution, domestic and international laws. (2) Petitioners also have standing as citizens-taxpayers. The public character of the LNMB and the general appropriations for its maintenance, preservation and development satisfy the requirements for a taxpayer's suit. To be sure, petitioners' assertion of every citizen's right to enforce the performance of a public duty and to ensure faithful execution of laws suffices to clothe them with the requisite legal standing as concerned citizens.

**4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND PROHIBITION; PROPER REMEDIES TO ASSAIL THE VALIDITY OF PRESIDENT DUTERTE'S DIRECTIVE TO HAVE THE REMAINS OF MARCOS INTERRED AT THE LNMB.—** The petitioners' resort to *certiorari* and prohibition was proper. A petition for *certiorari* or prohibition under Rule 65 is an appropriate remedy to question,

on the ground of grave abuse of discretion, the act of any branch or instrumentality of government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. To reiterate, the expanded definition of judicial power, under Article VIII, Section 1 of the Constitution, imposes upon the Court and all other courts of justice, the power and the duty not only to "settle actual controversies involving rights which are legally demandable and enforceable" but also "to determine whether or not there has been a grave abuse of discretion on the part of any branch or instrumentality of the Government." In the case of *Araullo v. Aquino,* the Court clarified that the special civil actions of *certiorari* and prohibition under Rule 65 of the Rules of Court are remedies by which the courts discharge this constitutional mandate. x x x Therefore, that the assailed act and/or issuances do not involve the exercise of judicial, quasi-judicial or ministerial functions is of no moment. Under the Court's expanded jurisdiction, the validity of the President's directive to have the remains of former President Marcos interred and buried at the LNMB and the legality of the assailed Memorandum and Directive issued by public respondents, are proper subjects of a petition for *certiorari* and prohibition.

**5. ID.; COURTS; HIERARCHY OF COURTS; EXCEPTIONS TO THE RULE, ENUMERATED; SPECIAL AND COMPELLING REASONS EXIST IN CASE AT BAR THAT JUSTIFY DIRECT RESORT TO THIS COURT.—** [T]he Court recognized that hierarchy of courts is not an iron-clad rule. Direct invocation of this Court's jurisdiction may be allowed for special, important and compelling reasons clearly spelled out in the petition, such as: (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) *when the issues involved are of transcendental importance;* (c) *in cases of first impression*; (d) when the constitutional *issues raised are best decided by this Court*; (e) w*hen the time element presented in this case cannot be ignored;* (f) when the petition reviews the act of a constitutional organ; (g) when there is no other plain, speedy, and adequate remedy in the ordinary course of law; (h) when public welfare and the advancement of public policy so dictates, or *when demanded by the broader interest of justice*; (i) when the orders complained of are patent nullities; and (j) when appeal is considered as clearly an inappropriate remedy. Contrary to the *ponencia*'s holding, there **are** special and compelling reasons

attendant in the case at bar which justify direct resort to this Court. Apart from the fact that the issues presented here are of transcendental importance, as earlier explained, they are being brought before the Court for the first time. As no jurisprudence yet exists on the matter, it is best that this case be decided by this Court.

**6. POLITICAL LAW; ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXCEPTIONS PRESENT.—** The doctrine of exhaustion of administrative remedies is not absolute as there are numerous exceptions laid down by jurisprudence, namely: (a) when there is a violation of due process; (b) *when the issue involved is purely a legal question*; (c) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (d) when there is estoppel on the part of the administrative agency concerned; (e) when there is irreparable injury; (f) *when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter*; (g) *when to require exhaustion of administrative remedies would be unreasonable*; (h) when it would amount to a nullification of a claim; (i) when the subject matter is a private land in land case proceedings; (j) when the rule does not provide a plain, speedy and adequate remedy; or (k) *when there are circumstances indicating the urgency of judicial intervention*. In the petitions before the Court, circumstances (b), (f), (g) and (k) are present.

**7. ID.; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENT'S POWER TO RESERVE TRACTS OF PUBLIC DOMAIN LAND FOR SPECIFIC PUBLIC PURPOSE; MUST BE EXERCISED THROUGH A PRESIDENTIAL PROCLAMATION; THE EXERCISE OF THIS POWER THROUGH A VERBAL ORDER FALLS SHORT OF THE MANNER PRESCRIBED BY LAW.—** [I]t bears noting that under the provisions of both the RAC and the Public Land Act, this power to reserve government lands of the public and private domain is exercised through a Presidential Proclamation or, under the Revised Administrative Code of 1917, by executive order. Elsewhere in the Public Land Act, the proclamation where the reservation is made is forwarded to the Director of Lands, and may require further action from the Solicitor General. An illustration is found in the factual

milieu of *Republic v. Octobre*, wherein a particular tract of land of the public domain was reserved for a public purpose by proclamation, and thereafter released through a subsequent proclamation by President Magsaysay. The Court cited therein the authority of the President under Section 9 of the Public Land Act to reclassify lands of the public domain "*at any time and in a similar manner*, transfer lands from one class to another," to validate the release of the reservation through the subsequent proclamation. This supports the conclusion that the positive act that "perfects" the reservation for public purpose (or release) is the issuance of a proclamation. x x x In this case, however, there is no dispute that this power, argued by the Solicitor General as belonging exclusively to the President, was exercised through a verbal order. Based on the foregoing, this falls short of the manner prescribed by law for its exercise. Accordingly, absent a Presidential Proclamation, I fail to fathom how these laws (the RAC and the Public Land Act) can be used to justify the decision to inter former President Marcos in the LNMB. Moreover, without any showing that the interment is consistent with LNMB's purpose as a national shrine, it cannot be undertaken as no change in the said specific purpose has been validly made.

**8. ID.; ID.; ID.; ID.; "PUBLIC USE" AND "PUBLIC PURPOSE", DISTINGUISHED; ANY DISBURSEMENT OF PUBLIC FUNDS FOR THE INTERMENT OF THE REMAINS OF MARCOS WILL NOT BE FOR A PUBLIC PURPOSE FOR IT PRIMARILY SERVES PRIVATE BENEFIT; TO ALLOW EXPENDITURE OF PUBLIC FUNDS TO INTER MARCOS AT THE LNMB WOULD BE TURNING A BLIND EYE TO THE DISSERVICE, DAMAGE, AND HAVOC THAT MARCOS CAUSED TO THIS COUNTRY.** — The *ponencia* holds that the recognition of the former President Marcos's status or contributions as a President, veteran or Medal of Valor awardee satisfies the public use requirement, and the interment as compensation for ***valuable services rendered*** is public purpose that justifies use of public funds. Apart from lacking legal basis, this holding conveniently overlooks the primary purpose of the interment extant in the records — the Solicitor General has admitted that the burial of former President Marcos was a campaign promise of the President to the Marcos family[.] x x x This admission by the Solicitor General indicates to me that the interment is primarily to favor the Marcos family, and serves no legitimate public purpose. x x x Moreover, any

disbursement of public funds in connection with the interment will not be for a public purpose, as it is principally for the advantage of a private party — separate from the motivation for the same. The holding of the *ponencia*, shown in this light, is illogical: Marcos is not a hero, and burying him in the LNMB will not convert him into a hero. But somehow, his interment primarily serves a public purpose or otherwise serves the interest of the public at large, and this Court will allow the expenditure of public funds to inter him as a President, veteran, and/or a Medal of Valor awardee as compensation for valuable public services rendered — **turning a blind eye to the disservice, damage and havoc that former President Marcos caused to this country**.

**9. ID.; ID.; ID.; PRESIDENT'S POWER OF CONTROL AND DUTY TO FAITHFULLY EXECUTE THE LAWS; THE ORDER TO INTER MARCOS IS NOT A VALID EXERCISE THEREOF FOR IT VIOLATES THE CONSTITUTION AND OTHER LAWS.—** The President's power of control and duty to faithfully execute laws are found in Article VII, Section 17 of the 1987 Constitution x x x[.] In *Phillips Seafood (Philippines) Corp. v. The Board of Investments*, the Court held that the power of control is not absolute, and may be effectively limited: x x x **by the Constitution, by law, or by judicial decisions.** x x x Therefore, while the order to inter former President Marcos in the LNMB may be considered an exercise of the President's power of control, this is necessarily subject to the limitations similarly applicable to his subordinate, the Philippine Veterans Affairs Office ("PVAO") or the Quartermaster General — found in the Constitution, laws and executive issuances. Verily, the claim that the President is merely faithfully executing law (i.e. the AFP Regulations) when he ordered the interment must be examined in the context of the other duties or obligations inferable from the Constitution and from statutes that relate to the facts of this case. And the order to inter cannot be considered a valid exercise of his power of control, or his duty to faithfully execute the laws because the interment violates the Constitution, laws and executive issuances[.]

**10. ID.; ID.; ID.; RESIDUAL POWERS OF THE PRESIDENT; ABSENCE OF FACTUAL BASIS FOR THE EXERCISE THEREOF WILL RESULT IN THE FINDING OF ARBITRARINESS, WHIMSICALITY, AND CAPRICIOUSNESS WHICH IS THE ESSENCE OF**

**GRAVE ABUSE OF DISCRETION.—** Inasmuch as the Solicitor General has failed to provide the persuasive constitutional or statutory basis for the exercise of residual power, or even the exigencies which "undermine the very existence of the government or the integrity of the State" that the order to inter former President Marcos in the LNMB seeks to address, the Court should have been left with no recourse except to examine the factual bases, if any, of the invocation of the residual powers of the President, as this is the duty given to the Court pursuant to its power of judicial review. Jurisprudence mandates that there is no grave abuse of discretion provided there is sufficient factual basis for the exercise of residual powers. Conversely, when there is absence of factual basis for the exercise of residual power, this will result in a finding of arbitrariness, whimsicality and capriciousness that is the essence of grave abuse of discretion. x x x In both *Marcos v. Manglapus* and *Integrated Bar of the Philippines v. Zamora*, the Court, pursuant to the expanded concept of judicial power under the 1987 Constitution, took the "pragmatist" approach that a political question should be subject to judicial review to determine whether or not there had been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action was being questioned. In turn, a determination of the existence or non-existence of grave abuse of discretion is greatly dependent upon a finding by the Court that the concerned official had adequate factual basis for his questioned action.

**11. ID.; ID.; ID.; ID.; THE SOLICITOR GENERAL FAILED TO DEMONSTRATE SUFFICIENT FACTUAL BASIS TO JUSTIFY THE INTERMENT OF MARCOS IN THE LNMB; MERE INCANTATION OF WORDS SUCH AS "NATIONAL HEALING," "GENUINE CHANGE," "NATIONAL PSYCHE," "CAMPAIGN PROMISE," AND "EFFACING SYMBOL OF POLARITY" AS THE WISDOM BEHIND THE ASSAILED INTERMENT ORDER IS A MERE SCHEME TO PREVENT THE COURT FROM TAKING JUDICIAL COGNITION THEREOF AND TO MAKE THE PRESIDENT'S ACTION INSCRUTABLE.—** National healing, genuine change, forgiveness, change in national psyche, and effacing the Marcos's remains as the symbol of polarity are not matters which the Court can or may take judicial notice of. They are not self-evident or self-authenticating. The public respondents and the private respondents, Heirs of Marcos, have,

therefore, the burden to factually substantiate them. The Court cannot be left, on its own, to divine their significance in practical terms and flesh them out. x x x [T]here appears to be no perceptible empirical correlation between the intended burial of former President Marcos and the supposed national healing the President seeks to promote. x x x "Genuine change", without more, may have been an excellent slogan during the campaign period, but as a reason for the decision to inter former President Marcos in the LNMB, is too amorphous and nebulous. x x x [F]orgiveness cannot be exacted from the victims of the Marcos martial rule because the State has no right to **impose** the same upon them. The Court is helpless in the absence of a reasonable and acceptable explanation how the President's objective of "forgiveness" is achieved by the intended interment. The Solicitor General's postulate that the burial of the former President's remains in the LNMB is "geared towards changing the national psyche" is, again, as vague as the other motherhood statements that have been bandied about. x x x Thus, the mere incantation of buzzwords such as "national psyche," "national healing," "genuine change," "campaign promise" and "effacing symbol of polarity" as the wisdom underlying the challenged order of the President appears – in the absence of anything other than such incantation – is nothing more than a legerdemain resorted to to prevent the Court from taking judicial cognition thereof and to make the President's action inscrutable.

**12. ID.; ID.; ID.; THE ORDER OF THE PRESIDENT TO INTER THE REMAINS OF MARCOS AT THE LNMB VIOLATES PD 105, RA 10066, RA 10086 AND THE SPECIFIC POLICIES IN THE TREATMENT OF NATIONAL SHRINES; THE INTERMENT OF MARCOS CONSTITUTES A VIOLATION OF THE PHYSICAL, HISTORICAL, AND CULTURAL INTEGRITY OF THE LNMB AS A NATIONAL SHRINE.—** The dual nature of the LNMB as a military memorial and a national shrine cannot be denied. x x x [T]he argument that the LNMB was initially, primarily, or truly a military memorial to maintain that only the express disqualifications in the AFP Regulations should control in the determination of who may be interred therein, to the exclusion of the provisions of the Constitution, laws and executive issuances, disregards the fact that its status as a national shrine has legal consequences. The policy of PD 105 with respect to national shrines is reiterated, or more accurately, expanded in

the statement of policy in RA 10066 that has the objective of "protect[ing], preserv[ing], conserv[ing] and promot[ing] the nation's cultural heritage, its property and histories; and RA 10086 that states the policy of the State to conserve, promote and popularize the nation's historical and cultural heritage and resources. Even assuming that PD 105 does not apply to the LNMB, there can be no argument that the later expression of legislative will in RA 10066 and RA 10086 accords even fuller protection to national shrines, which includes the LNMB. x x x In both laws, the word "*conservation*" is defined as "processes and measures of maintaining the cultural significance of a cultural property including, but not limited to, physical, **social or legal preservation**, restoration, reconstruction, **protection**, adaptation or any combination thereof," respectively, which is consistent with, and in fact expanded the protection beyond, what may be argued as merely prohibiting physical desecration in PD 105. The clear legislative mandate in RA 10066 and 10086 require conservation, not only of the physical integrity of national shrines as cultural and historical resources, but also of the cultural significance thereof. These laws operate to accord legal protection to the LNMB so that the standard applicable to it, in particular, esteem and reverence in Proclamation No. 86, and to national shrines, in general, as sacred and hallowed under PD 105, will be upheld and maintained. In other words, if a person who is not worthy of or held in esteem and reverence is sought to be interred in the LNMB, then this would be contrary to the policy to hold LNMB as a sacred and hallowed place — and the Court must step in to preserve and protect LNMB's cultural significance. Relevantly, the NHCP, which has the mandate to discuss and resolve, with finality, issues or conflicts on Philippine history under Section 7 of RA 10086, opposes the interment — another fact completely disregarded by the *ponencia.* Verily, **the interment of former President Marcos constitutes a violation of the physical, historical and cultural integrity of the LNMB as a national shrine, which the State has the obligation to conserve.**

**13. ID.; ID.; ID.; ID.; THE BURIAL OF MARCOS AT THE LNMB ALSO VIOLATES APPLICABLE TREATIES AND INTERNATIONAL LAW PRINCIPLES.—** Article II, Section 2 of the 1987 Constitution provides that the Philippines "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". One of these principles —as recognized by this Court in a long line

of decisions — is the rule of ***pacta sunt servanda*** in Article 26 of the 1969 Vienna Convention on the Law of Treaties ("VCLT"), or the performance in good faith of a State's treaty obligations. Borrowing the words of this Court in *Agustin v. Edu*, "[i]t is not for this country to repudiate a commitment to which it had pledged its word. The concept of *pacta sunt servanda* stands in the way of such an attitude, which is, moreover, at war with the principle of international morality." The Philippines became signatory to the Universal Declaration on Human Rights ("UDHR"), and State-party, **without reservations**, to the International Covenant on Civil and Political Rights ("ICCPR") on October 23, 1966, the Rome Statute on August 30, 2011, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") on June 18, 1986. x x x As culled from the primary sources of international law (the ICCPR and the CAT), and the subsidiary sources of international law — namely, the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ("UN Guidelines") — as well as RA 10368, HRVVs are entitled to the following rights: (1) the non-derogable right to an effective remedy; (2) the right against re-traumatization; (3) the right to truth and the State's corollary duty to preserve memory; and (4) the right to reparation. x x x [T]here is sufficient basis to rule that the burial of former President Marcos in the LNMB will violate certain international law principles and obligations, which the Philippines has adopted and must abide by, and RA 10368 which transformed the principle and State policy expressed in Article II, Section 11 of the Constitution which states: "The State values the dignity of every human person and guarantees full respect for human rights". In this sense, therefore, a violation of RA 10368 is tantamount to a violation of Article II, Section 11 of the Constitution.

## APPEARANCES OF COUNSEL

*National Union of People's Lawyers* for petitioners in G.R. No. 225973.

*Lagman Lagman & Mones Law Firm* for petitioners in G.R. No. 225984.

*Ibarra M. Gutierez III, et al.,* for petitioners in G.R. No. 226097.

*Reody Anthony M. Balisi, et al.,* for petitioners in G.R. No. 226116.

*The Solicitor General* for public respondents.

*Hyacinth E. Rafael-Antonio* for the heirs of Ferdinand E. Marcos.

*Jesus Nicardo M. Falcis III* for petitioners in G.R. No. 226117.

*Malayang and Latiph Law Office* for petitioner in G.R. No. 226120.

## D E C I S I O N

**PERALTA, *J.*:**

**In law, as much as in life, there is need to find closure. Issues that have lingered and festered for so long and which unnecessarily divide the people and slow the path to the future have to be interred. To move on is not to forget the past. It is to focus on the present and the future, leaving behind what is better left for history to ultimately decide. The Court finds guidance from the Constitution and the applicable laws, and in the absence of clear prohibition against the exercise of discretion entrusted to the political branches of the Government, the Court must not overextend its readings of what may only be seen as providing tenuous connection to the issue before it.**

### Facts

During the campaign period for the 2016 Presidential Election, then candidate Rodrigo R. Duterte (*Duterte*) publicly announced that he would allow the burial of former President Ferdinand E. Marcos (*Marcos*) at the *Libingan Ng Mga Bayani* (*LNMB*). He won the May 9, 2016 election, garnering 16,601,997 votes. At noon of June 30, 2016, he formally assumed his office at the Rizal Hall in the Malacañan Palace.

On August 7, 2016, public respondent Secretary of National Defense Delfin N. Lorenzana issued a Memorandum to the public respondent Chief of Staff of the Armed Forces of the Philippines (*AFP*), General Ricardo R. Visaya, regarding the interment of Marcos at the LNMB, to wit:

Subject: **Interment of the late Former President Ferdinand Marcos at LNMB**

Reference: Verbal Order of President Rodrigo Duterte on July 11, 2016.

In compliance to *(sic)* the verbal order of the President to implement his election campaign promise to have the remains of the late former President Ferdinand E. Marcos be interred at the Libingan ng mga Bayani, kindly undertake all the necessary planning and preparations to facilitate the coordination of all agencies concerned specially the provisions for ceremonial and security requirements. Coordinate closely with the Marcos family regarding the date of interment and the transport of the late former President's remains from Ilocos Norte to the LNMB.

The overall OPR for this activity will [be] the PVAO since the LNMB is under its supervision and administration. PVAO shall designate the focal person for this activity who shall be the overall overseer of the event.

Submit your Implementing Plan to my office as soon as possible.[1]

On August 9, 2016, respondent AFP Rear Admiral Ernesto C. Enriquez issued the following directives to the Philippine Army (*PA*) Commanding General:

SUBJECT: **Funeral Honors and Service**

TO: Commanding General, Philippine Army
Headquarters, Philippine Army
Fort Bonifacio, Taguig City
Attn: Assistant Chief of Staff for RRA, G9

1. Pursuant to paragraph 2b, SOP Number 8, GHQ, AFP dated 14 July 1992, provide services, honors and other courtesies for the late **Former President Ferdinand E. Marcos** as indicated:

   [x] Vigil **-Provide vigil-**
   [x] Bugler/Drummer
   [x] Firing Party

[1] See Annex "A" of Petition for Prohibition of Lagman, *et al.*, G.R. No. 225984.

[x] Military Host/Pallbearers
[x] Escort and Transportation
[x] Arrival/Departure Honors

2. His remains lie in state at **Ilocos Norte**
3. **Interment** will take place at the **Libingan ng mga Bayani, Ft. Bonifacio, Taguig City. Date: TBAL.**
4. **Provide all necessary military honors accorded for a President**
5. POC: **Administrator, PVAO**
**BY COMMAND OF GENERAL VISAYA**[2]

Dissatisfied with the foregoing issuance, the following were filed by petitioners:

1. Petition for *Certiorari* and Prohibition[3] filed by Saturnino Ocampo and several others,[4] in their capacities as human rights advocates or human rights violations victims as defined under Section 3 (c) of Republic Act (*R.A.*) No. 10368 (*Human Rights Victims Reparation and Recognition Act of 2013*).

2. Petition for *Certiorari*-in-Intervention[5] filed by Rene A.V. Saguisag, Sr. and his son,[6] as members of the Bar and human rights lawyers, and his grandchild.[7]

3. Petition for Prohibition[8] filed by Representative Edcel C. Lagman, in his personal capacity, as member of the House of Representatives and as Honorary Chairperson of Families of

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[2] See Annex "B", *id.* (Emphasis in the original)

[3] G.R. No. 225973.

[4] TRINIDAD H. REPUNO, BIENVENIDO LUMBERA, BONIFACIO P. ILAGAN, NERI JAVIER COLMENARES, MARIA CAROLINA P. ARAULLO, M.D., SAMAHAN NG EX-DETAINEES LABAN SA DETENSYON AT ARESTO (SELDA) represented by DIONITO CABILLAS, CARMENCITA M. FLORENTINO, RODOLFO DEL ROSARIO, FELIX C. DALISAY and DANILO M. DELA FUENTE.

[5] G.R. No. 225973.

[6] Rene A. Q. Saguisag, Jr.

[7] Rene A. C. Saguisag, III.

[8] G.R. No. 225984.

Victims of Involuntary Disappearance (FIND), a duly-registered corporation and organization of victims and families of enforced disappearance, mostly during the martial law regime of the former President Marcos, and several others,[9] in their official capacities as duly-elected Congressmen of the House of Representatives of the Philippines.

4. Petition for Prohibition[10] filed by Loretta Ann Pargas-Rosales, former Chairperson of the Commission on Human Rights, and several others,[11] suing as victims of State-sanctioned human rights violations during the martial law regime of Marcos.

5. Petition for Mandamus and Prohibition[12] filed by Heherson T. Alvarez, former Senator of the Republic of the Philippines, who fought to oust the dictatorship of Marcos, and several others,[13] as concerned Filipino citizens and taxpayers.

6. Petition for *Certiorari* and Prohibition[14] filed by Zaira Patricia B. Baniaga and several others,[15] as concerned Filipino citizens and taxpayers.

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[9] FIND CO-CHAIRPERSON, NILDA L. SEVILLA, REP. TEDDY BRAWNER BAGUILAT, JR., REP. TOMASITO S. VILLARIN, REP. EDGAR R. ERICE AND REP. EMMANUEL A. BILLONES.

[10] G.R. No. 226097.

[11] HILDA B. NARCISO, AIDA F. SANTOS-MARANAN, JO-ANN Q. MAGLIPON, ZENAIDA S. MIQUE, FE B. MANGAHAS, MA. CRISTINA P. BAWAGAN, MILA D. AGUILAR, MINERVA G. GONZALES, MA. CRISTINA V. RODRIGUEZ, LOUUE G. CRISMO, FRANCISCO E. RODRIGO, JR., LIWAYWAY D. ARCE and ABDULMARI DE LEON IMAO, JR.

[12] G.R. No. 226116.

[13] JOEL C. LAMANGAN, FRANCIS X. MAGLAPUS, EDILBERTO C. DE JESUS, BELINDA O. CUNANAN, CECILIA GUIDOTE ALVAREZ, REX DEGRACIA LORES, SR., ARNOLD MARIE NOEL, CARLOS MANUEL, EDMUND S. TAYAO, DANILO P. OLIVARES, NOEL F. TRINIDAD, JESUS DELA FUENTE, REBECCA M. QUIJANO, FR. BENIGNO BELTRAN, SVD, ROBERTO S. VERZOLA, AUGUSTO A. LEGASTO, JR. and JULIA KRISTINA P. LEGASTO.

[14] G.R. No. 226117.

[15] JOHN ARVIN BUENAAGUA, JOANNE ROSE SACE LIM, and JUAN ANTONIO RAROGAL MAGALANG.

7. Petition for *Certiorari* and Prohibition[16] filed by Algamar A. Latiph, former Chairperson of the Regional Human Rights Commission, Autonomous Region in Muslim Mindanao, by himself and on behalf of the *Moro*[17] who are victims of human rights during the martial law regime of Marcos.

8. Petition for *Certiorari* and Prohibition[18] filed by Leila M. De Lima as member of the Senate of the Republic of the Philippines, public official and concerned citizen.

**Issues**

*Procedural*

1. Whether President Duterte's determination to have the remains of Marcos interred at the LNMB poses a justiciable controversy.

2. Whether petitioners have *locus standi* to file the instant petitions.

3. Whether petitioners violated the doctrines of exhaustion of administrative remedies and hierarchy of courts.

*Substantive*

1. Whether the respondents Secretary of National Defense and AFP Rear Admiral committed grave abuse of discretion, amounting to lack or excess of jurisdiction, when they issued the assailed memorandum and directive in compliance with the verbal order of President Duterte to implement his election campaign promise to have the remains of Marcos interred at the LNMB.

2. Whether the issuance and implementation of the assailed memorandum and directive violate the Constitution, domestic and international laws, particularly:

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[16] G.R. No. 226120.

[17] Defined as native peoples who have historically inhabited Mindanao, Palawan and Sulu, who are largely of the Islamic Faith, under Sec. 4, par. d.[8], RA 9710 otherwise known as *The Magna Carta of Women.*

[18] G.R. No. 226294.

(a) Sections 2, 11, 13, 23, 26, 27 and 28 of Article II, Section 1 of Article III, Section 17 of Article VII, Section 1 of Article XI, Section 3(2) of Article XIV, and Section 26 of Article XVIII of the 1987 Constitution;

(b) R.A. No. 289;

(c) R.A. No. 10368;

(d) AFP Regulation G 161-375 dated September 11, 2000;

(e) The International Covenant on Civil and Political Rights;

(f) The "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" of the United Nations *(U.N.*) General Assembly; and

(g) The "Updated Set of Principles for Protection and Promotion of Human Rights through Action to Combat Impunity" of the U.N. Economic and Social Council;

3. Whether historical facts, laws enacted to recover ill-gotten wealth from the Marcoses and their cronies, and the pronouncements of the Court on the Marcos regime have nullified his entitlement as a soldier and former President to interment at the LNMB.

4. Whether the Marcos family is deemed to have waived the burial of the remains of former President Marcos at the LNMB after they entered into an agreement with the Government of the Republic of the Philippines as to the conditions and procedures by which his remains shall be brought back to and interred in the Philippines.

**Opinion**

The petitions must be dismissed.

*Procedural Grounds*

***Justiciable controversy***

It is well settled that no question involving the constitutionality or validity of a law or governmental act may be heard and decided

by the Court unless the following requisites for judicial inquiry are present: (*a*) there must be an actual case or controversy calling for the exercise of judicial power; (*b*) the person challenging the act must have the standing to question the validity of the subject act or issuance; (*c*) the question of constitutionality must be raised at the earliest opportunity; and (*d*) the issue of constitutionality must be the very *lis mota* of the case.[19] In this case, the absence of the first two requisites, which are the most essential, renders the discussion of the last two superfluous.[20]

An "actual case or controversy" is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.[21] There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.[22] Related to the requisite of an actual case or controversy is the requisite of "ripeness," which means that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action.[23] Moreover, the limitation on the power of judicial review to actual cases and controversies carries the assurance that the courts will not intrude into areas committed to the other branches of government.[24] Those areas pertain to

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[19] *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr.*, 721 Phil. 416, 518-519 (2013).

[20] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 471 (2010).

[21] *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr., supra* note 19, at 519, citing *Province of North Cotabato, et al. v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), et al.*, 589 Phil. 387, 481 (2008).

[22] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), et al., supra.*

[23] *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr., supra* note 19, at 519-520.

[24] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), et al., supra* note 21.

questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government.[25] As they are concerned with questions of policy and issues dependent upon the wisdom, not legality of a particular measure,[26] political questions used to be beyond the ambit of judicial review. However, the scope of the political question doctrine has been limited by Section 1 of Article VIII of the 1987 Constitution when it vested in the judiciary the power to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The Court agrees with the OSG that President Duterte's decision to have the remains of Marcos interred at the LNMB involves a political question that is not a justiciable controversy. In the exercise of his powers under the Constitution and the Executive Order (E.O.) No. 292 (otherwise known as the Administrative Code of 1987) to allow the interment of Marcos at the LNMB, which is a land of the public domain devoted for national military cemetery and military shrine purposes, President Duterte decided a question of policy based on his wisdom that it shall promote national healing and forgiveness. There being no taint of grave abuse in the exercise of such discretion, as discussed below, President Duterte's decision on that political question is outside the ambit of judicial review.

***Locus standi***

Defined as a right of appearance in a court of justice on a given question,[27] *locus standi* requires that a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of

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[25] *Tañada v. Cuenco*, 100 Phil. 1101 (1957); *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr., supra* note 19, at 526.

[26] *Id.; id.*

[27] *Black's Law Dictionary*, 941(1991 6th ed.).

issues upon which the court depends for illumination of difficult constitutional questions.[28] Unless a person has sustained or is in imminent danger of sustaining an injury as a result of an act complained of, such proper party has no standing.[29] Petitioners, who filed their respective petitions for *certiorari,* prohibition and mandamus, in their capacities as citizens, human rights violations victims, legislators, members of the Bar and taxpayers, have no legal standing to file such petitions because they failed to show that they have suffered or will suffer direct and personal injury as a result of the interment of Marcos at the LNMB.

Taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law.[30] In this case, what is essentially being assailed is the wisdom behind the decision of the President to proceed with the interment of Marcos at the LNMB. As taxpayers, petitioners merely claim illegal disbursement of public funds, without showing that Marcos is disqualified to be interred at the LNMB by either express or implied provision of the Constitution, the laws or jurisprudence.

Petitioners Saguisag, *et al.*,[31] as members of the Bar, are required to allege any direct or potential injury which the Integrated Bar of the Philippines, as an institution, or its members may suffer as a consequence of the act complained of.[32] Suffice it to state that the averments in their petition-in-intervention failed to disclose such injury, and that their interest in this case is too general and shared by other groups, such that their duty

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[28] *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr., supra* note 19, at 527.

[29] *Id*. at 527, citing *La Bugal-B'Laan, Inc. v. Sec. Ramos,* 465 Phil. 860, 890 (2004).

[30] *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr., supra* note 19, at 528.

[31] Rene A.V. Saguisag, Sr. and Rene A.Q. Saguisag, Jr.

[32] *Prof. David v. Pres. Macapagal-Arroyo,* 522 Phil. 705, 762 (2006).

to uphold the rule of law, without more, is inadequate to clothe them with requisite legal standing.[33]

As concerned citizens, petitioners are also required to substantiate that the issues raised are of transcendental importance, of overreaching significance to society, or of paramount public interest.[34] In cases involving such issues, the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence.[35] In *Marcos v. Manglapus*,[36] the majority opinion observed that the subject controversy was of grave national importance, and that the Court's decision would have a profound effect on the political, economic, and other aspects of national life. The *ponencia* explained that the case was in a class by itself, unique and could not create precedent because it involved a dictator forced out of office and into exile after causing twenty years of political, economic and social havoc in the country and who, within the short space of three years (from 1986), sought to return to the Philippines to die.

At this point in time, the interment of Marcos at a cemetery originally established as a national military cemetery and declared a national shrine would have no profound effect on the political, economic, and other aspects of our national life considering that more than twenty-seven (27) years since his death and thirty (30) years after his ouster have already passed. Significantly, petitioners failed to demonstrate a clear and imminent threat to their fundamental constitutional rights.

As human rights violations victims during the Martial Law regime, some of petitioners decry re-traumatization, historical revisionism, and disregard of their state recognition as heroes. Petitioners' argument is founded on the wrong premise that

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[33] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618 (2000).

[34] *Kilosbayan v. Guingona*, G.R. No. 113375, May 5, 1994, 232 SCRA 110.

[35] *The Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015, 747 SCRA 1, 46.

[36] 258 Phil. 479 (1989).

the LNMB is the National Pantheon intended by law to perpetuate the memory of all Presidents, national heroes and patriots. The history of the LNMB, as will be discussed further, reveals its nature and purpose as a national military cemetery and national shrine, under the administration of the AFP.

Apart from being concerned citizens and taxpayers, petitioners Senator De Lima, and Congressman Lagman, *et al.*[37] come before the Court as legislators suing to defend the Constitution and to protect appropriated public funds from being used unlawfully. In the absence of a clear showing of any direct injury to their person or the institution to which they belong, their standing as members of the Congress cannot be upheld.[38] They do not specifically claim that the official actions complained of, *i.e.*, the memorandum of the Secretary of National Defense and the directive of the AFP Chief of Staff regarding the interment of Marcos at the LNMB, encroach on their prerogatives as legislators.[39]

***Exhaustion of Administrative Remedies***

Petitioners violated the doctrines of exhaustion of administrative remedies and hierarchy of courts. Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, one should have availed first of all the means of administrative processes available.[40] If resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought.[41] For reasons

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[37] REP. TEDDY BRAWNER BAGUILAT JR., REP. TOMASITO S. VILLARIN, REP. EDGAR R. ERICE and REP. EMMANUEL A. BILLONES.

[38] *BAYAN (Bagong Alyansang Makabayan) v. Exec. Sec. Zamora*, 396 Phil. 623, 648 (2000).

[39] *Biraogo v. The Philippine Truth Commission*, 651 Phil. 374, 439 (2010).

[40] *Maglalang v. Philippine Amusement and Gaming Corp.*, 723 Phil. 546, 556 (2013).

[41] *Id.*

of comity and convenience, courts of justice shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.[42] While there are exceptions[43] to the doctrine of exhaustion of administrative remedies, petitioners failed to prove the presence of any of those exceptions.

Contrary to their claim of lack of plain, speedy, adequate remedy in the ordinary course of law, petitioners should be faulted for failing to seek reconsideration of the assailed memorandum and directive before the Secretary of National Defense. The Secretary of National Defense should be given opportunity to correct himself, if warranted, considering that AFP Regulations G 161-375 was issued upon his order. Questions on the implementation and interpretation thereof demand the exercise of sound administrative discretion, requiring the special knowledge, experience and services of his office to determine technical and intricate matters of fact. If petitioners would still be dissatisfied with the decision of the Secretary, they could elevate the matter before the Office of the President which has control and supervision over the Department of National Defense (*DND*).[44]

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[42] *Id.* at 557.

[43] Nonetheless, the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. There are many accepted exceptions, such as: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings. (See *Republic v. Lacap,* 546 Phil. 87, 97-98 [2007]).

[44] Book IV, Chapter 1, Section 1 of the Administrative Code.

***Hierarchy of Courts***

In the same vein, while direct resort to the Court through petitions for the extraordinary writs of *certiorari*, prohibition and mandamus are allowed under exceptional cases,[45] which are lacking in this case, petitioners cannot simply brush aside the doctrine of hierarchy of courts that requires such petitions to be filed first with the proper Regional Trial Court (*RTC*). The RTC is not just a trier of facts, but can also resolve questions of law in the exercise of its original and concurrent jurisdiction over petitions for *certiorari*, prohibition and mandamus, and has the power to issue restraining order and injunction when proven necessary.

In fine, the petitions at bar should be dismissed on procedural grounds alone. Even if We decide the case based on the merits, the petitions should still be denied.

*Substantive Grounds*

There is grave abuse of discretion when an act is (1) done contrary to the Constitution, the law or jurisprudence or (2) executed whimsically, capriciously or arbitrarily, out of malice, ill will or personal bias.[46] None is present in this case.

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[45] Direct resort to the Court is allowed as follows (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (2) when the issues involved are of transcendental importance; (3) when cases of first impression are involved; and (4) when constitutional issues raised are better decided by the Court; (5) when the time element presented in the case cannot be ignored; (6) when the filed petition reviews the act of a constitutional organ; (7) when petitioners rightly claim that they had no other plain, speedy and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and (8) when the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy." (See *The Diocese of Bacolod v. Commission on Elections, supra* note 35, at 45-49).

[46] *Almario, et al. v. Executive Secretary, et al.*, 714 Phil. 127, 169 (2013).

**I**

**The President's decision to bury Marcos at the LNMB is in accordance with the Constitution, the law or jurisprudence**

Petitioners argue that the burial of Marcos at the LNMB should not be allowed because it has the effect of not just rewriting history as to the Filipino people's act of revolting against an authoritarian ruler but also condoning the abuses committed during the Martial Law, thereby violating the letter and spirit of the 1987 Constitution, which is a "post-dictatorship charter" and a "human rights constitution." For them, the ratification of the Constitution serves as a clear condemnation of Marcos' alleged "heroism." To support their case, petitioners invoke Sections 2,[47] 11,[48] 13,[49] 23,[50] 26,[51] 27[52] and 28[53] of Article II, Sec. 17 of Art. VII,[54]

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[47] 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.

[48] SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

[49] SECTION 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

[50] SECTION 23. The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation.

[51] SECTION 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.

[52] SECTION 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

[53] SECTION 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

[54] SECTION 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

Sec. 3(2) of Art. XIV,[55] Sec. 1 of Art. XI,[56] and Sec. 26 of Art. XVIII[57] of the Constitution.

There is no merit to the contention.

As the Office of the Solicitor General (*OSG*) logically reasoned out, while the Constitution is a product of our collective history as a people, its entirety should not be interpreted as providing guiding principles to just about anything remotely related to the Martial Law period such as the proposed Marcos burial at the LNMB.

*Tañada v. Angara*[58] already ruled that the provisions in Article II of the Constitution are not self-executing. Thus:

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[55] SECTION 3. x x x

(2) They shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline, encourage critical and creative thinking, broaden scientific and technological knowledge, and promote vocational efficiency.

[56] SECTION 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

[57] SECTION 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.

A sequestration or freeze order shall be issued only upon showing of a *prima facie* case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.

[58] 338 Phil. 546 (1997).

By its very title, Article II of the Constitution is a "declaration of principles and state policies." The counterpart of this article in the 1935 Constitution is called the "basic political creed of the nation" by Dean Vicente Sinco. These principles in Article II are not intended to be self-executing principles ready for enforcement through the courts. They are used by the judiciary as aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws. As held in the leading case of *Kilosbayan, Incorporated vs. Morato*, the principles and state policies enumerated in Article II x x x are not "self-executing provisions, the disregard of which can give rise to a cause of action in the courts. They do not embody judicially enforceable constitutional rights but guidelines for legislation."

In the same light, we held in *Basco vs. Pagcor* that broad constitutional principles need legislative enactments to implement them x x x.

x x x x x x x x x

The reasons for denying a cause of action to an alleged infringement of broad constitutional principles are sourced from basic considerations of due process and the lack of judicial authority to wade "into the uncharted ocean of social and economic policy making."[59]

In the same vein, Sec. 1 of Art. XI of the Constitution is not a self-executing provision considering that a law should be passed by the Congress to clearly define and effectuate the principle embodied therein. As a matter of fact, pursuant thereto, Congress enacted R.A. No. 6713 *("Code of Conduct and Ethical Standards for Public Officials and Employees")*, R.A. No. 6770 *("The Ombudsman Act of 1989")*, R.A. No. 7080 *(An Act Defining and Penalizing the Crime of Plunder)*, and Republic Act No. 9485 *("Anti-Red Tape Act of 2007")*. To complement these statutes, the Executive Branch has issued various orders, memoranda, and instructions relative to the norms of behavior/code of conduct/

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[59] *Tañada v. Angara, supra*, at 580-581. (Citations omitted). The case was cited in *Tondo Medical Center Employees Ass'n. v. Court of Appeals,* 554 Phil. 609, 625-626 (2007); *Bases Conversion and Development Authority v. COA,* 599 Phil. 455, 465 (2009); and *Representatives Espina, et al. v. Hon. Zamora, Jr. (Executive Secretary), et al.,* 645 Phil. 269, 278-279 (2010). See also *Manila Prince Hotel v. GSIS,* 335 Phil. 82, 101-102 (1997).

ethical standards of officials and employees; workflow charts/ public transactions; rules and policies on gifts and benefits; whistle blowing and reporting; and client feedback program.

Petitioners' reliance on Sec. 3(2) of Art. XIV and Sec. 26 of Art. XVIII of the Constitution is also misplaced. Sec. 3(2) of Art. XIV refers to the constitutional duty of educational institutions in teaching the values of patriotism and nationalism and respect for human rights, while Sec. 26 of Art. XVIII is a transitory provision on sequestration or freeze orders in relation to the recovery of Marcos' ill-gotten wealth. Clearly, with respect to these provisions, there is no direct or indirect prohibition to Marcos' interment at the LNMB.

The second sentence of Sec. 17 of Art. VII pertaining to the duty of the President to *"ensure that the laws be faithfully executed,"* which is identical to Sec. 1, Title I, Book III of the Administrative Code of 1987,[60] is likewise not violated by public respondents. Being the Chief Executive, the President represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his or her department.[61] Under the Faithful Execution Clause, the President has the power to take "necessary and proper steps" to carry into execution the law.[62] The mandate is self-executory by virtue of its being inherently executive in nature and is intimately related to the other executive functions.[63] It is best construed as an imposed obligation, not a separate grant of power.[64] The provision simply underscores the rule of law and, corollarily, the cardinal principle

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[60] Executive Order No. 292, s. 1987, Signed on July 25, 1987.

[61] *Biraogo v. The Phil. Truth Commission of 2010,* 651 Phil. 374, 451 (2010).

[62] *Philippine Constitution Association v. Enriquez,* G.R. Nos. 113105, 113174, 113766, and 113888, August 19, 1994, 235 SCRA 506, 552.

[63] *Rene A.V. Saguisag, et al. v. Executive Secretary Paquito N. Ochoa, Jr., et al.*, G.R. Nos. 212426 & 212444, January 12, 2016.

[64] *Almario, et al. v. Executive Secretary, et al., supra* note 46, at 164, as cited in *Rene A.V. Saguisag, et al. v. Executive Secretary Paquito N. Ochoa, Jr., supra* note 63.

that the President is not above the laws but is obliged to obey and execute them.[65]

Consistent with President Duterte's mandate under Sec. 17, Art. VII of the Constitution, the burial of Marcos at the LNMB does not contravene R.A. No. 289, R.A. No. 10368, and the international human rights laws cited by petitioners.

***A. On R.A. No. 289***[66]

For the perpetuation of their memory and for the inspiration and emulation of this generation and of generations still unborn, R.A. No. 289 authorized the construction of a National Pantheon as the burial place of the mortal remains of all the Presidents of the Philippines, national heroes and patriots.[67] It also provided for the creation of a Board on National Pantheon to implement the law.[68]

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[65] *Almario, et al. v. Executive Secretary, et al., supra* note 46, at 164.

[66] Entitled *"An Act Providing for the Construction of a National Pantheon for Presidents of the Philippines, National Heroes and Patriots of the Country,"* approved on June 16, 1948.

[67] Section 1.

[68] Sec. 2. There is hereby created a Board on National Pantheon composed of the Secretary of the Interior, the Secretary of Public Works and Communications and the Secretary of Education and two private citizens to be appointed by the President of the Philippines with the consent of the Commission on Appointments which shall have the following duties and functions:

(a) To determine the location of a suitable site for the construction of the said National Pantheon, and to have such site acquired, surveyed and fenced for this purpose and to delimit and set aside a portion thereof wherein shall be interred the remains of all Presidents of the Philippines and another portion wherein the remains of heroes, patriots and other great men of the country shall likewise be interred;

(b) To order and supervise the construction thereon of uniform monuments, mausoleums, or tombs as the Board may deem appropriate;

(c) To cause to be interred therein the mortal remains of all Presidents of the Philippines, the national heroes and patriots;

(d) To order and supervise the construction of a suitable road leading to the said National Pantheon from the nearest national or provincial road; and

(e) To perform such other functions as may be necessary to carry out the purposes of this Act.

On May 12, 1953, President Elpidio R. Quirino approved the site of the National Pantheon at East Avenue, Quezon City.[69] On December 23, 1953, he issued Proclamation No. 431 to formally "withdraw from sale or settlement and reserve as a site for the construction of the National Pantheon a certain parcel of land located in Quezon City." However, on July 5, 1954, President Magsaysay issued Proclamation No. 42 revoking Proclamation Nos. 422 and 431, both series of 1953, and reserving the parcels of land embraced therein for national park purposes to be known as Quezon Memorial Park.

It is asserted that Sec. 1 of R.A. No 289 provides for the legal standard by which a person's mortal remains may be interred at the LNMB, and that AFP Regulations G 161-375 merely implements the law and should not violate its spirit and intent. Petitioners claim that it is known, both here and abroad, that Marcos' acts and deed – the gross human rights violations, the massive corruption and plunder of government coffers, and his military record that is fraught with myths, factual inconsistencies, and lies – are neither worthy of perpetuation in our memory nor serve as a source of inspiration and emulation of the present and future generations. They maintain that public respondents are not members of the Board on National Pantheon, which is authorized by the law to cause the burial at the LNMB of the deceased Presidents of the Philippines, national heroes, and patriots.

Petitioners are mistaken. Both in their pleadings and during the oral arguments, they miserably failed to provide legal and historical bases as to their supposition that the LNMB and the National Pantheon are one and the same. This is not at all unexpected because the LNMB is distinct and separate from the burial place envisioned in R.A. No 289. The parcel of land subject matter of President Quirino's Proclamation No. 431, which was later on revoked by President Magsaysay's Proclamation

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[69] Office of the President of the Philippines. (1953). Official Month in Review. *Official Gazette of the Republic of the Philippines,* 49(5), lxv-lxxvi (http://www.gov.ph/1953/05/01/official-month-in-review-may-1953/, last accessed on October 28, 2016).

No. 42, is different from that covered by Marcos' Proclamation No. 208. The National Pantheon does not exist at present. To date, the Congress has deemed it wise not to appropriate any funds for its construction or the creation of the Board on National Pantheon. This is indicative of the legislative will not to pursue, at the moment, the establishment of a singular interment place for the mortal remains of all Presidents of the Philippines, national heroes, and patriots. Perhaps, the Manila North Cemetery, the Manila South Cemetery, and other equally distinguished private cemeteries already serve the noble purpose but without cost to the limited funds of the government.

Even if the Court treats R.A. No. 289 as relevant to the issue, still, petitioners' allegations must fail. To apply the standard that the LNMB is reserved only for the "decent and the brave" or "hero" would be violative of public policy as it will put into question the validity of the burial of each and every mortal remains resting therein, and infringe upon the principle of separation of powers since the allocation of plots at the LNMB is based on the grant of authority to the President under existing laws and regulations. Also, the Court shares the view of the OSG that the proposed interment is not equivalent to the consecration of Marcos' mortal remains. The act in itself does not confer upon him the status of a "hero." Despite its name, which is actually a misnomer, the purpose of the LNMB, both from legal and historical perspectives, has neither been to confer to the people buried there the title of "hero" nor to require that only those interred therein should be treated as a "hero." Lastly, petitioners' repeated reference to a "hero's burial" and "state honors," without showing proof as to what kind of burial or honors that will be accorded to the remains of Marcos, is speculative until the specifics of the interment have been finalized by public respondents.

***B. On R.A. No. 10368***[70]

For petitioners, R.A. No. 10368 modified AFP Regulations G 161-375 by implicitly disqualifying Marcos' burial at the

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[70] Approved on February 25, 2013, R.A. No. 10368 is the consolidation of House Bill (H.B.) No. 5990 and Senate Bill (S.B.) No. 3334. H.B. No. 5990,

LNMB because the legislature, which is a co-equal branch of the government, has statutorily declared his tyranny as a deposed dictator and has recognized the heroism and sacrifices of the Human Rights Violations Victims (*HRVVs*)[71] under his regime.

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entitled *"An Act Providing Compensation To Victims Of Human Rights Violations During The Marcos Regime, Documentation Of Said Violations, Appropriating Funds Therefor, And For Other Purposes,"* was co-sponsored by Lorenzo R. Tañada III, Edcel C. Lagman, Rene L. Relampagos, Joseph Emilio A. Abaya, Walden F. Bello, Kaka J. Bag-ao, Teodoro A. Casiño, Neri Javier Colmenares, Rafael V. Mariano, Luzviminda C. Ilagan, Antonio L. Tinio, Emerenciana A. De Jesus, and Raymond V. Palatino. No member of the House signified an intention to ask any question during the period of sponsorship and debate, and no committee or individual amendments were made during the period of amendments (Congressional Record, Vol. 2, No. 44, March 14, 2012, p. 3). The bill was approved on Second Reading (Congressional Record, Vol. 2, No. 44, March 14, 2012, p. 4). On Third Reading, the bill was approved with 235 affirmative votes, no negative vote, and no abstention (Congressional Record, Vol. 2, No. 47, March 21, 2012, p. 15). On the other hand, S.B. No. 3334, entitled *"An Act Providing For Reparation And Recognition Of The Survivors And Relatives Of The Victims Of Violations Of Human Rights And Other Related Violations During The Regime Of Former President Ferdinand Marcos, Documentation Of Said Violations, Appropriating Funds Therefor, And For Other Purposes,"* was co-authored by Sergio R. Osmena III, Teofisto D. Guingona III, Francis G. Escudero, and Franklin M. Drilon. Senators Drilon and Panfilo M. Lacson withdrew their reservation to interpellate on the measure (Senate Journal No. 41, December 10, 2012, p. 1171). The bill was approved on Second Reading with no objection (Senate Journal No. 41, December 10, 2012, p. 1172). On Third Reading, the bill was approved with 18 senators voting in favor, none against, and no abstention (Senate Journal No. 44, December 17, 2012, p. 1281).

[71] *Human Rights Violations Victim (HRVV)* refers to a person whose human rights were violated by persons acting in an official capacity and/or agents of the State as defined herein. In order to qualify for reparation under this Act, the human rights violation must have been committed during the period from September 21, 1972 to February 25, 1986: *Provided, however,* That victims of human rights violations that were committed one (1) month before September 21, 1972 and one (1) month after February 25, 1986 shall be entitled to reparation under this Act if they can establish that the violation was committed:

(1) By agents of the State and/or persons acting in an official capacity as defined hereunder;

(2) For the purpose of preserving, maintaining, supporting or promoting the said regime; or

They insist that the intended act of public respondents damages and makes mockery of the mandatory teaching of Martial Law atrocities and of the lives and sacrifices of its victims. They contend that "reparation" under R.A. No. 10368 is *non-judicial* in nature but a *political* action of the State through the Legislative and Executive branches by providing administrative relief for the compensation, recognition, and memorialization of human rights victims.

We beg to disagree.

Certainly, R.A. No. 10368 recognizes the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance, and other gross human rights violations committed from September 21, 1972 to February 25, 1986. To restore their honor and dignity, the State acknowledges its moral and legal obligation[72] to provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they experienced.

In restoring the rights and upholding the dignity of HRVVs, which is part of the right to an effective remedy, R.A. No. 10368 entitles them to monetary and non-monetary reparation. Any HRVV qualified under the law[73] shall receive a monetary

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(3) To conceal abuses during the Marcos regime and/or the effects of Martial Law. (Sec. 3[c] of R.A. No. 10368).

[72] Section 11, Article II and Section 12, Article III of the 1987 Constitution as well as Section 2 of Article II of the 1987 Constitution in relation to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT) and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other international human rights laws and conventions (See Sec. 2 of R.A. No. 10368).

[73] The claimants in the class suit and direct action plaintiffs in the Human Rights Litigation Against the Estate of Ferdinand E. Marcos (MDL No. 840, CA No. 86-0390) in the US Federal District Court of Honolulu, Hawaii wherein a favorable judgment has been rendered, and the HRVVs recognized by the *Bantayog Ng Mga Bayani* Foundation shall be extended the conclusive presumption that they are HRVVs. However, the Human Rights Victims' Claims Board is not deprived of its original jurisdiction and its inherent power to determine the extent of the human rights violations and the corresponding reparation and/or recognition that may be granted (See Sec. 17 of R.A. No. 10368).

reparation, which is tax-free and without prejudice to the receipt of any other sum from any other person or entity in any case involving human rights violations.[74] Anent the non-monetary reparation, the Department of Health (*DOH*), the Department of Social Welfare and Development (*DSWD*), the Department of Education (*DepEd*), the Commission on Higher Education (*CHED*), the Technical Education and Skills Development Authority (*TESDA*), and such other government agencies are required to render the necessary services for the HRVVs and/or their families, as may be determined by the Human Rights Victims' Claims Board (*Board*) pursuant to the provisions of the law.[75]

Additionally, R.A. No. 10368 requires the recognition of the violations committed against the HRVVs, regardless of whether they opt to seek reparation or not. This is manifested by enshrining their names in the Roll of Human Rights Violations Victims (*Roll*) prepared by the Board.[76] The Roll may be displayed in government agencies designated by the HRVV Memorial Commission (*Commission*).[77] Also, a Memorial/ Museum/Library shall be established and a compendium of their sacrifices shall be prepared and may be readily viewed and accessed in the internet.[78] The Commission is created primarily for the establishment, restoration, preservation and conservation of the Memorial/Museum/ Library/Compendium.[79]

To memorialize[80] the HRVVs, the Implementing Rules and Regulations of R.A. No. 10368 further mandates that: (1) the

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[74] Sec. 4 of R.A. No. 10368.

[75] Sec. 5 of R.A. No. 10368.

[76] Sec. 26 of R.A. No. 10368.

[77] *Id.*

[78] *Id.*

[79] Sec. 27 of R.A. No. 10368.

[80] "*Memorialization*" refers to the preservation of the memory of the human rights violations victims, objects, events and lessons learned during the Marcos regime. This is part of the inherent obligation of the State to

database prepared by the Board derived from the processing of claims shall be turned over to the Commission for archival purposes, and made accessible for the promotion of human rights to all government agencies and instrumentalities in order to prevent recurrence of similar abuses, encourage continuing reforms and contribute to ending impunity;[81] (2) the lessons learned from Martial Law atrocities and the lives and sacrifices of HRVVs shall be included in the basic and higher education curricula, as well as in continuing adult learning, prioritizing those most prone to commit human rights violations;[82] and (3) the Commission shall publish only those stories of HRVVs who have given prior informed consent.[83]

This Court cannot subscribe to petitioners' logic that the beneficial provisions of R.A. No. 10368 are not exclusive as it includes the prohibition on Marcos' burial at the LNMB. It would be undue to extend the law beyond what it actually contemplates. With its victim-oriented perspective, our legislators could have easily inserted a provision specifically proscribing Marcos' interment at the LNMB as a "reparation" for the HRVVs, but they did not. As it is, the law is silent and should remain to be so. This Court cannot read into the law what is simply not there. It is irregular, if not unconstitutional, for Us to presume the legislative will by supplying material details into the law. That would be tantamount to judicial legislation.

Considering the foregoing, the enforcement of the HRVVs' rights under R.A. No 10368 will surely not be impaired by the interment of Marcos at the LNMB. As opined by the OSG, the assailed act has no causal connection and legal relation to the law. The subject memorandum and directive of public

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acknowledge the wrongs committed in the past, to recognize the heroism and sacrifices of all Filipinos who were victims of gross human rights violations during Martial Law, and to prevent the recurrence of similar abuses. (Sec. 1 [j], Rule II, IRR of R.A. No. 10368).

[81] Sec. 1, Rule VII, IRR of R.A. No. 10368.

[82] Sec. 2, Rule VII, IRR of R.A. No. 10368.

[83] Sec. 3, Rule VII, IRR of R.A. No. 10368.

respondents do not and cannot interfere with the statutory powers and functions of the Board and the Commission. More importantly, the HRVVs' entitlements to the benefits provided for by R.A. No 10368 and other domestic laws are not curtailed. It must be emphasized that R.A. No. 10368 does not amend or repeal, whether express or implied, the provisions of the Administrative Code or AFP Regulations G 161-375:

> It is a well-settled rule of statutory construction that repeals by implication are not favored. In order to effect a repeal by implication, the later statute must be so irreconcilably inconsistent and repugnant with the existing law that they cannot be made to reconcile and stand together. The clearest case possible must be made before the inference of implied repeal may be drawn, for inconsistency is never presumed. There must be a showing of repugnance clear and convincing in character. The language used in the later statute must be such as to render it irreconcilable with what had been formerly enacted. An inconsistency that falls short of that standard does not suffice. x x x[84]

***C. On International Human Rights Laws***

Petitioners argue that the burial of Marcos at the LNMB will violate the rights of the HRVVs to "full" and "effective" reparation, which is provided under the *International Covenant on Civil and Political Rights* (ICCPR),[85] the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for*

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[84] *Remman Enterprises, Inc., et al. v. Professional Regulatory Board of Real Estate Service, et al.,* 726 Phil. 104, 118-119 (2014).

[85] **Article 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.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

*Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*[86]

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

[86] **IX. Reparation for harm suffered**

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

16. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.

17. States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements.

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes,

adopted by the U.N. General Assembly on December 16, 2005, and the *Updated Set of Principles for the Protection and*

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as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

(*a*) Physical or mental harm;

(*b*) Lost opportunities, including employment, education and social benefits;

(*c*) Material damages and loss of earnings, including loss of earning potential;

(*d*) Moral damage;

(*e*) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. *Rehabilitation* should include medical and psychological care as well as legal and social services.

22. *Satisfaction* should include, where applicable, any or all of the following:

(*a*) Effective measures aimed at the cessation of continuing violations;

(*b*) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

(*c*) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

(*d*) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

(*e*) Public apology, including acknowledgment of the facts and acceptance of responsibility;

(*f*) Judicial and administrative sanctions against persons liable for the violations;

(*g*) Commemorations and tributes to the victims;

(*h*) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

*Promotion of Human Rights Through Action to Combat Impunity*[87] dated February 8, 2005 by the U.N. Economic and Social Council.

We do not think so. The ICCPR,[88] as well as the U.N. principles on reparation and to combat impunity, call for the enactment

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23. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(*a*) Ensuring effective civilian control of military and security forces;

(*b*) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

(*c*) Strengthening the independence of the judiciary;

(*d*) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

(*e*) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(*f*) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(*g*) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(*h*) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

[87] PRINCIPLE 2. THE INALIENABLE RIGHT TO THE TRUTH

Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.

PRINCIPLE 3. THE DUTY TO PRESERVE MEMORY

A people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfillment of the State's duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.

[88] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966, entry into force

of legislative measures, establishment of national programmes, and provision for administrative and judicial recourse, in accordance with the country's constitutional processes, that are necessary to give effect to human rights embodied in treaties, covenants and other international laws. The U.N. principles on reparation expressly states:

> *Emphasizing* that the Basic Principles and Guidelines contained herein **do not** entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms[.] [Emphasis supplied]

The Philippines is more than compliant with its international obligations. When the Filipinos regained their democratic institutions after the successful People Power Revolution that culminated on February 25, 1986, the three branches of the government have done their fair share to respect, protect and fulfill the country's human rights obligations, to wit:

The 1987 Constitution contains provisions that promote and protect human rights and social justice.

As to judicial remedies, aside from the writs of *habeas corpus*, *amparo*,[89] and *habeas data*,[90] the Supreme Court promulgated on March 1, 2007 Administrative Order No. 25-2007,[91] which provides rules on cases involving extra-judicial killings of political ideologists and members of the media. The provision of the *Basic Principles and Guidelines* on the prevention of the victim's re-traumatization applies in the course

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March 23, 1976, in accordance with Article 49 (http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx, last accessed on October 28, 2016).

[89] A.M. No. 07-9-12-SC, Effective on October 24, 2007.

[90] A.M. No. 08-1-16-SC, Effective on February 2, 2008.

[91] Reiterated in OCA Circular No. 103-07 dated October 16, 2007 and OCA Circular No. 46-09 dated April 20, 2009.

of legal and administrative procedures designed to provide justice and reparation.[92]

On the part of the Executive Branch, it issued a number of administrative and executive orders. Notable of which are the following:

1. A.O. No. 370 dated December 10, 1997 *(Creating the Inter-Agency Coordinating Committee on Human Rights)*
2. E.O. No. 118 dated July 5, 1999 *(Providing for the Creation of a National Committee on the Culture of Peace)*
3. E.O. No. 134 dated July 31, 1999 *(Declaring August 12, 1999 and Every 12th Day of August Thereafter as International Humanitarian Law Day)*
4. E.O. No. 404 dated January 24, 2005 *(Creating the Government of the Republic of the Philippines Monitoring Committee [GRP-MC] on Human Rights and International Humanitarian Law)*
5. A.O. No. 157 dated August 21, 2006 *(Creating an Independent Commission to Address Media and Activist Killings)*
6. A.O. No. 163 dated December 8, 2006 *(Strengthening and Increasing the Membership of the Presidential Human Rights Committee, and Expanding Further the Functions of Said Committee)*[93]
7. A.O. No. 181 dated July 3, 2007 *(Directing the Cooperation and Coordination Between the National Prosecution Service and Other Concerned Agencies of*

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[92] **VI. Treatment of victims**

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

[93] Originated from A.O. No. 101 dated December 13, 1988 and A.O. No. 29 dated January 27, 2002.

*Government for the Successful Investigation and Prosecution of Political and Media Killings)*

8. A.O. No. 197 dated September 25, 2007 *(DND and AFP Coordination with PHRC Sub-committee on Killings and Disappearances)*
9. A.O. No. 211 dated November 26, 2007 *(Creating a Task Force Against Political Violence)*
10. A.O. No. 249 dated December 10, 2008 *(Further Strengthening Government Policies, Plans, and Programs for the Effective Promotion and Protection of Human Rights on the Occasion of the 60th Anniversary of the Universal Declaration of Human Rights)*
11. E.O. No. 847 dated November 23, 2009 *(Creating the Church-Police-Military-Liaison Committee to Formulate and Implement a Comprehensive Program to Establish Strong Partnership Between the State and the Church on Matters Concerning Peace and Order and Human Rights)*
12. A.O. No. 35 dated November 22, 2012 *(Creating the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons)*
13. A.O. No. 1 dated October 11, 2016 *(Creating the Presidential Task Force on Violations of the Right to Life, Liberty and Security of the Members of the Media)*

Finally, the Congress passed the following laws affecting human rights:

1. Republic Act No. 7438 *(An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof)*
2. Republic Act No. 8371*(The Indigenous Peoples' Rights Act of 1997)*
3. Republic Act No. 9201 *(National Human Rights Consciousness Week Act of 2002)*

4. Republic Act No. 9208 *(Anti-Trafficking in Persons Act of 2003)*
5. Republic Act No. 9262 *(Anti-Violence Against Women and Their Children Act of 2004)*
6. Republic Act No. 9344 *(Juvenile Justice and Welfare Act of 2006)*
7. Republic Act No. 9372 *(Human Security Act of 2007)*
8. Republic Act No. 9710 *(The Magna Carta of Women)*
9. Republic Act No. 9745 *(Anti-Torture Act of 2009)*
10. Republic Act No. 9851 *(Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity)*
11. Republic Act No. 10121 *(Philippine Disaster Risk Reduction and Management Act of 2010)*
12. Republic Act No. 10168 *(The Terrorism Financing Prevention and Suppression Act of 2012)*
13. Republic Act No. 10353 *(Anti-Enforced or Involuntary Disappearance Act of 2012)*
14. Republic Act No. 10364 *(Expanded Anti-Trafficking In Persons Act of 2012)*
15. Republic Act No. 10368 *(Human Rights Victims Reparation And Recognition Act of 2013)*
16. Republic Act No. 10530 *(The Red Cross and Other Emblems Act of 2013)*

Contrary to petitioners' postulation, our nation's history will not be instantly revised by a single resolve of President Duterte, acting through the public respondents, to bury Marcos at the LNMB. Whether petitioners admit it or not, the lessons of Martial Law are already engraved, albeit in varying degrees, in the hearts and minds of the present generation of Filipinos. As to the unborn, it must be said that the preservation and popularization of our history is not the sole responsibility of the Chief Executive; it is a joint and collective endeavor of every freedom-loving citizen of this country.

Notably, complementing the statutory powers and functions of the Human Rights Victims' Claims Board and the HRVV Memorial Commission in the memorialization of HRVVs, the National Historical Commission of the Philippines (*NHCP*),

formerly known as the National Historical Institute (*NHI*),[94] is mandated to act as the primary government agency responsible for history and is authorized to determine all factual matters relating to official Philippine history.[95] Among others, it is tasked to: (a) conduct and support all kinds of research relating to Philippine national and local history; (b) develop educational materials in various media, implement historical educational activities for the popularization of Philippine history, and disseminate, information regarding Philippine historical events, dates, places and personages; and (c) actively engage in the settlement or resolution of controversies or issues relative to historical personages, places, dates and events.[96] Under R.A. Nos. 10066 *(National Cultural Heritage Act of 2009)*[97] and 10086 *(Strengthening Peoples' Nationalism Through Philippine History Act)*,[98] the declared State policy is to conserve, develop, promote, and popularize the nation's historical and cultural heritage and resources.[99] Towards this end, means shall be provided to strengthen people's nationalism, love of country, respect for its heroes and pride for the people's accomplishments by reinforcing the importance of Philippine national and local history in daily life with the end in view of raising social consciousness.[100] Utmost priority shall be given not only with the research on history but also its popularization.[101]

**II.**

**The President's decision to bury Marcos at the LNMB is not done whimsically, capriciously or arbitrarily, out of malice, ill will or personal bias**

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[94] Sec. 4 of R.A. No. 10086.

[95] Sec. 5 of R.A. No. 10086.

[96] *Id.*

[97] Approved on March 26, 2010.

[98] Approved on May 12, 2010 and took effect on June 13, 2010.

[99] Sec. 2 of R.A. 10066 and Sec. 2 of R.A. 10086.

[100] *Id.*

[101] *Id.*

Petitioners contend that the interment of Marcos at the LNMB will desecrate it as a sacred and hallowed place and a revered national shrine where the mortal remains of our country's great men and women are interred for the inspiration and emulation of the present generation and generations to come. They erred.

### *A. National Shrines*

As one of the cultural properties of the Philippines, national historical shrines (or historical shrines) refer to sites or structures hallowed and revered for their history or association as declared by the NHCP.[102] The national shrines created by law and presidential issuance include, among others: Fort Santiago (*Dambana ng Kalayaan*) in Manila;[103] all battlefield areas in Corregidor and Bataan;[104] the site of First Mass in the Philippines in Magallanes, Limasawa, Leyte;[105] Aguinaldo Shrine or Freedom Shrine in Kawit, Cavite;[106] Fort San Antonio Abad National Shrine in Malate, Manila;[107] Tirad Pass National Shrine in Ilocos Sur;[108] Ricarte Shrine[109] and Aglipay Shrine[110] in Batac, Ilocos Norte; Liberty Shrine in Lapu-Lapu, Cebu;[111] "Red Beach" or the landing point of General Douglas MacArthur and the

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[102] See Sec. 4 (d) of R.A. 10066 in relation to Sec. 3 (u) of R.A. No. 10066 and Sec. 3 (n) of R.A. No. 10086. The Implementing Rules and Regulations of R.A. No. 10086 specifically defines National Historical Shrine as "a site or structure hallowed and revered for its association to national heroes or historical events declared by the Commission." (Art. 6[q.], Rule 5, Title I)

[103] R.A. No. 597, as amended by R.A. Nos. 1569 and 1607.

[104] E.O. No. 58 issued on August 16, 1954 (See *Arula v. Brig. Gen. Espino, etc., et al.*,138 Phil. 570, 589-591 [1969]) .

[105] R.A. No. 2733.

[106] R.A. No. 4039.

[107] Proclamation No. 207 dated May 27, 1967.

[108] Proclamation No. 433 dated July 23, 1968.

[109] R.A. No. 5648.

[110] R.A. No. 5649.

[111] R.A. No. 5695.

liberating forces in Baras, Palo, Leyte;[112] Dapitan City as a National Shrine City in Zamboanga Del Norte;[113] General Leandro Locsin Fullon National Shrine in Hamtic, Antique;[114] and Mabini Shrine in Polytechnic University of the Philippines - Mabini Campus, Sta. Mesa, Manila.[115] As sites of the birth, exile, imprisonment, detention or death of great and eminent leaders of the nation, it is the policy of the Government to hold and keep the national shrines as sacred and hallowed place.[116] P.D. No. 105[117] strictly prohibits and punishes by imprisonment and/or fine the desecration of national shrines by disturbing their peace and serenity through digging, excavating, defacing, causing unnecessary noise, and committing unbecoming acts within their premises. R.A. No. 10066 also makes it punishable to intentionally modify, alter, or destroy the original features of, or undertake construction or real estate development in any national shrine, monument, landmark and other historic edifices and structures, declared, classified, and marked by the NHCP as such, without the prior written permission from the National Commission for Culture and the Arts (*NCAA*).[118]

As one of the cultural agencies attached to the NCAA,[119] the NHCP manages, maintains and administers national shrines, monuments, historical sites, edifices and landmarks of significant historico-cultural value.[120] In particular, the NHCP Board has the power to approve the declaration of historic structures and

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[112] Proclamation No. 618 dated October 13, 1969, as amended by Proclamation No. 1272 dated June 4, 1974.

[113] R.A. No. 6468.

[114] Batas Pambansa Bilang 309 dated November 14, 1982.

[115] Proclamation No. 1992 dated February 8, 2010.

[116] P.D. No. 105 dated January 24, 1973.

[117] Entitled *"Declaring National Shrines As Sacred (Hallowed) Places And Prohibiting Desecration Thereof."* (Signed on January 24, 1973)

[118] Sec. 48 (b).

[119] Sec. 31 (d) of R.A. No. 10066.

[120] Sec. 5 (d) of R.A. No. 10086.

sites, such as national shrines, monuments, landmarks and heritage houses and to determine the manner of their identification, maintenance, restoration, conservation, preservation and protection.[121]

Excluded, however, from the jurisdiction of the NHCP are the military memorials and battle monuments declared as national shrines, which have been under the administration, maintenance and development of the Philippine Veterans Affairs Office (*PVAO*) of the DND. Among the military shrines are: Mt. Samat National Shrine in Pilar, Bataan;[122] Kiangan War Memorial Shrine in Linda, Kiangan, Ifugao;[123] Capas National Shrine in Capas, Tarlac;[124] Ricarte National Shrine in Malasin, Batac, Ilocos Norte;[125] Balantang Memorial Cemetery National Shrine in Jaro, Iloilo;[126] Balete Pass National Shrine in Sta. Fe, Nueva Vizcaya;[127] USAFIP, NL Military Shrine and Park in Bessang Pass, Cervantes, Ilocos Sur;[128] and the LNMB in Taguig City, Metro Manila.[129]

### *B. The Libingan Ng Mga Bayani*

At the end of World War II, the entire nation was left mourning for the death of thousands of Filipinos. Several places served as grounds for the war dead, such as the Republic Memorial Cemetery, the Bataan Memorial Cemetery, and other places throughout the country. The Republic Memorial Cemetery, in

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[121] Article 12 (e) and (f) Rule 8 Title III of the Implementing Rules and Regulations of R.A. No. 10086.

[122] Proclamation No. 25 dated April 18, 1966.

[123] Proclamation No. 1682 dated October 17, 1977.

[124] Proclamation No. 842 dated December 7, 1991 and R.A. No. 8221.

[125] Proclamation No. 228 dated August 12, 1993.

[126] Proclamation No. 425 dated July 13, 1994.

[127] R.A. No. 10796.

[128] http://server.pvao.mil.ph/PDF/shrines/usafipnl.pdf, last accessed on September 19, 2016.

[129] Proclamation No. 208 dated May 28, 1967.

particular, was established in May 1947 as a fitting tribute and final resting place of Filipino military personnel who died in World War II.

On October 23, 1954, President Ramon D. Magsaysay, Sr. issued E.O. No. 77, which ordered *"the remains of the war dead interred at the Bataan Memorial Cemetery, Bataan Province, and at other places in the Philippines, be transferred to, and reinterred at, the Republic Memorial Cemetery at Fort Wm Mckinley, Rizal Province"* so as to minimize the expenses for the maintenance and upkeep, and to make the remains accessible to the widows, parents, children, relatives, and friends.

On October 27, 1954, President Magsaysay issued Proclamation No. 86, which changed the name of Republic Memorial Cemetery to *Libingan Ng Mga Bayani* to symbolize *"the cause for which our soldiers have died"* and to *"truly express the nation's esteem and reverence for her war dead."*[130]

On July 12, 1957, President Carlos P. Garcia issued Proclamation No. 423, which reserved for military purposes, under the administration of the AFP Chief of Staff, the land where LNMB is located. The LNMB was part of a military reservation site then known as Fort Wm McKinley (now known as Fort Andres Bonifacio).

On May 28, 1967, Marcos issued Proclamation No. 208, which excluded the LNMB from the Fort Bonifacio military reservation and reserved the LNMB for national shrine purposes under the administration of the National Shrines Commission (*NSC*) under the DND.

On September 24, 1972, Marcos, in the exercise of his powers as the AFP Commander-in-Chief, and pursuant to Proclamation No. 1081 dated September 21, 1972, and General Order No. l dated September 22, 1972, as amended, issued Presidential Decree (*P.D.*) No. 1 which reorganized the Executive Branch of the National Government through the adoption of the Integrated Reorganization Plan (*IRP*). Section 7, Article XV,

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[130] See Whereas Clause of Proclamation No. 86.

Chapter I, Part XII thereof abolished the NSC and its functions together with applicable appropriations, records, equipment, property and such personnel as may be necessary were transferred to the NHI under the Department of Education (*DEC*). The NHI was responsible for promoting and preserving the Philippine cultural heritage by undertaking, *inter alia*, studies on Philippine history and national heroes and maintaining national shrines and monuments.[131]

Pending the organization of the DEC, the functions relative to the administration, maintenance and development of national shrines were tentatively integrated into the PVAO in July 1973.

On January 26, 1977, President Marcos issued P.D. No. 1076. Section 7, Article XV, Chapter I, Part XII of the IRP was repealed on the grounds that "*the administration, maintenance and development of national shrines consisting of military memorials or battle monuments can be more effectively accomplished if they are removed from the [DEC] and transferred to the [DND] by reason of the latter's greater capabilities and resources"* and that "*the functions of the [DND] are more closely related and relevant to the charter or significance of said national shrines."* Henceforth, the PVAO – through the Military Shrines Service (MSS), which was created to perform the functions of the abolished NSC – would administer, maintain and develop military memorials and battle monuments proclaimed as national shrines.

On July 25, 1987, President Corazon C. Aquino issued the Administrative Code. The Code retains PVAO under the supervision and control of the Secretary of National Defense.[132] Among others, PVAO shall administer, develop and maintain military shrines.[133] With the approval of PVAO Rationalization Plan on June 29, 2010, pursuant to E.O. No. 366 dated October 4, 2004, MSS was renamed to Veterans Memorial and Historical Division, under the supervision and control of PVAO, which

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[131] Section 1, Article XV, Chapter I, Part XII of the IRP.

[132] Book IV, Title VIII, Subtitle II, Chapter 1, Sec. 18.

[133] Book IV, Title VIII, Subtitle II, Chapter 5, Sec. 32(4).

is presently tasked with the management and development of military shrines and the perpetuation of the heroic deeds of our nation's veterans.

As a national military shrine, the main features, structures, and facilities of the LNMB are as follows:

1. **Tomb of the Unknown Soldiers** – The main structure constructed at the center of the cemetery where wreath laying ceremonies are held when Philippine government officials and foreign dignitaries visit the LNMB. The following inscription is found on the tomb: *"Here lies a Filipino soldier whose name is known only to God."* Behind the tomb are three marble pillars representing the three main island groups of the Philippines – Luzon, Visayas and Mindanao. Buried here were the remains of 39,000 Filipino soldiers who were originally buried in Camp O'Donnell Concentration Camp and Fort Santiago, Intramuros, Manila.

2. **Heroes Memorial Gate** – A structure shaped in the form of a large concrete tripod with a stairway leading to an upper view deck and a metal sculpture at the center. This is the first imposing structure one sees upon entering the grounds of the cemetery complex.

3. **Black Stone Walls** – Erected on opposite sides of the main entrance road leading to the Tomb of the Unknown Soldiers and just near the Heroes Memorial are two 12-foot high black stone walls which bear the words, *"I do not know the dignity of his birth, but I do know the glory of his death."* that General Douglas MacArthur made during his sentimental journey to the Philippines in 1961.

4. **Defenders of Bataan and Corregidor Memorial Pylon** – Inaugurated on April 5, 1977 by Secretary Renato S. De Villa in memory of the defenders of Bataan and Corregidor during World War II. This monument is dedicated as an eternal acknowledgment of their valor and sacrifice in defense of the Philippines.

5. **Korean Memorial Pylon** – A towering monument honoring the 112 Filipino officers and men who, as members of the Philippine Expeditionary Forces to Korea (PEFTOK), perished during the Korean War.

6. **Vietnam Veterans Memorial Pylon** – Dedicated to the members of the Philippine contingents and Philippine civic action groups to Vietnam (PHILCON-V and PHILCAG-V) who served as medical, dental, engineering construction, community and psychological workers, and security complement. They offered tremendous sacrifices as they alleviated human suffering in war-ravaged Vietnam from 1964-1971. Inscribed on the memorial pylon are the words: *"To build and not to destroy, to bring the Vietnamese people happiness and not sorrow, to develop goodwill and not hatred."*

7. **Philippine World War II Guerillas Pylon** – Erected by the Veterans Federation of the Philippines as a testimony to the indomitable spirit and bravery of the Filipino guerillas of World War II who refused to be cowed into submission and carried on the fight for freedom against an enemy with vastly superior arms and under almost insurmountable odds. Their hardship and sufferings, as well as their defeats and victories, are enshrined in this memorial.[134]

Contrary to the dissent, P.D. No. 105[135] does not apply to the LNMB. Despite the fact that P.D. No. 208 predated P.D. No. 105,[136] the LNMB was not expressly included in the national shrines enumerated in the latter.[137] The proposition that the LNMB

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[134] See Annex to the Manifestation of the AFP Adjutant General and http://server.pvao.mil.ph/PDF/shrines/libingan.pdf (last accessed on October 25, 2016).

[135] P.D. No. 105 is an issuance of Marcos, acting as the AFP Commander-in-Chief and by virtue of his powers under the Martial Law. It was not a law that was enacted by the Congress.

[136] P.D. No. 208 was signed on May 28, 1967 while P.D. No. 105 was signed on January 24, 1973.

[137] Among those named were the birthplace of Dr. Jose Rizal in Calamba, Laguna, Talisay, Dapitan City, where the hero was exiled for four years, Fort Santiago, Manila, where he was imprisoned in 1896 prior to his execution; Talaga, Tanauan, Batangas where Apolinario Mabini was born, Pandacan, Manila, where Mabini's house in which he died, is located; Aguinaldo Mansion in Kawit, Cavite, where General Emilio Aguinaldo, first President of the Philippines, was born, and where Philippine Independence was solemnly proclaimed on June 12, 1898; and Batan, Aklan, where the "Code of Kalantiyaw" was promulgated in 1433.

is implicitly covered in the catchall phrase *"and others which may be proclaimed in the future as National Shrines"* is erroneous because:

(1) As stated, Marcos issued P.D. No. 208 prior to P.D. No. 105.

(2) Following the canon of statutory construction known as *ejusdem generis*,[138] the LNMB is not a site *"of the birth, exile, imprisonment, detention or death of great and eminent leaders of the nation."* What P.D. No. 105 contemplates are the following national shrines: Fort Santiago (*"Dambana ng Kalayaan"*), all battlefield areas in Corregidor and Bataan, the site of First Mass in the Philippines, Aguinaldo Shrine or Freedom Shrine, Fort San Antonio Abad National Shrine, Tirad Pass National Shrine, Ricarte Shrine, Aglipay Shrine, Liberty Shrine, "Red Beach" or the landing point of General Douglas MacArthur and the liberating forces, Dapitan City, General Leandro Locsin Fullon National Shrine, and Mabini Shrine. Excluded are the military memorials and battle monuments declared as national shrines under the PVAO, such as: Mt. Samat National Shrine, Kiangan War Memorial Shrine, Capas National Shrine, Ricarte National Shrine, Balantang Memorial Cemetery National Shrine, Balete

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[138] Under the principle of *ejusdem generis*, "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned."

The purpose and rationale of the principle was explained by the Court in *National Power Corporation v. Angas* as follows:

> The purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms. [2 Sutherland, Statutory Construction, 3rd ed., pp. 395-400]. (See *Pelizloy Realty Corp. v. The Province of Benguet*, 708 Phil. 466, 480-481 [2013], as cited in *Alta Vista Golf and Country Club v. City of Cebu*, G.R. No. 180235, January 20, 2016)

Pass National Shrine; USAFIP, NL Military Shrine and Park, and the LNMB.

(3) Since its establishment, the LNMB has been a military shrine under the jurisdiction of the PVAO. While P.D. No. 1 dated September 24, 1972 transferred the administration, maintenance and development of national shrines to the NHI under the DEC, it never actually materialized. Pending the organization of the DEC, its functions relative to national shrines were tentatively integrated into the PVAO in July 1973. Eventually, on January 26, 1977, Marcos issued P.D. No. 1076. The PVAO, through the MSS, was tasked to administer, maintain, and develop military memorials and battle monuments proclaimed as national shrines. The reasons being that *"the administration, maintenance and development of national shrines consisting of military memorials or battle monuments can be more effectively accomplished if they are removed from the [DEC] and transferred to the [DND] by reason of the latter's greater capabilities and resources"* and that *"the functions of the [DND] are more closely related and relevant to the charter or significance of said national shrines."*

The foregoing interpretation is neither narrow and myopic nor downright error. Instead, it is consistent with the letter and intent of P.D. No. 105.

Assuming that P.D. No. 105 is applicable, the descriptive words *"sacred and hallowed"* refer to the LNMB as a place and not to each and every mortal remains interred therein. Hence, the burial of Marcos at the LNMB does not diminish said cemetery as a revered and respected ground. Neither does it negate the presumed individual or collective "heroism" of the men and women buried or will be buried therein. The *"nation's esteem and reverence for her war dead,"* as originally contemplated by President Magsaysay in issuing Proclamation No. 86, still stands unaffected. That being said, the interment of Marcos, therefore, does not constitute a violation of the physical, historical, and cultural integrity of the LNMB as a national military shrine.

At this juncture, reference should be made to Arlington National Cemetery (*Arlington*), which is identical to the LNMB in terms of its prominence in the U.S. It is not amiss to point

that our armed forces have been patterned after the U.S. and that its military code produced a salutary effect in the Philippines' military justice system.[139] Hence, relevant military rules, regulations, and practices of the U.S. have persuasive, if not the same, effect in this jurisdiction.

As one of the U.S. Army national military cemeteries,[140] the Arlington is under the jurisdiction of the Department of the Army.[141] The Secretary of the U.S. Army has the responsibility to develop, operate, manage, administer, oversee, and fund the Army national military cemeteries in a manner and to standards that fully honor the service and sacrifices of the deceased members of the armed forces buried or inurned therein, and shall prescribe such regulations and policies as may be necessary to administer the cemeteries.[142] In addition, the Secretary of the U.S. Army is empowered to appoint an advisory committee, which shall make periodic reports and recommendations as well as advise the Secretary with respect to the administration of the cemetery, the erection of memorials at the cemetery, and master planning for the cemetery.[143]

Similar to the Philippines, the U.S. national cemeteries are established as national shrines in tribute to the gallant dead who have served in the U.S. Armed Forces.[144] The areas are protected, managed and administered as suitable and dignified burial grounds and as significant cultural resources.[145] As such, the authorization of activities that take place therein is limited to those that are consistent with applicable legislation and that

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[139] See *Cudia v. The Superintendent of the Philippine Military Academy (PMA)*, G.R. No. 211362, February 24, 2015, 751 SCRA 469, 542.

[140] Also includes the United States Soldiers' and Airmen's National Cemetery in the District of Columbia.

[141] See 32 C.F.R. § 553.3 and 10 U.S.C.A. § 4721.

[142] *Id*.

[143] 10 U.S.C.A. § 4723.

[144] 36 C.F.R. § 12.2.

[145] *Id*.

are compatible with maintaining their solemn commemorative and historic character.[146]

The LNMB is considered as a national shrine for military memorials. The PVAO, which is empowered to administer, develop, and maintain military shrines, is under the supervision and control of the DND. The DND, in turn, is under the Office of the President.

The presidential power of control over the Executive Branch of Government is a self-executing provision of the Constitution and does not require statutory implementation, nor may its exercise be limited, much less withdrawn, by the legislature.[147] This is why President Duterte is not bound by the alleged 1992 Agreement[148] between former President Ramos and the Marcos

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[146] *Id*.

[147] See *National Electrification Administration v. COA*, 427 Phil. 464, 485 (2002).

[148] On August 19, 1992, the Government of the Republic of the Philippines, represented by Department of Interior and Local Government (*DILG*) Secretary Rafael M. Alunan III, and the family of the late President Marcos, represented by his widow, Mrs. Imelda R. Marcos, agreed on the following conditions and procedures by which the remains of the former President shall be brought back to and interred in the Philippines:

I

It is hereby agreed that the remains of former President Ferdinand E. Marcos shall be allowed to be brought back to the Philippines from Hawaii, USA on 1 September 1992.

II

That the remains shall be brought directly from Hawaii, USA to Laoag, Ilocos Norte by means of an aircraft which shall fly directly to its port of destination at Laoag International Airport, Laoag, Ilocos Norte. It shall be understood that once the aircraft enters the Philippine area of responsibility, stopover for whatever reason in any airport other than the airport of destination shall be allowed only upon prior clearance from the Philippine Government.

III

That the family of the late President Marcos undertakes to fix a wake period of nine (9) days beginning 1 September 1992 to allow friends, relatives and supporters to pay their courtesy, last respect and homage to the former President at the Marcos family home at Batac,

family to have the remains of Marcos interred in Batac, Ilocos Norte. As the incumbent President, he is free to amend, revoke

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Ilocos Norte. It shall undertake further to maintain peaceful and orderly wake and/or help and cooperate with the local government authorities ensure that the same will not be used to foment and promote civil disorder.

IV

That the remains shall be buried [temporarily interred] on the 9th of September 1992 at the family burial grounds at Batac, Ilocos Norte, provided that any transfer of burial grounds shall be with prior clearance from the Philippine Government taking into account the prevailing socio-political climate.

V

The government shall provide appropriate military honors during the wake and interment, the details of which shall be arranged and finalized by and between the parties thereto.

VI

The Government shall ensure that the facilities at Laoag International Airport will allow for a safe landing as well as processing of incoming passengers, their cargoes and/or existing laws and regulations.

On August 26, 1992, DILG Secretary Alunan informed Mrs. Marcos of the government's decision that former President Marcos be accorded honors befitting a war veteran, and a former member of the AFP which, in general terms, includes the following: Flag Draped Coffin, Vigil Guards during the wake, Honor Guard, Firing Detail, Taps, and Pallbearers composed of retired generals under his command.

On August 25, 1993, Roque R. Ablan Jr. wrote DILG Secretary Alunan, confirming the previous arrangements between him and Mrs. Marcos, and also the arrangements made by Ablan before President Fidel V. Ramos on the following matters:

1. Direct flight of the remains of the late Pres. Marcos from Honolulu to Laoag.
2. That there will be an interim burial of the late Pres. Marcos in Batac, Ilocos Norte until such time when President Ramos will feel that the healing period would have been attain[ed] and that he shall be transferred to Manila for final burial.
3. That the remains will not be paraded to the other provinces.
4. That [Ablan] discussed this with Mrs. Marcos this morning and that she had given me full authority to assure the government that everything will be in accordance with the memo of understanding, and the pronouncement made by President Ramos that the remains can stay at the Don Mariano Marcos State University provided no government expenditures will be incurred and that the place will not be disturbed.

or rescind political agreements entered into by his predecessors, and to determine policies which he considers, based on informed judgment and presumed wisdom, will be most effective in carrying out his mandate.

Moreover, under the Administrative Code, the President has the power to reserve for public use and for specific public purposes any of the lands of the public domain and that the reserved land shall remain subject to the specific public purpose indicated until otherwise provided by law or proclamation.[149] At present, there is no law or executive issuance specifically excluding the land in which the LNMB is located from the use it was originally intended by the past Presidents. The allotment of a cemetery plot at the LNMB for Marcos as a former President and Commander-in-Chief,[150] a legislator,[151] a Secretary of National Defense,[152] a military personnel,[153] a

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Ablan also informed DILG Secretary Alunan of the following details: (1) the remains of former President Marcos would arrive in Laoag City, Ilocos Norte on September 7, 1993; (2) from the airport, the remains would be brought to the Laoag City Cathedral, and after the mass, it would be brought to the Capitol for public viewing; (3) on the next day, the remains would be brought to Batac where it should be placed side by side with the late Doña Josefa Edralin Marcos; (4) that on September 9, Doña Josefa Marcos would be buried in the cemetery besides Governor Elizabeth Marcos Roca; and (5) on September 10, the late President Marcos would be buried in the mausoleum.

On September 10, 1993, the coffin of former President Marcos was opened inside the mausoleum and was subsequently placed inside a transparent glass for viewing.

[149] Book III, Title I, Chapter 4, Section 14 of the Administrative Code.

[150] From December 30, 1965 until February 25, 1986 when he and his immediate family members were forcibly exiled in the USA because of the EDSA People Power Revolution.

[151] He was an Assemblyman (1949 to 1959) and a Senator (1959-1965), serving as Senate President during his last three (3) years.

[152] From December 31, 1965 to January 20, 1967.

[153] On November 15, 1941, Marcos was called and inducted to the United States Armed Forces in the Far East (*USAFFE*) as Third Lieutenant. From November 16, 1941 to April 8, 1942, he was assigned as assistant G-2 of

veteran,[154] and a Medal of Valor awardee,[155] whether recognizing his contributions or simply his status as such, satisfies the public use requirement. The disbursement of public funds to cover the expenses incidental to the burial is granted to compensate him for valuable public services rendered.[156] Likewise, President Duterte's determination to have Marcos' remains interred at the LNMB was inspired by his desire for national healing and reconciliation. Presumption of regularity in the performance of official duty prevails over petitioners' highly disputed factual allegation that, in the guise of exercising a presidential prerogative, the Chief Executive is actually motivated by *utang na loob* (*debt of gratitude*) and *bayad utang* (*payback*) to the Marcoses. As the purpose is not self-evident, petitioners have the burden of proof to establish the factual basis of their claim. They failed. Even so, this Court cannot take cognizance of factual issues since We are not a trier of facts.

### *C. AFP Regulations on the LNMB*

A review of the regulations issued by the AFP Chief of Staff as to who may and may not be interred at the LNMB underscores

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the 21st (Lightning) Division of the USAFFE, where he attained the rank of First Lieutenant. He was then promoted to the rank of Colonel under Special Orders No. 68 dated September 25, 1962. In Special Orders No. 264 dated June 11, 1963 and General Orders No. 265 dated May 19, 1964, he remained listed as Colonel. (See Annex "13" of the Consolidated Comment filed by the OSG).

[154] The PVAO recognized Marcos as a member of the retired army personnel. Based on a Certification dated August 18, 2016 issued by PVAO's Records Management Division Chief, respondent Imelda Romualdez Marcos is receiving 5,000.00 as Old Age Pension, being the surviving spouse of a retired veteran under R.A. No. 6948, as amended. (See Annex "12" of the Consolidated Comment filed by the OSG).

[155] During his military career, Marcos was awarded a Medal of Valor through General Orders No. 167 dated October 16, 1968 *"for extraordinary gallantry and intrepidity at the risk of life, above and beyond the call of duty in a suicidal action against overwhelming enemy forces at the junction of Salian River and Abo-Abo River, Bataan, on or about 22 January 1942."* (See Annex "14" of Consolidated Comment filed by the OSG).

[156] See *Yap v. Commission on Audit*, 633 Phil. 174, 188 (2010).

the nature and purpose of the LNMB as an active military cemetery/grave site.

On May 13, 1947, the Chief of Staff of the Philippine Army, by the direction of the President and by order of the Secretary of National Defense, issued General Orders No. 111, which constituted and activated, as of said date, the Graves Registration Platoon as a unit of the Philippine Army.

On February 2, 1960, the AFP Chief of Staff, by order of the Secretary of National Defense, issued AFP Regulations G 161-371 (Administrative and Special Staff Services, Grave Registration Service), which provided that the following may be interred in the LNMB: (a) World War II dead of the AFP and recognized guerillas; (b) Current dead of the AFP; (c) Retired military personnel of the AFP; (d) Remains of former members of the AFP who died while in the active service and in the Retired List of the AFP now interred at different cemeteries and other places throughout the Philippines or the Secretary of National Defense; and (e) Others upon approval of the Congress of the Philippines, the President of the Philippines or the Secretary of National Defense. The regulation also stated that the AFP Quartermaster General will be responsible for, among other matters, the efficient operation of the Graves Registration Service; the interment, disinterment and reinterment of the dead mentioned above; and preservation of military cemeteries, national cemeteries, and memorials.

On July 31, 1973, the AFP Chief of Staff, by order of the Secretary of National Defense, issued AFP Regulations G 161-372 (Administration and Operation of AFP Graves Registration Installations), which superseded AFP Regulations G 161-371. It provided that the following may be interred in the LNMB: (a) Deceased Veterans of the Philippine Revolution of 1896/ World War I; (b) Deceased World War II members of the AFP and recognized guerillas; (c) Deceased military personnel of the AFP who died while in the active duty; (d) Deceased retired military personnel of the AFP; (e) Deceased military personnel of the AFP interred at different cemeteries and other places outside the LNMB; and (f) Such remains of persons as the

Commander-in-Chief of the AFP may direct. The remains of the following were not allowed to be interred in the LNMB: (a) The spouse of an active, or retired, deceased military personnel, recognized guerillas who himself/herself is not a military personnel; and (b) AFP personnel who were retireable but separated/reverted/ discharged for cause, or joined and aided the enemy of the Republic of the Philippines, or were convicted of capital or other criminal offenses, involving moral turpitude. The regulation also stated that the Quartermaster General shall be responsible for, among other matters, the efficient operation of the AFP graves registration installations; the interment, disinterment and reinterment of deceased military personnel mentioned above; and the preservation of military cemeteries, proper marking and official recording of graves therein.

On April 9, 1986, AFP Chief of Staff Fidel V. Ramos, by order of National Defense Minister, issued AFP Regulations G 161-373 (Allocation of Cemetery Plots at the *Libingan Ng Mga Bayani*), which superseded AFP Regulations G 161-372. It enumerated a list of deceased person who may be interred at the LNMB, namely: (a) Medal of Valor Awardees; (b) Presidents or Commanders-in-Chief, AFP; (c) Ministers of National Defense; (d) Chiefs of Staff, AFP; (e) General/Flag Officers of the AFP; (f) Active and retired military personnel of the AFP; (g) Veterans of Philippine Revolution of 1896, WWI, WW II and recognized guerillas; and (h) Government Dignitaries, Statesmen, National Artist and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, *Batasang Pambansa* or the Minister of National Defense. The regulation also stated that the Quartermaster General shall be responsible for the allocation of specific section/ areas for the said deceased persons, while the Commanding Officer of the Quartermaster Graves Registration Company shall be charged with the preparation of grave sites, supervision of burials at LNMB and the registration of graves.

On March 27, 1998, the AFP Chief of Staff, by order of the Secretary of National Defense, issued AFP Regulations G 161-374 (Allocation of Cemetery Plots at the *Libingan Ng Mga Bayani*), which superseded AFP Regulations G 161-373. It

provided that the following may be interred in the LNMB: (a) Medal of Valor Awardees; (b) Presidents or Commanders-in-Chief, AFP; (c) Secretaries of National Defense; (d) Chiefs of Staff, AFP; (e) General/Flag Officers of the AFP; (f) Active and retired military personnel of the AFP; (g) Veterans of Philippine Revolution of 1890, WWI, WWII and recognized guerillas; (h) Government Dignitaries, Statesmen, National Artists and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, Congress or Secretary of National Defense; and (i) Former Presidents, Secretaries of Defense, CSAFP, Generals/Flag Officers, Dignitaries, Statesmen, National Artists, widows of former Presidents, Secretaries of National Defense and Chief of Staff. The remains of the following were not allowed to be interred in the LNMB: (a) Personnel who were dishonorably separated/reverted/discharged from the service; and (b) Authorized personnel who were convicted by final judgment of an offense involving moral turpitude. Like AFP Regulations G 161-373, it stated that the Quartermaster General shall be responsible for the allocation of specific section/areas for the deceased persons, whereas the Commanding Officer of the Quartermaster Graves Registration Unit shall be charged with the preparation of grave sites, supervision of burials, and the registration of graves.

Finally, on September 11, 2000, the AFP Chief of Staff, by the order of the Secretary of National Defense, issued AFP Regulations G 161-375 (Allocation of Cemetery Plots at the *Libingan Ng Mga Bayani*), which superseded AFP Regulations G 161-374. The regulation stated that the Chief of Staff shall be responsible for the issuance of interment directive for all active military personnel for interment, authorized personnel (such as those former members of the AFP who laterally entered or joined the Philippine Coast Guard [*PCG*] and the Philippine National Police [*PNP*]), and retirees, veterans and reservists enumerated therein. The Quartermaster General is tasked to exercise over-all supervision in the implementation of the regulation and the Commander ASCOM, PA through the Commanding Officer of Grave Services Unit is charged with the registration of the deceased/graves, the allocation of specific

section/area at the LNMB for interment of deceased, the preparation of grave sites, and the supervision of burials.

Under AFP Regulations G 161-375, the following are eligible for interment at the LNMB: (a) Medal of Valor Awardees; (b) Presidents or Commanders-in-Chief, AFP; (c) Secretaries of National Defense; (d) Chiefs of Staff, AFP; (e) General/ Flag Officers of the AFP; (f) Active and retired military personnel of the AFP to include active draftees and trainees who died in line of duty, active reservists and CAFGU Active Auxiliary (CAA) who died in combat operations or combat related activities; (g) Former members of the AFP who laterally entered or joined the PCG and the PNP; (h) Veterans of Philippine Revolution of 1890, WWI, WWII and recognized guerillas; (i) Government Dignitaries, Statesmen, National Artists and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, Congress or the Secretary of National Defense; and (j) Former Presidents, Secretaries of Defense, Dignitaries, Statesmen, National Artists, widows of Former Presidents, Secretaries of National Defense and Chief of Staff. Similar to AFP Regulations G 161-374, the following are not qualified to be interred in the LNMB: (a) Personnel who were dishonorably separated/reverted/discharged from the service; and (b) Authorized personnel who were convicted by final judgment of an offense involving moral turpitude.

In the absence of any executive issuance or law to the contrary, the AFP Regulations G 161-375 remains to be the sole authority in determining who are entitled and disqualified to be interred at the LNMB. Interestingly, even if they were empowered to do so, former Presidents Corazon C. Aquino and Benigno Simeon C. Aquino III, who were themselves aggrieved at the Martial Law, did not revise the rules by expressly prohibiting the burial of Marcos at the LNMB. The validity of AFP Regulations G 161-375 must, therefor, be sustained for having been issued by the AFP Chief of Staff acting under the direction of the Secretary of National Defense, who is the alter ego of the President.

x x x In *Joson v. Torres*, we explained the concept of the alter ego principle or the doctrine of qualified political agency and its limit in this wise:

Under this doctrine, which recognizes the establishment of a single executive, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, **except in cases where the Chief Executive is required by the Constitution or law to act in person or the exigencies of the situation demand that he act personally**, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the Secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive presumptively the acts of the Chief Executive. (Emphasis ours, citation omitted.)[157]

It has been held that an administrative regulation adopted pursuant to law has the force and effect of law and, until set aside, is binding upon executive and administrative agencies, including the President as the chief executor of laws.[158]

***1. Qualification under the AFP Regulations***

AFP Regulations G 161-375 should not be stricken down in the absence of clear and unmistakable showing that it has been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Neither could it be considered *ultra vires* for purportedly providing incomplete, whimsical, and capricious standards for qualification for burial at the LNMB.

To compare, We again refer to the U.S. Army regulations on Arlington. In the U.S., the Secretary of the Army, with the approval of the Secretary of Defense, determines eligibility for interment or inurnment in the Army national military cemeteries.[159] Effective October 26, 2016, the rule[160] is as follows:

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[157] *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, G.R. Nos. 180771 & 181527, December 8, 2015.

[158] *Almario, et al. v. Executive Secretary, et al., supra* note 46, at 166.

[159] 10 U.S.C.A. § 4722.

[160] 32 C.F.R. § 553.12.

Only those who qualify as a primarily eligible person or a derivatively eligible person are eligible for interment in Arlington National Cemetery, unless otherwise prohibited as provided for in §§ 553.19[161]

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[161] The following persons are not eligible for interment, inurnment, or memorialization in an Army National Military Cemetery:

(a) A father, mother, brother, sister, or in-law solely on the basis of his or her relationship to a primarily eligible person, even though the individual is:

(1) Dependent on the primarily eligible person for support; or

(2) A member of the primarily eligible person's household.

(b) A person whose last period of service was not characterized as an honorable discharge (e.g., a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal), regardless of whether the person:

(1) Received any other veterans' benefits; or

(2) Was treated at a Department of Veterans Affairs hospital or died in such a hospital.

(c) A person who has volunteered for service with the U.S. Armed Forces, but has not yet entered on active duty.

(d) A former spouse whose marriage to the primarily eligible person ended in divorce.

(e) A spouse who predeceases the primarily eligible person and is interred or inurned in a location other than Arlington National Cemetery, and the primarily eligible person remarries.

(f) A divorced spouse of a primarily eligible person.

(g) Otherwise derivatively eligible persons, such as a spouse or minor child, if the primarily eligible person was not or will not be interred or inurned at Arlington National Cemetery.

(h) A service member who dies while on active duty, if the first General Courts Martial Convening Authority in the service member's chain of command determines that there is clear and convincing evidence that the service member engaged in conduct that would have resulted in a separation or discharge not characterized as an honorable discharge (e.g., a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal) being imposed, but for the death of the service member.

(i) Animal remains. If animal remains are unintentionally commingled with human remains due to a natural disaster, unforeseen accident, act of war or terrorism, violent explosion, or similar incident, and such remains cannot be separated from the remains of an eligible person, then the remains may be interred or inurned with the eligible person, but the identity of the animal remains shall not be inscribed or identified on a niche, marker, headstone, or otherwise. (See 32 C.F.R. § 553.19)

–553.20,[162] provided that the last period of active duty of the service member or veteran ended with an honorable discharge.

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[162] (a) Prohibition. Notwithstanding §§ 553.12–553.16, 553.18, and 553.22, pursuant to 10 U.S.C. 985 and 38 U.S.C. 2411, the interment, inurnment, or memorialization in an Army National Military Cemetery of any of the following persons is prohibited:

(1) Any person identified in writing to the Executive Director by the Attorney General of the United States, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a Federal capital crime and whose conviction is final (other than a person whose sentence was commuted by the President).

(2) Any person identified in writing to the Executive Director by an appropriate State official, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a State capital crime and whose conviction is final (other than a person whose sentence was commuted by the Governor of the State).

(3) Any person found under procedures specified in § 553.21 to have committed a Federal or State capital crime but who has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution. Notice from officials is not required for this prohibition to apply.

(4) Any person identified in writing to the Executive Director by the Attorney General of the United States or by an appropriate State official, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a Federal or State crime causing the person to be a Tier III sex offender for purposes of the Sex Offender Registration and Notification Act, who for such crime is sentenced to a minimum of life imprisonment and whose conviction is final (other than a person whose sentence was commuted by the President or the Governor of a State, as the case may be).

(b) Notice. The Executive Director is designated as the Secretary of the Army's representative authorized to receive from the appropriate Federal or State officials notification of conviction of capital crimes referred to in this section.

(c) Confirmation of person's eligibility.

(1) If notice has not been received, but the Executive Director has reason to believe that the person may have been convicted of a Federal capital crime or a State capital crime, the Executive Director shall seek written confirmation from:

(i) The Attorney General of the United States, with respect to a suspected Federal capital crime; or

(ii) An appropriate State official, with respect to a suspected State capital crime.

(a) Primarily eligible persons. The following are primarily eligible persons for purposes of interment:

(1) Any service member who dies on active duty in the U.S. Armed Forces (except those service members serving on active duty for training only), if the General Courts Martial Convening Authority grants a certificate of honorable service.

(2) Any veteran retired from a Reserve component who served a period of active duty (other than for training), is carried on the official retired list, and is entitled to receive military retired pay.

(3) Any veteran retired from active military service and entitled to receive military retired pay.

(4) Any veteran who received an honorable discharge from the Armed Forces prior to October 1, 1949, who was discharged for a permanent physical disability, who served on active duty (other than for training), and who would have been eligible for retirement under the provisions of 10 U.S.C. 1201 had the statute been in effect on the date of separation.

(5) Any veteran awarded one of the following decorations:

(i) Medal of Honor;[163]

(ii) Distinguished Service Cross, Air Force Cross, or Navy Cross;

(iii) Distinguished Service Medal;

(iv) Silver Star; or

(v) Purple Heart.

(6) Any veteran who served on active duty (other than active duty for training) and who held any of the following positions:

(i) President or Vice President of the United States;

(ii) Elected member of the U.S. Congress;

(iii) Chief Justice of the Supreme Court of the United States or Associate Justice of the Supreme Court of the United States;

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(2) The Executive Director will defer the decision on whether to inter, inurn, or memorialize a decedent until a written response is received. (See 32 C.F.R. § 553.20).

[163] The medal of honor awarded posthumously to a deceased member of the armed forces who, as an unidentified casualty of a particular war or other armed conflict, is interred in the Tomb of the Unknowns at Arlington National Cemetery, Virginia, is awarded to the member as the representative of the members of the armed forces who died in such war or other armed conflict and whose remains have not been identified, and not to the individual personally. (10 U.S.C.A. § 1134)

(iv) A position listed, at the time the person held the position, in 5 U.S.C. 5312[164] or 5313[165] (Levels I and II of the Executive Schedule); or

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[164] Includes the Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Transportation, United States Trade Representative, Secretary of Energy, Secretary of Education, Secretary of Veterans Affairs, Secretary of Homeland Security, Director of the Office of Management and Budget, Commissioner of Social Security, Social Security Administration, Director of National Drug Control Policy, Chairman and Board of Governors of the Federal Reserve System, and Director of National Intelligence.

[165] Includes the Deputy Secretary of Defense, Deputy Secretary of State, Deputy Secretary of State for Management and Resources, Administrator of Agency for International Development, Administrator of the National Aeronautics and Space Administration, Deputy Secretary of Veterans Affairs, Deputy Secretary of Homeland Security, Under Secretary of Homeland Security for Management, Deputy Secretary of the Treasury, Deputy Secretary of Transportation, Chairman of Nuclear Regulatory Commission, Chairman of Council of Economic Advisers, Director of the Office of Science and Technology, Director of the Central Intelligence Agency, Secretary of the Air Force, Secretary of the Army, Secretary of the Navy, Administrator of Federal Aviation Administration, Director of the National Science Foundation, Deputy Attorney General, Deputy Secretary of Energy, Deputy Secretary of Agriculture, Director of the Office of Personnel Management, Administrator of Federal Highway Administration, Administrator of the Environmental Protection Agency, Under Secretary of Defense for Acquisition, Technology, and Logistics, Deputy Secretary of Labor, Deputy Director of the Office of Management and Budget, Independent Members of Thrift Depositor Protection Oversight Board, Deputy Secretary of Health and Human Services, Deputy Secretary of the Interior, Deputy Secretary of Education, Deputy Secretary of Housing and Urban Development, Deputy Director for Management of Office of Management and Budget, Director of the Federal Housing Finance Agency, Deputy Commissioner of Social Security, Social Security Administration, Administrator of the Community Development Financial Institutions Fund, Deputy Director of National Drug Control Policy, Members and Board of Governors of the Federal Reserve System, Under Secretary of Transportation for Policy, Chief Executive Officer of Millennium Challenge Corporation, Principal Deputy Director of National Intelligence, Director of the National Counterterrorism Center, Director of the National Counter Proliferation Center, Administrator of the Federal Emergency Management Agency and Federal Transit Administrator.

(v) Chief of Mission of a Category 4, 5, or 5+ post if the Department of State classified that post as a Category 4, 5, or 5+ post during the person's tenure as Chief of Mission.

(7) Any former prisoner of war who, while a prisoner of war, served honorably in the active military service, and who died on or after November 30, 1993.

(b) Derivatively eligible persons. The following individuals are derivatively eligible persons for purposes of interment who may be interred if space is available in the gravesite of the primarily eligible person:

(1) The spouse of a primarily eligible person who is or will be interred in Arlington National Cemetery. A former spouse of a primarily eligible person is not eligible for interment in Arlington National Cemetery under this paragraph.

(2) The spouse of an active duty service member or an eligible veteran, who was:

(i) Lost or buried at sea, temporarily interred overseas due to action by the Government, or officially determined to be missing in action;

(ii) Buried in a U.S. military cemetery maintained by the American Battle Monuments Commission; or

(iii) Interred in Arlington National Cemetery as part of a group burial (the derivatively eligible spouse may not be buried in the group burial gravesite).

(3) The parents of a minor child or a permanently dependent adult child, whose remains were interred in Arlington National Cemetery based on the eligibility of a parent at the time of the child's death, unless eligibility of the non-service connected parent is lost through divorce from the primarily eligible parent.

(4) An honorably discharged veteran who does not qualify as a primarily eligible person, if the veteran will be buried in the same gravesite as an already interred primarily eligible person who is a close relative, where the interment meets the following conditions:

(i) The veteran is without minor or unmarried adult dependent children;

(ii) The veteran will not occupy space reserved for the spouse, a minor child, or a permanently dependent adult child;

(iii) All other close relatives of the primarily eligible person concur with the interment of the veteran with the primarily eligible person by signing a notarized statement;

(iv) The veteran's spouse waives any entitlement to interment in Arlington National Cemetery, where such entitlement might be based on the veteran's interment in Arlington National Cemetery.

The Executive Director may set aside the spouse's waiver, provided space is available in the same gravesite, and all close relatives of the primarily eligible person concur;

(v) Any cost of moving, recasketing, or revaulting the remains will be paid from private funds.

There is a separate list of eligible with respect to the inurnment of cremated remains in the Columbarium,[166] interment of

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[166] The following persons are eligible for inurnment in the Arlington National Cemetery Columbarium, unless otherwise prohibited as provided for in §§ 553.19–553.20, provided that the last period of active duty of the service member or veteran ended with an honorable discharge.

(a) Primarily eligible persons. The following are primarily eligible persons for purposes of inurnment:

(1) Any person eligible for interment in Arlington National Cemetery, as provided for in § 553.12(a).

(2) Any veteran who served on active duty other than active duty for training.

(3) Any member of a Reserve component of the Armed Forces who dies while:

(i) On active duty for training or performing full-time duty under title 32, United States Code;

(ii) Performing authorized travel to or from such active duty for training or full-time duty;

(iii) On authorized inactive-duty training, including training performed as a member of the Army National Guard of the United States or the Air National Guard of the United States; or

(iv) Hospitalized or receiving treatment at the expense of the Government for an injury or disease incurred or contracted while on such active duty for training or full-time duty, traveling to or from such active duty for training or full-time duty, or on inactive-duty training.

(4) Any member of the Reserve Officers' Training Corps of the United States, Army, Navy, or Air Force, whose death occurs while:

(i) Attending an authorized training camp or cruise;

(ii) Performing authorized travel to or from that camp or cruise; or

(iii) Hospitalized or receiving treatment at the expense of the Government for injury or disease incurred or contracted while attending such camp or cruise or while traveling to or from such camp or cruise.

(5) Any citizen of the United States who, during any war in which the United States has been or may hereafter be engaged, served in the armed forces of any government allied with the United States during that war, whose last service ended honorably by death or otherwise, and who was a citizen of the United States at the time of entry into that service and at the time of death.

(6) Commissioned officers, United States Coast and Geodetic Survey (now National Oceanic and Atmospheric Administration) who die during

cremated remains in the Unmarked Area,[167] and group burial.[168] As a national military cemetery, eligibility standards for interment,

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or subsequent to the service specified in the following categories and whose last service terminated honorably:

(i) Assignment to areas of immediate military hazard.

(ii) Served in the Philippine Islands on December 7, 1941.

(iii) Transferred to the Department of the Army or the Department of the Navy under certain statutes.

(7) Any commissioned officer of the United States Public Health Service who served on full-time duty on or after July 29, 1945, if the service falls within the meaning of active duty for training as defined in 38 U.S.C. 101(22) or inactive duty training as defined in 38 U.S.C. 101(23) and whose death resulted from a disease or injury incurred or aggravated in line of duty. Also, any commissioned officer of the Regular or Reserve Corps of the Public Health Service who performed active service prior to July 29, 1945 in time of war; on detail for duty with the Armed Forces; or while the service was part of the military forces of the United States pursuant to Executive order of the President.

(8) Any Active Duty Designee as defined in this part.

(b) Derivatively eligible persons. Those connected to an individual described in paragraph (a) of this section through a relationship described in § 553.12(b). Such individuals may be inurned if space is available in the primarily eligible person's niche. (32 C.F.R. § 553.13).

[167] (a) The cremated remains of any person eligible for interment in Arlington National Cemetery as described in § 553.12 may be interred in the designated Arlington National Cemetery Unmarked Area.

(b) Cremated remains must be interred in a biodegradable container or placed directly into the ground without a container. Cremated remains are not authorized to be scattered at this site or at any location within Arlington National Cemetery.

(c) There will be no headstone or marker for any person choosing this method of interment. A permanent register will be maintained by the Executive Director.

(d) Consistent with the one-gravesite-per-family policy, once a person is interred in the Unmarked Area, any derivatively eligible persons and spouses must be interred in this manner. This includes spouses who are also primarily eligible persons. No additional gravesite, niche, or memorial marker in a memorial area will be authorized. (32 C.F.R. § 553.14).

[168] (a) The Executive Director may authorize a group burial in Arlington National Cemetery whenever several people, at least one of whom is an active duty service member, die during a military-related activity and not all remains can be individually identified.

inurnment, or memorialization in Arlington are based on **honorable military service**.[169] Exceptions to the eligibility standards for new graves, which are rarely granted, are for those persons who have made **significant contributions that directly and substantially benefited the U.S. military**.[170]

Judging from the foregoing, it is glaring that the U.S. Army regulations on Arlington and the AFP Regulations G 161-375 on the LNMB, as a general rule, recognize and reward the military services or military related activities of the deceased. Compared with the latter, however, the former is actually less generous in granting the privilege of interment since only the spouse or parent, under certain conditions, may be allowed "if space is available in the gravesite of the primarily eligible person."

It is not contrary to the "well-established custom," as the dissent described it, to argue that the word "*bayani*" in the LNMB has become a misnomer since while a symbolism of heroism may attach to the LNMB as a national shrine for military memorial, the same does not automatically attach to its feature as a military cemetery and to those who were already laid or will be laid therein. As stated, the purpose of the LNMB, both from the legal and historical perspectives, has neither been to confer to the people buried there the title of "hero" nor to require that only those interred therein should be treated as a "hero." In fact, the privilege of internment at the LNMB has been loosen up through the years. Since 1986, the list of eligible includes not only those who rendered active military service or military-related activities but also non-military personnel who were recognized for their significant contributions to the Philippine society (such as government dignitaries, statesmen, national artists, and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, Congress or

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(b) Before authorizing a group burial that includes both United States and foreign decedents, the Executive Director will notify the Department of State and request that the Department of State notify the appropriate foreign embassy. (32 C.F.R. § 553.15).

[169] 32 C.F.R. § 553.22(a).

[170] *Id*.

Secretary of National Defense). In 1998, the widows of former Presidents, Secretaries of National Defense and Chief of Staff were added to the list. Whether or not the extension of burial privilege to civilians is unwarranted and should be restricted in order to be consistent with the original purpose of the LNMB is immaterial and irrelevant to the issue at bar since it is indubitable that Marcos had rendered significant active military service and military-related activities.

Petitioners did not dispute that Marcos was a former President and Commander-in-Chief, a legislator, a Secretary of National Defense, a military personnel, a veteran, and a Medal of Valor awardee. For his alleged human rights abuses and corrupt practices, we may disregard Marcos as a President and Commander-in-Chief, but we cannot deny him the right to be acknowledged based on the other positions he held or the awards he received. In this sense, We agree with the proposition that Marcos should be viewed and judged in his totality as a person. While he was not all good, he was not pure evil either. Certainly, just a human who erred like us.

Our laws give high regard to Marcos as a Medal of Valor awardee and a veteran. R.A. No. 9049[171] declares the policy of the State "*to consistently honor its military heroes in order to strengthen the patriotic spirit and nationalist consciousness of the military.*"[172] For the "*supreme self-sacrifice and distinctive acts of heroism and gallantry,*"[173] a Medal of Valor awardee or his/her dependents/heirs/beneficiaries are entitled to the following social services and financial rewards:

1. Tax-exempt lifetime monthly gratuity of Twenty Thousand Pesos (₱20,000.00), which is separate and distinct from any salary or pension that the awardee

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[171] Approved on March 22, 2001 and published in national newspapers of general circulation on April 9, 2001 as well as in the Official Gazette on July 9, 2001. It repealed P.D. No. 1687 dated March 24, 1980.

[172] Sec. 1 of R.A. No. 9049.

[173] *Id.*

currently receives or will receive from the government of the Philippines;[174]

2. Precedence in employment in government agencies or government-owned or controlled corporation, if the job qualifications or requirements are met;
3. Priority in the approval of the awardee's housing application under existing housing programs of the government;
4. Priority in the acquisition of public lands under the Public Land Act and preferential right in the lease of pasture lands and exploitation of natural resources;
5. Privilege of obtaining loans in an aggregate amount not exceeding Five Hundred Thousand Pesos (₱500,000.00) from government-owned or controlled financial institutions without having to put up any collateral or constitute any pledge or mortgage to secure the payment of the loan;
6. Twenty (20%) percent discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishments, restaurants, recreation and sport centers and purchase of medicine anywhere in the country;
7. Twenty (20%) percent discount on admission fees charged by theaters, cinema houses and concert halls, circuses, carnivals and other similar places of culture, leisure and amusement;
8. Free medical and dental services and consultation in hospital and clinics anywhere in the country;
9. Exemption from the payment of tuition and matriculation fees in public or private schools, universities, colleges and other educational institutions in any pre-school, baccalaureate or post-graduate courses such as or including course leading to the degree of Doctor of Medicine (*MD*), Bachelor of Laws (*LLB*), and Bachelor of Science in Nursing (*BSN*) or allied and similar courses; and

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[174] In the event of the awardee's death, the gratuity shall accrue in equal shares and with the right of accretion to the surviving spouse until she remarries and to the children, legitimate, or adopted or illegitimate, until they reach the age of eighteen (18) or until they marry, whichever comes earlier.

10. If interested and qualified, a quota is given to join the cadet corps of the Philippine Military Academy or otherwise priority for direct commission, call to active duty (*CAD*) and/or enlistment in regular force of the AFP.

On the other hand, in recognizing their patriotic services in times of war and peace for the cause of freedom and democracy; for the attainment of national unity, independence, and socioeconomic advancement; and for the maintenance of peace and order,[175] R.A. No. 6948, as amended,[176] grants our veterans[177] and their dependents or survivors with pension (old age, disability, total administrative disability, and death) and non-pension (burial, education, hospitalization, and medical care and treatment) benefits as well as provisions from the local governments. Under the law, the benefits may be withheld if the Commission on Human Rights certifies to the AFP General Headquarters that the veteran has been found **guilty by final judgment** of a gross human rights violation **while in the service**, but this factor shall not be considered taken against his next of kin.[178]

### *2. Disqualification under the AFP Regulations*

Aside from being eligible for burial at the LNMB, Marcos possessed none of the disqualifications stated in AFP Regulations G 161-375. He was neither convicted by final judgment of the

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[175] Sec. 1 of R.A. No. 6948.

[176] Amended by R.A. Nos. 7696, 9396, and 9499.

[177] A veteran refers to "any person who: (1) rendered military service in the land, sea or air forces of the Philippines during the revolution against Spain, the Philippine-American War, and World War II, including Filipino citizens who served with the Allied Forces in Philippine territory; (2) was a member of the Philippine Expeditionary Forces sent to the Korean War and the Philippine Civic Action Group sent to the Vietnam War; (3) rendered military service in the Armed Forces of the Philippines (AFP) and has been honorably discharged or retired after at least twenty (20) years total cumulative active service or sooner separated while in the active service in the AFP due to death or disability arising from a wound or injury received or sickness or disease incurred in line of duty."(Sec. 2 [a] of R.A. No. 6948, as amended by R.A. No. 9396).

[178] Sec. 25 of R.A. No. 6948.

offense involving moral turpitude nor dishonorably separated/reverted/discharged from active military service.

Petitioners, however, protest that a narrow interpretation of the AFP regulations disregards historical context and the rule on statutory construction. They urge the Court to construe statutes not literally but according to their spirit and reason.

It is argued that Marcos committed offenses involving moral turpitude for his gross human rights violations, massive graft and corruption, and dubious military records, as found by foreign and local courts as well as administrative agencies. By going into exile, he deliberately evaded liability for his actions. And by allowing death to overtake him, he inevitably escaped the prospect of facing accountability for his crimes. They also contend that his removal in the 1986 popular uprising is a clear sign of his discharge from the AFP. The People Power Revolution was the direct exercise of the Filipinos' power to overthrow an illegitimate and oppressive regime. As a sovereign act, it necessarily includes the power to adjudge him as dishonorably discharged from the AFP.

Furthermore, according to petitioners, to limit the application of the disqualifying provisions of AFP Regulations G 161-375 only to soldiers would be unfair (since, unlike Presidents, soldiers have an additional cause for disqualification) and lead to absurd results (because soldiers who were dishonorably discharged would be disqualified for acts that are less atrocious than that committed by Marcos). Also, the AFP regulations would place Marcos in the same class as the other Philippine Presidents when in fact he is a class of his own, *sui generis*. The other Presidents were never removed by People Power Revolution and were never subject of laws declaring them to have committed human rights violations. Thus, the intended burial would be an act of similarly treating persons who are differently situated.

Despite all these ostensibly persuasive arguments, the fact remains that Marcos was not convicted by final judgment of any offense involving moral turpitude. No less than the 1987 Constitution mandates that a person shall not be held to answer for a criminal offense without due process of law and that, "*[i]n*

*all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf."*[179] Even the U.N. principles on reparation and to combat impunity cited by petitioners unequivocally guarantee the rights of the accused, providing that:

**XIII. Rights of others**

27. Nothing in this document is to be construed as derogating from internationally or nationally protected rights of others, in particular the right of an accused person to benefit from applicable standards of due process.

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**PRINCIPLE 9. GUARANTEES FOR PERSONS IMPLICATED**

Before a commission identifies perpetrators in its report, the individuals concerned shall be entitled to the following guarantees:
(a) The commission must try to corroborate information implicating individuals before they are named publicly;
(b) The individuals implicated shall be afforded an opportunity to provide a statement setting forth their version of the facts either at a hearing convened by the commission while conducting its investigation or through submission of a document equivalent to a right of reply for inclusion in the commission's file.

To note, in the U.S., a person found to have committed a Federal or State capital crime (*i.e.*, a crime which a sentence of imprisonment for life or death penalty may be imposed) but who has not been convicted by reason of not being available for trial due to death or flight to avoid prosecution, may be ineligible for interment, inurnment, or memorialization in an Army national military cemetery. Nevertheless, such ineligibility must still observe the procedures specified in § 553.21.[180]

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[179] Section 14, Article III.

[180] (a) Preliminary inquiry. If the Executive Director has reason to believe that a decedent may have committed a Federal capital crime or a State capital

The various cases cited by petitioners, which were decided with finality by courts here and abroad, have no bearing in this case since they are merely **civil** in nature; hence, cannot and do not establish moral turpitude.

Also, the equal protection clause is not violated. Generally, there is no property right to safeguard because even if one is

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crime but has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution, the Executive Director shall submit the issue to the Army General Counsel. The Army General Counsel or his or her designee shall initiate a preliminary inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information.

(b) Decision after preliminary inquiry. If, after conducting the preliminary inquiry described in paragraph (a) of this section, the Army General Counsel or designee determines that credible evidence exists suggesting the decedent may have committed a Federal capital crime or State capital crime, then further proceedings under this section are warranted to determine whether the decedent committed such crime. Consequently the Army General Counsel or his or her designee shall present the personal representative with a written notification of such preliminary determination and a dated, written notice of the personal representative's procedural options.

(c) Notice and procedural options. The notice of procedural options shall indicate that, within fifteen days, the personal representative may:

(1) Request a hearing;

(2) Withdraw the request for interment, inurnment, or memorialization; or

(3) Do nothing, in which case the request for interment, inurnment, or memorialization will be considered to have been withdrawn.

(d) Time computation. The fifteen-day time period begins on the calendar day immediately following the earlier of the day the notice of procedural options is delivered in person to the personal representative or is sent by U.S. registered mail or, if available, by electronic means to the personal representative. It ends at midnight on the fifteenth day. The period includes weekends and holidays.

(e) Hearing. The purpose of the hearing is to allow the personal representative to present additional information regarding whether the decedent committed a Federal capital crime or a State capital crime. In lieu of making a personal appearance at the hearing, the personal representative may submit relevant documents for consideration.

(1) If a hearing is requested, the Army General Counsel or his or her designee shall conduct the hearing.

(2) The hearing shall be conducted in an informal manner.

(3) The rules of evidence shall not apply.

eligible to be buried at the LNMB, such fact would only give him or her the *privilege* to be interred therein. Unless there is a favorable recommendation from the Commander-in-Chief, the Congress or the Secretary of National Defense, no *right* can be said to have ripen. Until then, such *inchoate* right is not legally demandable and enforceable.

Assuming that there is a property right to protect, the requisites of equal protection clause are not met.[181] In this case, there is

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(4) The personal representative and witnesses may appear, at no expense to the Government, and shall, in the discretion of the Army General Counsel or his or her designee, testify under oath. Oaths must be administered by a person who possesses the legal authority to administer oaths.

(5) The Army General Counsel or designee shall consider any and all relevant information obtained.

(6) The hearing shall be appropriately recorded. Upon request, a copy of the record shall be provided to the personal representative.

(f) Final determination. After considering the opinion of the Army General Counsel or his or her designee, and any additional information submitted by the personal representative, the Secretary of the Army or his or her designee shall determine the decedent's eligibility for interment, inurnment, or memorialization. This determination is final and not appealable.

(1) The determination shall be based on evidence that supports or undermines a conclusion that the decedent's actions satisfied the elements of the crime as established by the law of the jurisdiction in which the decedent would have been prosecuted.

(2) If an affirmative defense is offered by the decedent's personal representative, a determination as to whether the defense was met shall be made according to the law of the jurisdiction in which the decedent would have been prosecuted.

(3) Mitigating evidence shall not be considered.

(4) The opinion of the local, State, or Federal prosecutor as to whether he or she would have brought charges against the decedent had the decedent been available is relevant but not binding and shall be given no more weight than other facts presented.

(g) Notice of decision. The Executive Director shall provide written notification of the Secretary's decision to the personal representative. (See 32 C.F.R. § 553.21; Effective: October 26, 2016 ).

[181] The requirements for a valid and reasonable classification are: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class. (*Ferrer, Jr. v. Bautista*, G.R. No. 210551, June 30, 2015, 760 SCRA 652, 709-710).

a real and substantial distinction between a military personnel and a former President. The conditions of dishonorable discharge under the Articles of War[182] attach only to the members of the military. There is also no substantial distinction between Marcos and the three Philippine Presidents buried at the LNMB (Presidents Quirino, Garcia, and Macapagal). All of them were not convicted of a crime involving moral turpitude. In addition, the classification between a military personnel and a former President is germane to the purposes of Proclamation No. 208 and P.D. No. 1076. While the LNMB is a national shrine for **military** memorials, it is also an active **military** cemetery that recognizes the **status or position** held by the persons interred therein.

Likewise, Marcos was honorably discharged from military service. PVAO expressly recognized him as a retired veteran pursuant to R.A. No. 6948, as amended. Petitioners have not shown that he was dishonorably discharged from military service under AFP Circular 17, Series of 1987 (Administrative Discharge Prior to Expiration of Term of Enlistment) for violating Articles 94, 95 and 97 of the Articles of War.[183]

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[182] Commonwealth Act No. 408 dated September 14, 1938, as amended.

[183] ARTICLE 94. *Various Crimes*. – Any person subjected to military law who commits any crime, breach of law or violation of municipal ordinance, which is recognized as an offense of a penal nature and is punishable under the penal laws of the Philippines or under municipal ordinances, on a Philippine Army reservation, shall be punished as a court-martial may direct; *Provided*, That in time of peace, officers and enlisted men of the Philippine Constabulary shall not be triable by courts-martial for any felony, crime, breach of law or violation of municipal ordinances committed under this Article.

ARTICLE 95. *Frauds Against the Government Affecting Matters and Equipments*. – Any person subject to military law who, having charge, possession, custody, or control of any money or other property of the Commonwealth of the Philippines, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any paper certifying the receipt of any property of the Commonwealth of the Philippines furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained and with intent to defraud the Philippines; or

The NHCP study[184] is incomplete with respect to his entire military career as it failed to cite and include the official records of the AFP.

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Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the Commonwealth of the Philippines furnished or intended for the military service thereof; or

Who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition, clothing subsistence stores, or other property of the Commonwealth of the Philippines, such soldier, officer, or other person not having lawful right to sell or pledge the same;

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge, or by any or all of said penalties. And if any person, being guilty of any of the offenses aforesaid while in the military service of the Philippines, received his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed. And if any officer, being guilty, while in the military service of the Philippines of embezzlement of ration savings, post exchange, company, or other like funds, or of embezzlement of money or other property entrusted to his charge by an enlisted man or men, receives his discharge, or is dismissed, or is dropped from the rolls, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not been so discharged, dismissed, or dropped from the rolls.

ARTICLE 97. *General Article*. – Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline and all conduct of a nature to bring discredit upon the military service shall be taken cognizance of by a general or special or summary court-martial according to the nature and degree of the offense, and punished at the discretion of such court. (Commonwealth Act No. 408 dated September 14, 1938, as amended by P.D. 1166 dated June 24, 1977)

Article 94 is under the jurisdiction of civil courts while Articles 95 to 97, as service-connected crimes or offenses, are under the jurisdiction of the court-martial. (See R.A. No. 7055, Approved on June 20, 1991)

[184] On July 12, 2016, the NHCP published its study, entitled "*Why Ferdinand E. Marcos Should Not Be Buried At The Libingan Ng Mga Bayani,*" concluding that Marcos' military record is fraught with myths, factual inconsistencies, and lies. The NHCP study demonstrated that: (1) Marcos lied about receiving U.S. Medals (Distinguished Service Cross, Silver Star,

With respect to the phrase *"[p]ersonnel who were dishonorably separated/reverted/discharged from the service,"* the same should be viewed in light of the definition provided by AFP Regulations G 161-375 to the term *"active service"* which is *"[s]ervice rendered by a military person as a Commissioned Officer, enlisted man/woman, probationary officer, trainee or draftee in the Armed Forces of the Philippines* ***and*** *service rendered by him/her as a civilian official or employee in the Philippine Government* ***prior to*** *the date of his/her separation or retirement from the Armed Forces of the Philippines, for which military and/or civilian service he/she shall have received pay from the Philippine Government, and/or such others as may be hereafter be prescribed by law as active service (PD 1638, as amended)."*[185] To my mind, the word "service" should be construed as that rendered by a military person in the AFP, including civil service, from the time of his/her commission, enlistment, probation, training or drafting, up to the date of his/her separation or retirement from the AFP. Civil service after honorable separation and retirement from the AFP is outside the context of "service" under AFP Regulations G 161-375.

Hence, it cannot be conveniently claimed that Marcos' ouster from the presidency during the EDSA Revolution is tantamount to his dishonorable separation, reversion or discharge from the military service. The fact that the President is the Commander-in-Chief of the AFP under the 1987 Constitution only enshrines the principle of supremacy of civilian authority over the military. Not being a military person who may be prosecuted before the

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and Order of Purple Heart); (2) his guerilla unit, the *Ang Mga Maharlika*, was never officially recognized and neither was his leadership of it; (3) U.S. officials did not recognize Marcos' rank promotion from Major in 1944 to Lt. Col. by 1947; and (4) some of Marcos' actions as a soldier were officially called into question by the upper echelons of the U.S. Military, such as his command of the Allas Intelligence Unit (described as "usurpation"), his commissioning of officers (without authority), his abandonment of USAFIP-NL presumably to build an airfield for Gen. Roxas, his collection of money for the airfield (described as "illegal"), and his listing of his name on the roster of different units (called a "malicious criminal act").

[185] Emphasis supplied.

court martial, the President can hardly be deemed *"dishonorably separated/reverted/discharged from the service"* as contemplated by AFP Regulations G 161-375. Dishonorable discharge through a successful revolution is an extra-constitutional and direct sovereign act of the people which is beyond the ambit of judicial review, let alone a mere administrative regulation.

It is undeniable that former President Marcos was forced out of office by the people through the so-called EDSA Revolution. Said political act of the people should not be automatically given a particular legal meaning other than its obvious consequence – that of ousting him as president. To do otherwise would lead the Court to the treacherous and perilous path of having to make choices from multifarious inferences or theories arising from the various acts of the people. It is not the function of the Court, for instance, to divine the exact implications or significance of the number of votes obtained in elections, or the message from the number of participants in public assemblies. If the Court is not to fall into the pitfalls of getting embroiled in political and oftentimes emotional, if not acrimonious, debates, it must remain steadfast in abiding by its recognized guiding stars – clear constitutional and legal rules – not by the uncertain, ambiguous and confusing messages from the actions of the people.

**Conclusion**

In sum, there is no clear constitutional or legal basis to hold that there was a grave abuse of discretion amounting to lack or excess of jurisdiction which would justify the Court to interpose its authority to check and override an act entrusted to the judgment of another branch. Truly, the President's discretion is not totally unfettered. "Discretion is not a free-spirited stallion that runs and roams wherever it pleases but is reined in to keep it from straying. In its classic formulation, 'discretion is not unconfined and vagrant' but 'canalized within banks that keep it from overflowing.'"[186] At bar, President Duterte, through the public respondents, acted within the bounds of the law and jurisprudence.

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[186] *Almario, et al. v. Executive Secretary, et al., supra* note 46, at 163.

Notwithstanding the call of human rights advocates, the Court must uphold what is legal and just. And that is not to deny Marcos of his rightful place at the LNMB. For even the Framers of our Constitution intend that full respect for human rights is available at any stage of a person's development, from the time he or she becomes a person to the time he or she leaves this earth.[187]

There are certain things that are better left for history – not this Court – to adjudge. The Court could only do so much in accordance with the clearly established rules and principles. Beyond that, it is ultimately for the people themselves, as the sovereign, to decide, a task that may require the better perspective that the passage of time provides. **In the meantime, the country must move on and let this issue rest.**

**WHEREFORE, PREMISES CONSIDERED,** the petitions are **DISMISSED**. Necessarily, the *Status Quo Ante Order* is hereby **LIFTED**.

*Velasco, Jr.* and *Leonardo-de Castro, JJ.*, concur in the *ponencia* and also in the separate opinion of *J. Mendoza.*

*Brion, Bersamin, Perez,* and *Mendoza, JJ.*, see separate concurring opinions.

*Del Castillo* and *Perlas-Bernabe, JJ.*, join the separate opinion of *J. Mendoza.*

*Sereno, C.J., Carpio, Leonen,* and *Caguioa, JJ.*, dissents, see dissenting opinions.

*Jardeleza, J.*, joins the dissent of *J. Caguioa.*

*Reyes, J.*, inhibited, no part.

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[187] Vol. IV Record, September 19, 1986, pp. 829-831; See also Bernas, Joaquin G., S.J., *The Intent of the 1986 Constitution Writers*, 1995, pp. 116-117.

## SEPARATE CONCURRING OPINION

**BRION, *J.*:**

I write this Separate Concurring Opinion to express the reasons for my vote to dismiss the petitions assailing President Rodrigo Duterte's order to inter the remains of former President Ferdinand Marcos at the Libingan ng Mga Bayani (*LNMB*).

I opine that the Court cannot grant the petitions as the petitioners presented issues that are outside our judicial authority – as defined by law and jurisprudence – to resolve.

I am not insensitive to the plight of victims of human rights violations, nor am I unaware of the allegations they raised against the Marcos administration. But their emotions and beliefs cannot and should not influence the faithful discharge of my duties as a Member of this Court.

The judicial power that the Court wields is symbolized by a blindfolded lady carrying a set of scales for a reason: it bases its decision, not on who the litigants are, nor on the clout – political, emotional, or financial – they may carry; judicial adjudication is based on law and evidence alone. Under this standard, I cannot grant the petitions without knowingly crossing the line separating judicial power from judicial overreach.

To my mind, the present petitions, however emotionally charged they might be, do not present ***an actual case or controversy*** that calls for the exercise of the power of judicial review.

Without an actual case or controversy, we cannot and should not exercise this exceptional power; even our expanded jurisdiction under the Constitution does not allow exceptions to this deficiency. For us to indulge in this exercise would not only amount to a judicial overreach, but could possibly thrust this Court into a political minefield that could not be traversed without weakening the public's trust and confidence in our institution.

Ours is a power that emanates from the authority, granted to us under the Constitution, to interpret and apply the law in actual and live disputes. We exercise this power through the decisions we render in cases presented before us; without the public's respect and trust in the legal soundness of our decisions, our pronouncements would be no different from meaningless doodles that children write on throw away papers.

Even if we were to exercise our power of judicial review in these petitions, the exercise of our judgment should be limited by the following considerations:

***First***, judicial review, even under our Court's expanded jurisdiction, does not empower the Court to *directly* pass upon allegations involving *violations of statutes*;

***Second***, the Constitution's "faithful execution" clause cannot be made the basis to question the Executive's manner of implementing our laws;

***Third***, the petitioners failed to specify any treaty obligation prohibiting Marcos' burial at the LNMB;

***Fourth***, the Constitution, while built on the ashes of the Marcos regime, should not be interpreted in a way that would prevent reconciliation and the country's move towards national unity; and

***Finally***, the necessity of Marcos' burial at the LNMB is a political question that the President has decided, and is not without support from the Filipino electorate.

I shall discuss these points in the order posed above.

***Judicial review, even under our Court's expanded jurisdiction, does not empower the Court to directly pass upon allegations involving violations of statutes.***

The petitions directly assail before this Court the President's decision allowing the interment of the remains of former President Marcos at the LNMB; they impute grave abuse of discretion on President Duterte for this decision and seek, under this Court's expanded jurisdiction, the nullification of his actions. By doing

so, the petitioners directly seek the exercise of our power of judicial review.

After due consideration, I find that these petitions failed to establish the necessity of the Court's *direct* exercise of its power of judicial review, as their cited legal bases and arguments largely involve violations of the law or its misapplication. *The remedy available to them, given their objective, is not judicial review under the Court's expanded jurisdiction, but the ordinary remedies available for errors of law under the Rules of Court.*

Thus, we cannot grant to the petitioners the remedy they seek, as their desired remedy lies outside this Court's power to directly provide.

The petitions collectively assert that the burial order violates several statutes and implementing rules and regulations, among them: AFP Regulations G 161-373,[1] Republic Act (*RA*) No. 289,[2] and RA 10368.[3] The petitions further assert that the President's failure to interpret these laws, together or in relation with one another, to bar Marcos' burial at the LNMB, violates the faithful execution clause and the spirit of the 1987 Constitution.

Indeed, our Court now possesses the duty to determine and to act when "grave abuse of discretion amounting to lack or excess of jurisdiction on the part of … the government" exists. This is a grant of power under the second paragraph of Article VIII, Section 1 of the 1987 Constitution.

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[1] AFP Regulations G 161-373 Allocation of Cemetery Plots at the LNMB, issued on 9 April 1986 by then AFP Chief of Staff General Fidel V. Ramos and then President Corazon Aquino.

[2] An Act Providing for the Construction of a National Pantheon for Presidents of the Philippines, National Heroes, and Pantheon for Presidents of the Philippines, National Heroes, and Patriots of the Country, 16 June 1948. "Section 1: To perpetuate the memory of all the Presidents of the Philippines, national heroes and patriots for the inspiration and emulation of this generation and of generations still unborn, x x x" (Emphasis by petitioner)

[3] Human Rights Victims Reparation and Recognition Act of 2013.

Under the expanded jurisdiction that the Constitution granted this Court, our duty to exercise judicial review runs broad and deep; it exists even when an aspect of the case involves a political question. We have in fact cited this duty to justify the relaxation of the "standing" requirement for judicial review when the case presents a matter of transcendental importance, a standard that the Court has formulated and self-defined to allow for the exceptional application of our jurisdiction.

Separately from all these, I have also been pushing for an alternative approach in invoking our expanded jurisdiction, by recognizing that a *prima facie* showing of grave abuse of discretion on the part of the government in *cases involving constitutional violations*, should be sufficient to give a Filipino citizen the standing to seek judicial remedy.

The Court's expanded jurisdiction, however, affects only the *means* of invoking judicial review, and does not change the nature of this power at all. The power of judicial review pertains to the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution.[4] As a requirement for its *direct exercise* by this Court, the "grave abuse of discretion" that triggers the Court's expanded jurisdiction must necessarily involve a violation of the Constitution.

In other words, the Court's direct authority to exercise its expanded jurisdiction is limited to the determination of the

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[4] *Garcia v. Executive Secretary*, G.R. No. 157584 , April 2, 2009. Note, at this point, that judicial review is an aspect of judicial power, which the Constitution defines as the power to "settle actual controversies involving rights which are legally demandable and enforceable"; thus the Court necessarily exercises judicial power when engaging in judicial review, but not all exercises of judicial power includes, or needs, the exercise of the judicial review power. Judicial review, when approached through the traditional route, requires the existence of four requirements, *viz*: (1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.

*constitutionality* of a governmental act. Grave abuse of discretion arising from mere violations of statutes cannot, as a rule, be the subject of the Court's direct exercise of its expanded jurisdiction. *The petitioners' recourse in this situation lies with other judicial remedies or proceedings, allowed under the Rules of Court, that may arrive in due course at the Court's portals for review.*

In the context of the present case, for the Court to directly exercise its expanded jurisdiction, the petitioners carry the burden of proving, *prima facie*, that the President's decision to inter Marcos at the LNMB violates the Constitution.

This view is not only in accord with existing pronouncements on judicial review and the exercise of judicial power; it is also the more prudent and practicable option for the Court.

Opening the Court's direct exercise of its expanded jurisdiction to acts that violate statutes, however grave the abuse of the statute might be, significantly dilutes the doctrines of *hierarchy of courts*,[5] *primary jurisdiction*,[6] and *exhaustion of administrative*

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[5] Under the principle of hierarchy of courts, direct recourse to this Court is improper because the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket. *Republic of the Philippines v. Caguioa*, G.R. No. 174385, February 20, 2013.

[6] The doctrine of primary jurisdiction holds that if a case is such that its determination requires the expertise, specialized training and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the courts is had even if the matter may well be within their proper jurisdiction. It applies where a claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative agency. In such a case, the court in which the claim is sought to be enforced may suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice. *Euro-med Laboratories Phil. v. Province of Batangas*, G.R. No. 148106, July 17, 2006.

*remedies*.[7] In short, the necessity for the application of these doctrines diminishes when recourse to the Court is immediately and directly made available.

The practice of directly accessing this Court could also possibly add petitions that are jointly cognizable with the lower courts, to the Court's already clogged dockets, and deluge this Court with matters that are highly technical in nature or are premature for adjudication. Let it be remembered that the Supreme Court is not a trier of facts; this adjudicatory role belongs, as a rule, to the lower courts.

In these lights, I find that the petitioners' allegations equating President Duterte's alleged statutory violations (when he issued his burial order) to grave abuse of discretion, are not the proper subject of judicial review under the Court's *direct* exercise of its expanded jurisdiction.

Assuming, hypothetically, that several statutes have indeed been erroneously applied by the President, the remedy for the petitioners is not the *direct and immediate* recourse to this Court for the nullification of the illegal acts committed. Violations of statutes by the Executive may be assailed through administrative bodies that possess the expertise on the applicable laws and that possess as well the technical expertise on the information subject of, or relevant to, the dispute.

For these statutory violations, recourse may be made before the courts through an appeal of the administrative body's ruling, or by filing for a petition for declaratory relief before the lower court with jurisdiction over the matter. Only when these lower courts have rendered their decisions should these matters be elevated to this Court by appeal or *certiorari*; even then, the issues the petitioners may present are limited to questions of law, not to questions of fact.

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[7] The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.

***The faithful execution clause does not allow the constitutionalization of issues that, if proven to be true, would amount to the violation of statutes.***

Neither can I agree that the "faithful execution" clause found in the Constitution may be used to constitutionalize issues that primarily involve the manner by which laws are implemented.

The Constitution vests in the President the power to execute laws under Section 1, Article VII of the 1987 Constitution which provides:

SECTION 1. The executive power shall be vested in the President of the Philippines.

The Constitution has apparently left out from this provision a definition of what "executive power" exactly is, in order to give the President sufficient flexibility and leeway in the implementation of laws. We thus have jurisprudence recognizing the vast and plenary nature of executive power,[8] and the President's vast discretion in implementing laws.

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Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact. *Republic v. Lacap*, G.R. No. 158253, March 2, 2007, 517 SCRA 255, 265.

[8] In *Sanlakas v. Executive Secretary*, G.R. No. 159085, February 3, 2004, for instance, the Court noted:

In The Philippine Presidency A Study of Executive Power, the late Mme. Justice Irene R. Cortes, proposed that the Philippine President was vested with residual power and that this is even greater than that of the U.S. President. She attributed this distinction to the "unitary and highly centralized" nature of the Philippine government. She noted that, "There is no counterpart of the several states of the American union which have reserved powers under the United States constitution." Elaborating on the constitutional basis for her argument, she wrote:

This immense executive power, however, is not without limitations. The Constitution provides clear and categorical limits and any violation of these limits could amount to a grave abuse of discretion on the part of the President.

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. . . The [1935] Philippine [C]onstitution establishes the three departments of the government in this manner: "The legislative power shall be vested in a Congress of the Philippines which shall consist of a Senate and a House of Representatives." "The executive power shall be vested in a President of the Philippines." The judicial powers shall be vested in one Supreme Court and in such inferior courts as may be provided by law." These provisions not only establish a separation of powers by actual division but also confer plenary legislative, executive, and judicial powers. For as the Supreme Court of the Philippines pointed out in *Ocampo v. Cabangis*, "a grant of legislative power means a grant of all the legislative power; and a grant of the judicial power means a grant of all the judicial power which may be exercised under the government." If this is true of the legislative power which is exercised by two chambers with a combined membership [at that time] of more than 120 and of the judicial power which is vested in a hierarchy of courts, it can equally if not more appropriately apply to the executive power which is vested in one official – the president. He personifies the executive branch. There is a unity in the executive branch absent from the two other branches of government. The president is not the chief of many executives. He is the executive. His direction of the executive branch can be more immediate and direct than the United States president because he is given by express provision of the constitution control over all executive departments, bureaus and offices.55

The esteemed Justice conducted her study against the backdrop of the 1935 Constitution, the framers of which, early on, arrived at a general opinion in favor of a strong Executive in the Philippines."56 Since then, reeling from the aftermath of martial law, our most recent Charter has restricted the President's powers as Commander-in-Chief. The same, however, cannot be said of the President's powers as Chief Executive.

In her *ponencia* in *Marcos v. Manglapus*, Justice Cortes put her thesis into jurisprudence. There, the Court, by a slim 8-7 margin, upheld the President's power to forbid the return of her exiled predecessor. The rationale for the majority's ruling rested on the President's

. . . unstated residual powers which are implied from the grant of executive power and which are necessary for her to comply with her duties under the Constitution. The powers of the President are not limited to what are expressly enumerated in the article on the Executive Department and in scattered provisions of the Constitution. This is so, notwithstanding the avowed intent of the members of the Constitutional Commission of 1986 to limit the powers of the President as a reaction to the abuses under the regime of Mr. Marcos,

The Constitution has as well defined how the President is to relate to other officials within his own department. Article VI, Section 17 of the 1987 Constitution provides that:

> SECTION 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

Through jurisprudence, we have recognized that this provision vests in the President the *power of control and supervision* over all the executive departments, bureaus, and offices.[9] The first sentence pertains to the President's *power of control*, while the latter, to his *power of supervision*. His duty to "ensure that the laws be faithfully executed" pertains to his power (and duty) of supervision over the executive branch, and when read with Section 4, Article X of the 1987 Constitution, over local government units.[10] Notably, the provision on the President's supervision over autonomous regions follows a similar language, thus:

> SECTION 16. The President shall exercise general supervision over autonomous regions to ensure that the laws are faithfully executed.

How laws are to be "faithfully executed" provides a broad standard generally describing the expectations on how the President is to execute the law. The nature and extent of the constitutionally-granted presidential powers, however, negate the concept that this standard can be used as basis to constitutionally question the ***manner*** by which the President exercises executive power.

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for the result was a limitation of specific powers of the President, particularly those relating to the commander-in-chief clause, but not a diminution of the general grant of executive power.57 [Underscoring supplied. Italics in the original.]

[9] See *de Leon v. Carpio*, G.R. No. 85243, October 12, 1989, 178 SCRA 457, *Blaquera, et al. v. Alcasid*, G.R. No. 109406, September 11, 1998.

[10] See *Pimentel v. Aguirre*, G.R. No. 132988, July 19, 2000, 336 SCRA 201, *Taule v. Santos, Dadole, et al. v. COA*, G.R. No. 90336, August 12, 1991, 200 SCRA 512.

To hold otherwise is inconsistent with the ***plenary*** nature of executive power that the Constitution envisions. The Constitution intends as well a tripartite system of government where each branch is co-equal and supreme in its own sphere.

These intents could be defeated if the standard of "faithfulness" in executing our laws would be a constitutional standard measuring the manner of the President's implementation of the laws. In the first place, it places the Court in the position to pass upon the scope and parameters of the vague and not-easily determinable "faithfulness" standard. Putting the Court in this position (especially when considered with the Court's expanded jurisdiction) amounts to placing it in a higher plane from where it can dictate how laws should be implemented. In fact, it is hard to discern how the Court can apply a standard for the faithful execution of the laws, without determining ***how*** the law should be implemented in the first place.

Additionally, characterizing the failure to ensure faithful execution of the laws as a constitutional violation can prove to be an unreasonably restricting interpretation. It could possibly paralyze executive discretion, and expose the Executive to constant lawsuits based on acts of grave abuse of discretion he or she allegedly committed.

Thus, the duty to "ensure that laws are faithfully executed" *should not be read as the constitutional standard to test the legality of the President's acts so that a legal error in the implementation of a law becomes a constitutional violation of his faithful execution duty*.

Incidentally, the interpretation that the faithful execution clause refers to the President's power of control and supervision is in line with US jurisprudence interpreting the "take care" clause of the United States Constitution, which – as everyone knows – served as the 1935 Philippine Constitution's model from which our later constitutions have not departed. Article II, Section 3 of the United States Constitution provides:

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their

Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; ***he shall take care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.***

In the United States, the take care clause has generally been accepted as imposing a constitutional duty on the President not to suspend or refuse the enforcement of laws, particularly of statutes.[11]

In *Kendall v. United States ex rel. Stokes*,[12] for instance, the US Supreme Court characterized a provision requiring the Postmaster General to provide back pay to mail courier providers as a ministerial duty that the President had no authority to prevent. The US Court arrived at this ruling in *Kendall* using the take care clause as basis to prevent the President from stopping the implementation of a ministerial duty that Congress imposed.

On the flipside, the take care clause has likewise been used to invalidate laws that rob the President of his powers of control and supervision over the Executive. In *Buckley v. Valeo*,[13] for instance, the US Court held that the Congress cannot arrogate unto itself the power to appoint officials to an independent commission that exercises executive powers. The reason for this ruling is the President's duty to ensure that the laws are faithfully executed.

While the two functions of the take care clause in US jurisprudence could at times seem to conflict with each other (one imposes a duty on the President, the other recognizes his authority)[14]

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[11] *See* Todd Garvey, *The Take Care Clause and Executive Discretion in the Enforcement of Law*, September 4, 2014, *available at* https://www.fas.org/sgp/crs/misc/R43708.pdf.

[12] 37 U.S. 524 (1838).

[13] 424 U.S. 1 (1970).

[14] *Supra* note 6.

*it has never been used to question the manner by which the President's executive power is exercised.*

Notably, the President's duty to implement laws under the take care clause is judicially enforceable only where the statute in question provides a clear and categorical directive to the President. Where a statute leaves to the executive the details of its implementation, the latter should be given sufficient leeway in exercising its duty.

In sum, the petitioners' insistence that the burial order's violation of various laws amounts to a constitutional violation involving the faithful execution clause, rests on a very tenuous interpretation of this clause that stretches it to its breaking point. The faithful execution clause does not allow litigants to question – as a constitutional violation – the manner by which the President implements a law. The Court, for its part, has no authority to *directly* resolve the alleged statutory violations that, in this case, allegedly attended the burial order.

***The burial order does not violate international law obligations.***

The petitioners' international law arguments, in my view, likewise fail to establish the unconstitutionality of the President's burial order.

The petitioners argue that the burial order violates several international law obligations, based on the Philippines' status as a signatory to the Universal Declaration of Human Rights (*UDHR*), the International Covenant for Civil and Political Rights (*ICCPR*), the Rome Statute, and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*CAT*).

While I agree that these international agreements (except for the UDHR, which is a non-binding document with provisions attaining the status of customary international law) had been ratified by the Philippine government and hence have the force and effect of law in the Philippines, the petitioners failed to point to any specific treaty obligation prohibiting Marcos' burial at the LNMB or at any other public cemetery.

These treaties prohibit torture or cruel, inhuman or degrading treatment or punishment,[15] and recognize these acts as crimes against humanity[16] falling within the jurisdiction of the International Criminal Court.[17] State parties to CAT are likewise obliged to criminalize torture and take effective legislative, administrative, judicial, and other measures to prevent torture.[18] Parties also have the obligation to investigate claims of torture[19] and ensure that torture victims have an enforceable right to fair and adequate compensation.[20]

Article 14 of the CAT, in particular, requires state parties to "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation."

The petitioners assert that the burial order amounts to a state-sanctioned narrative that violates the Philippines' duty to provide a "full and effective reparation" for human rights violations victims. The petitioners cite as legal bases Principle 22 and Principle 23 of the Basic Principles and Guidelines on the right to a remedy; Reparation for Victims of Gross Violations of International Human Rights Law (*IHRL*); Serious Violations of International Humanitarian Law *(IHL*); and Principle 2 and Principle 3 of the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity.

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[15] Article 7 of the ICCPR provides:

Article 7 – No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

[16] Article 7, Section 1 (g) of the Rome Statute.

[17] Article 5, Section 1 (b) of the Rome Statute.

[18] Article 2, CAT.

[19] Articles 12 and 13, CAT.

[20] Article 14, CAT.

These principles, however, do not create *legally binding obligations*. They are not international agreements that states accede to and ratify, as states have not agreed to formally be bound by them. Declarations, principles, plans of action and guidelines are considered "soft law" because they do not bind states, although they may carry considerable political and legal weight. They are considered statements of moral and political intent that, at most, may subsequently ripen into international norms.[21]

Paragraph 7 of the Preamble of The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law (*IHRL*), for instance, does not create new international or domestic legal obligations, viz:

> Emphasizing that the Basic Principles and Guidelines contained herein ***do not entail new international or domestic legal obligations*** but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms,

That these principles do not create obligations legally binding on the State means that they cannot be interpreted as constraints on the discretion of the President who acts, not only as the government's chief executive, but as its chief architect in foreign affairs.

Without any specific and legally binding prohibition limiting the President's actions, no basis exists to nullify his order and to disregard the presumption of regularity that exists in the performance of his duties.

Lastly, it must be considered that the burial order does not have the effect of rewriting jurisprudence and excusing the ills of the Marcos administration; neither does it amend Republic

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[21] See The International Council on Human Rights Policy, *Human Rights Standards: Learning from Experience*, (2006) pp.11, 14 – 18, *available at* http://www.ichrp.org/files/reports/31/120b_report_en.pdf.

Act No. 10368 ("Human Rights Victims Reparation and Recognition Act of 2013"), a law that had been enacted as part of the Philippines' compliance with its obligations in the ICCPR and CAT.

RA 10368, among others, creates a Human Rights Victims Claims Board tasked to recognize victims of human rights violations and to recommend their claims for reparation. RA 10368 even recognizes the "heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance, and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986." The law makes it a policy to "restore the victims' honor and dignity" and acknowledge the State's moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations, and damages they suffered under the Marcos regime."

These terms and provisions, however, while critical of the Marcos regime hardly amount to a prohibition barring the interment of his remains in a resting place duly *reserved by law* for soldiers; former President Marcos indisputably was a soldier during his lifetime and was one long before the human rights violations attributed to him took place. To deny him now, despite the law entitling him to a LNMB resting place, may only lay the petitioners to the charge that they are now doing to another what they have accused former President Marcos of doing – denying another of the rule of law.

***Divining the spirit of the Constitution is acceptable only to clarify ambiguities in its provisions, and not to create entirely new provisions.***

***a. The Spirit of the 1987 Constitution***

The petitioners further argue that Marcos' interment at the LNMB violates the spirit of the 1987 Constitution which was crafted as a reaction to the abuses during the Marcos regime.

Limitations and restrictions to the President's power, in particular, had been introduced because of former President Marcos' abuses during his regime. Thus, to inter him at the LNMB would amount to a violation of the reasons underlying the Constitution.

In particular, the petitioners assert that former President Marcos' burial at the LNMB violates two other principles enshrined in the 1987 Constitution: ***first***, it violates Section 27, Article II of the Constitution as the burial of a dishonest and disgraced public official will not promote honesty and integrity in public service; ***second***, it violates Section 1, Article XI of the Constitution[22] because it goes against the precept that corruption is never forgotten.

Constitutional provisions, read by themselves for the principles and precepts they embody, hardly reveal the clear intents that drove the constitutional framers to incorporate these provisions in the Constitution. These intents, however, are neither lost nor hidden as they can be gleaned from the deliberations of the Constitutional Commission which drafted the Constitution.

In this Court, we use and have used these deliberations as guides to interpret the Constitution when there exist ambiguous or seemingly conflicting provisions crucial to the resolution of a case. We look to these deliberations to find the intent behind the constitutional provisions to clarify how they should be applied.

While constitutional intent serves as a valuable guide in undertaking our adjudicatory duties, *it does not embody a right and, by itself, is not a basis for the enforcement of a right.* Neither does it provide a standard on how the President should act and enforce the laws, without prior reference to specific provisions or legislations applying the intent of the Constitution.

In the context of the present petitions, without any specific provision alleged to have been violated by the burial order, the constitutional intents that the petitioners brought to light cannot be used as a measure to resolve the issues that bedevil us in

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[22] "Public office is a public trust. x x x"

these cases. Specifically, they cannot be used as basis to determine the existence of grave abuse of discretion under the Court's expanded jurisdiction. As we have done by long established practice, we rely on intent only to settle ambiguities that cross our paths in the course of reading and considering constitutional provisions.

To go to the concrete and the specific demands of the issues at hand, we cannot use the faithful execution clause as basis to question the manner by which the Executive implements a law.

Neither can we interpret Article II, Section 27 and Article XI, Section 1 to prohibit former President Marcos' interment at the LNMB. To be sure, these are provisions that cannot be faulted as they enshrine honesty, integrity, and accountability in the public service, and require government officials to exercise their functions "with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives."

Despite their high minded terms, however, these provisions can hardly be claimed as basis, in the absence of clear and concrete legislation embodying actionable standards, for the petitioners' claims; these provisions can only describe our aspirations for our government and government officials, and could not have been meant to dilute the President's prerogatives in making his political moves, among them, his decision on the interment of a previously deposed president.

It should be noted, too, that Article II, Section 27 does not appear to be a self-executing provision. Its location, *i.e.*, under Article II, Declaration of State Principles, strongly hints of its non-self-executing[23] nature. The language itself of the provision

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[23] In *Manila Prince Hotel v. GSIS*, G.R. No. 122156, February 3, 1997, the Court has distinguished between self-executing and non-self-executing provisions of the Constitution, *viz*:

Admittedly, some constitutions are merely declarations of policies and principles. Their provisions command the legislature to enact laws and carry out the purposes of the framers who merely establish an outline of government providing for the different departments of the governmental machinery and

obligates the State to "take positive and effective measures against graft and corruption." Under these terms and circumstances, this provision merely reflects a statement of an ideal that cannot be realized independently of a concrete congressional enactment. Its goal of maintaining honesty and integrity in the public service cannot likewise be implemented without laws defining and promoting these values.

b. ***No Express Constitutional Bar to Interment***

The Constitution was undeniably forged out of the ashes of the Marcos regime. Its enactment after the Marcos regime collapsed, however, does not suggest and cannot be translated into an implied command preventing his burial at the LNMB or in a shrine of national significance. Had such prohibition been the intent, the Constitution's transitory provisions would have specifically so provided in the manner these provisions incorporated terms that the framers wanted to implement within intended and foreseeable time frames.[24]

***c. Historical Perspectives***

Unfortunately, both in the pleadings and in the media, the Court majority has been accused of being quick to forget the lessons of the Martial Law Era. I see no point in directly answering this charge as this Opinion has not been written to

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securing certain fundamental and inalienable rights of citizens. A provision which lays down a general principle, such as those found in Art. II of the 1987 Constitution, is usually not self-executing. But a provision which is complete in itself and becomes operative without the aid of supplementary or enabling legislation, or that which supplies sufficient rule by means of which the right it grants may be enjoyed or protected, is self-executing. Thus a constitutional provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.

[24] The transitory provisions, for example, specifically laid down the rule that after the expiration of the Military Bases Agreement, military bases, troops and facilities shall not be introduced into the Philippines except through a treaty concurred in by the Senate.

consider historical perspectives except to the extent that they bear on the immediate business an concern of the Court – the interpretation and application of the Constitution.

The Court, of course, is not blind to history but is not a judge of history; it is a judge of the interpretation and application of the terms of the Constitution.[25] When the time comes therefore when we are tested by push and pull of history and those of the Constitution, an answer is not difficult to make even if we are dealing with an exceptional historical figure.

The clear and simple response is that concerns raised by the Constitution must first be addressed; historical considerations follow unless the constitutional concern is so affected or intertwined with history that we cannot consider one without the other. Fortunately for us in the present case, no such consideration requires to be taken as the way is clear: we rule based on the standards of our Constitution.

Based on these considerations, I believe we should not be charged with being blind to the lessons of the past, in particular of what transpired during the martial law era. Rather than being blind, we simply do not look first to history in resolving disputes before us; we look to the law as our primary guide and consideration.

Thus, if we do rule in favor of the burial of former President Marcos at the LNMB, we do not thereby dishonor those who believe they suffered under his regime. Nor are we unmindful of the laws crafted in their favor; we considered these laws but they are simply not the laws primarily relevant and applicable to the issue before us – the interment of former President Marcos at the LNMB.

**d. Considerations of Policy**

I do know as a matter of law and history that the framers of our Constitution crafted it with the intent of preventing another tyrant from rising to power and from consolidating the State's

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[25] *Gudani v. Senga Corona*, G.R. No. 170165, August 15, 2006.

might for himself. A stronger tripartite government with a system of checks and balances became the cornerstone of our new democracy. Under this system, each of the three branches of government perform specific, distinct, and clearly delineated functions. The intent is to prevent one branch from encroaching on the prerogatives of another and to characterize any usurpation as an act of tyranny. These constitutional principles are the policies that receive primary consideration from us as a Court.

The Constitution vested the Supreme Court with judicial power – the power and duty to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Considering that Justices of this Court are not elected by the sovereign people, the framers did not see it fit to give us dominion over matters of policy.

From these perspectives, this Court is clearly not a court of public opinion; we are court of law. With respect to matters of policy, we have no right to substitute our wisdom over that of duly elected political branches. They carry the mandate of the popular will – we do not.

Under the impetus of these constitutional realities, **the wisdom of or need for** the interment of former President Marcos at the LNMB is a political question[26] that our President decided after an assessment of the thoughts and sentiments of the people from all the regions in our country; it is a policy determination that is outside the Court's jurisdiction to pass upon or interfere with *as a matter of law*.

Separately from our consideration of the Executive and its policy, we are also aware that strong sentiments exist against

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[26] A political question refers to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure." *Tañada v. Cuenco*, G.R. No. L-10520, February 28, 1957.

the burial of former President Marcos at the LNMB. We hear the loud and strident voices that proclaim these sentiments. But we are likewise aware that against the pull by those who voice these sentiments are counterforces pulling into other directions, specifically, the pull of the law and those of policy.

As I have already indicated, I again say that the law must prevail under the unwavering standard we observe. But we recognize at the same time that policy has its own demands. Ultimately, we recognize that vowing to the raucous crowd may temporarily signify harmony, but we do so at the expense of disregarding Executive policy and weakening the political branches, and indeed, the very institution of government itself.

Thus, we have no choice if we are to truly serve as guardians of the Constitution. In the absence of any countervailing legal considerations, we give primacy to the Executive's policy as this is the law – the constitutional separation of power – that we have to fully respect.

As my last point, that the burial of Marcos had been a campaign promise strengthens the nature of former President Marcos' burial at the LNMB as a political question. Voters knew of his plan to bury Marcos at the LNMB at the time he campaigned, and might have voted for him because or regardless of this plan. President Duterte's victory in the polls signifies, at the very least, the electorate's tolerance of his decision and, at most, the electorate's support.

In sum and without hesitation, we must now recognize that the petitioners have failed to establish any clear constitutional breach attendant to the President's burial order. We must therefore respect and abide by the Executive's decision to allow the interment of former President Marcos at the LNMB.

**WHEREFORE,** I vote to **DISMISS** the petitions, and to lift the *status quo ante* order this Court issued to avoid rendering the petitions moot and academic prior to our decision.

## CONCURRING OPINION

**BERSAMIN, *J.*:**

These consolidated special civil actions (variously seeking the writs of *certiorari*, *mandamus* and prohibition)[1] concern the question of whether or not the Chief Executive, in verbally authorizing the interment of the remains of the late President Ferdinand E. Marcos in the Libingan ng mga Bayani (LNMB), gravely abused his discretion.

I **CONCUR** with the **MAIN OPINION** so eruditely penned for the Majority by Justice Diosdado M. Peralta. I hereby only express my reasons for voting to dismiss the petitions, and thus to allow the interment to proceed.

President Rodrigo Roa Duterte was sworn to office and assumed the Presidency at noontime of June 30, 2016. In his campaign for the Presidency, he had promised, among others, that if elected he would authorize the interment of the remains of the late President Marcos in the LNMB. To deliver on this promise, he verbally directed Secretary Delfin N. Lorenzana of the Department of National Defense (DND) on July 11, 2016 to prepare the groundwork for the interment. Secretary Lorenzana thus issued on August 7, 2016 the assailed Memorandum directing General Ricardo R. Visaya, Chief of Staff of the Armed Forces of the Philippines (AFP), to "kindly undertake the necessary planning and preparations to facilitate the coordination of all agencies concerned specially the provisions for ceremonial and security requirements" for the interment, and to "[c]oordinate closely with the Marcos family regarding the date of interment and the transport of the late former President's remains from Ilocos Norte to the LNMB." In turn, General Visaya commanded Deputy Chief of Staff of the AFP Rear Admiral Ernesto C.

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[1] G.R. No. 225973, G.R. No. 226117, and G.R. No. 226120 are petitions for *certiorari* and prohibition; G.R. No. 225984 and G.R. No. 226097 are petitions for prohibition; and G.R. No. 226116 prays for the issuance of the writs of *mandamus* and prohibition.

Enriquez to implement the Memorandum, and this Rear Admiral Enriquez did by transmitting on August 9, 2016 his own directive to the Commanding General of the Philippine Army to proceed with the interment and to provide "all necessary military honors accorded for a President."

These events expectedly invited protests from various sectors. The petitioners herein then initiated these consolidated special civil actions in this Court to advance a common cause – to prevent the interment of the remains of President Marcos in LNMB because of the many human rights violations committed during his long regime that included the period when he placed the whole country under Martial Law. They mainly insisted that interring the remains of President Marcos in the LNMB would desecrate the shrine that was intended only for heroes.

The following should explain my vote.

First of all, the foregoing antecedents render it quite evident to me that the interment of the remains of President Marcos in the LMNB is a matter that exclusively pertains to the discretion of President Duterte as the Chief Executive. The character of the LMNB as the resting place for the war dead and other military personnel under the care and control of the AFP has placed the LMNB under the control of the President. Plainly enough, the President thereby exercised such control through the AFP Chief of Staff.

In the context of the LNMB being a military facility, the AFP has issued AFP Regulations G 161-375 to prescribe guidelines that enumerate the persons whose remains may be interred therein, to wit:

a. Medal of Valor Awardees

b. Presidents or Commander-in-Chief, AFP

c. Secretaries of National Defense

d. Chiefs of Staff, AFP

e. Generals/Flag Officers of the AFP

f. Active and retired military personnel of the AFP to include active draftees and trainees who died in the line of duty, active reservists and CAFGU Active Auxillary (CAA) who died in combat operations or combat related activities.

g. Former members of the AFP who laterally entered or joined the Philippine Coast Guard (PCG) and the Philippine National Police (PNP).

h. Veterans of Philippine Revolution of 1890, WWI, WWII, and recognized guerillas.

i. Government Dignitaries, Statesmen, National Artists and other deceased persons whose interment or reinternment has been approved by the Commander-in-Chief, Congress or the Secretary of National Defense.

j. Former Presidents, Secretaries of Defense, Dignitaries, Statesmen, National Artists, widows of Former Presidents, Secretaries of National Defense and Chief of Staff are authorized to be interred at the LNMB.

Based on the foregoing, the exercise by President Duterte of his discretion upon a matter under his control like the interment of the remains of President Marcos in the LNMB is beyond review by the Court. He has not thereby transgressed any legal boundaries. President Marcos – being a former President of the Philippines, a Medal of Valor awardee, a veteran of World War II, a former Senator and Senate President, and a former Congressman – is one of those whose remains are *entitled* to be interred in the LNMB under the terms of AFP Regulations G 161-375. President Duterte was far from whimsical or arbitrary in his exercise of discretion. I believe that interment of any remains in the LNMB is a political question within the exclusive domain of the Chief Executive. The Court must defer to his wisdom and must respect his exercise of discretion. In other words, his directive to Secretary Lorenzana is unassailable.

I must observe that the factual milieu in these cases is different from that in the case in which the Court addressed and decided the question of whether or not the President of the Philippines had validly acted in prohibiting the return of the family of President Marcos to the country. In the latter case, the Court

ruled that when political questions were involved, the Constitution limited the determination to whether or not grave abuse of discretion amounting to lack or excess of jurisdiction was committed by the respondent public official.[2] The foremost consideration then was that the return of the Marcoses could dangerously impact on the nation's peace and security. That impact is not imminent today.

Secondly, the several laws the petitioner have invoked to prevent the interment are not relevant to the LNMB. The main opinion fully explains why this is so. I agree.

For instance, Republic Act No. 289, which all the petitioners except the petitioners in G.R. No. 226120 rely upon, stipulated the establishment of the National Pantheon as the final resting place for former Presidents of the Philippines, national heroes and patriots to perpetuate their memory as sources of inspiration and emulation for the future generations. On the basis of this law, the petitioners concerned quickly assert that the remains of the late President Marcos do not deserve to be interred in the LNMB because his gross human rights violations, massive corruption and plunder of the government coffers, and other abuses during his regime rendered his memory unworthy of perpetuation and because he could not be a source of inspiration and emulation for future generations. Yet, the Solicitor General has clarified that the LNMB is not the National Pantheon referred to by Republic Act No. 289. Indeed, Proclamation No. 431 (*Reserving as Site for the Construction of the National Pantheon a Certain Parcel of Land Situated in Quezon City*) would locate the National Pantheon in East Avenue, Quezon City, but the establishment of the National Pantheon was later on discontinued. In contrast, the LNMB is the former Republic Memorial Cemetery as expressly provided in Executive Order No. 77 (*Transferring the Remains of War Dead Interred at Bataan Memorial Cemetery, Bataan Province and at the Other Places in the Philippines to the Republic Memorial Cemetery at Port WM MicKinley, Rizal*

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[2] *Marcos v. Manglapus*, G.R. No. 88211, September 15, 1989, 177 SCRA 668, 696.

*Province*). The Republic Memorial Cemetery *was* reserved as the final resting place for the war dead of World War II, but President Magsaysay renamed it to LNMB on October 27, 1954. The history of the LNMB refutes the petitioners' reliance on Republic Act No. 289. Verily, the LNMB is not the same as the National Pantheon.

Republic Act No. 10368 has also been cited by the petitioners. This law recognizes the victims of Martial Law and makes reparations for their sufferings by appropriating ₱10,000,000,000.00 as compensation for them. How such law impacts on the interment of the remains of President Marcos has not been persuasively shown.

The petitioners have not laid out any legal foundation for directly testing the issuance of the challenged executive issuances. They have not cited any specific provision of either the Constitution or other existing laws that would expressly prohibit the interment in the LNMB of the remains of one like President Marcos.

And, thirdly, AFP Regulations G 161-375 lists those who are disqualified to have their remains interred in the LNMB, to wit:

a. Personnel who were dishonorably separated/reverted/discharged from the service.

b. Authorized personnel who were convicted by final judgment of an offense involving moral turpitude.

None of the disqualifications can apply to the late President Marcos. He had not been dishonorably separated or discharged from military service, or convicted by final judgment of any offense involving moral turpitude. The contention that he had been ousted from the Presidency by the 1986 People Power revolution was not the same as being dishonorably discharged because the discharge must be from the military service. In contrast, and at the risk of being redundant, I remind that he had been a two-term President of the Philippines, a Medal of Valor awardee, a veteran of World War II, a former Senator and Senate President, and a former Congressman, by any of which he was qualified to have his remains be interred in the LNMB.

## SEPARATE OPINION

**PEREZ, *J.*:**

The factual and procedural antecedents are not in dispute.

On 25 February 1986, during the snap election term of Ferdinand Marcos Sr., the EDSA People Power Revolution transpired. With US aid, the Former President, together with his family, was forced into exile. On 28 September 1989, he died in Honolulu, Hawaii. Two weeks before his death, the Supreme Court upheld then sitting President Corazon Aquino's firm decision to bar the return of the Marcos family.[1] In a statement, President Aquino said:

"In the interest of the safety of those who will take the death of Mr. Marcos in widely and passionately conflicting ways, and for the tranquility of the state and order of society, the remains of Ferdinand E. Marcos will not be allowed to be brought to our country until such time as the government, be it under this administration or the succeeding one, shall otherwise decide."[2]

Pursuant to a written agreement executed between the Philippine Government, then represented by Former President Fidel V. Ramos, and the Marcos family, the remains of the late strongman was returned to the Philippines on 5 September 1993. The mortal remains of Former President Marcos was allowed to be returned to the Philippines, under the following conditions:

1. The body of President Marcos would be flown straight from Hawaii to Ilocos Norte province without any fanfare;[3]
2. President Marcos would be given honors befitting a major, his last rank in the AFP;[4] and
3. The body of President Marcos will be buried in Ilocos.[5]

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[1] *Marcos v. Manglapus*, G.R. No. 88211, 27 October 1989.

[2] *Id.*

[3] Alvarez petition, p. 10.

[4] *Id.*

[5] Ocampo petition, p. 6.

The Former President was eventually interred in a Mausoleum, with his remains currently kept in a refrigerated crypt in Batac, Ilocos Norte.

During his campaign for president in the 2016 national elections, candidate Rodrigo R. Duterte publicly declared that he will cause the burial of the former President in the *Libingan ng mga Bayani* (LNMB). After his election as president, President Rodrigo R. Duterte ordered the implementation of his campaign declaration. On 11 July 2016, President Duterte verbally directed Marcos' burial in the LNMB. In compliance with the verbal order, Secretary of National Defense Delfin N. Lorenzana issued a Memorandum dated 7 August 2016, addressed to General Ricardo R. Visaya, Chief of Staff of the AFP, directing him to "undertake the necessary planning and preparations to facilitate the coordination of all agencies concerned specially the provisions for ceremonial and security requirements"[6] and to "coordinate closely with the Marcos family regarding the date of interment and the transport of the late former President's remains from Ilocos Norte to the LNMB."[7] Conforming to the 7 August 2016 Memorandum, AFP Chief of Staff General Visaya instructed Deputy Chief of Staff for Reservist and Retiree Affairs Rear Admiral Ernesto C. Enriquez to issue a directive addressed to the Philippine Army.[8] According to the 9 August 2016 Directive, the Army is required to provide vigil, bugler/drummer, firing party, military host/pallbearers, escort and transportation, and arrival and departure honors.[9]

Five different petitions, praying for a Temporary Restraining Order to restrain respondents from proceeding with the burial were filed and consolidated. Petitioners likewise sought the nullification of the 7 August 2016 Memorandum and the 9 August 2016 Directive, and a permanent prohibition from allowing the

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[6] Memorandum issued by Secretary of National Defense Delfin N. Lorenzana dated 7 August 2016.

[7] *Id*.

[8] Ocampo petition, p. 8.

[9] *Id*.

interment of the remains of Former President Marcos at the *Libingan ng mga Bayani*.

The first petition (*Ocampo* petition) was filed on 15 August 2016 by Saturnino C. Ocampo, Trinidad G. Repuno, Bienvenido Lumbera, Bonifacio P. Ilagan, Neri Javier Colmenares, Maria Carolina P. Araullo, all of whom alleged that they were human rights violations victims and members of the class suit in the human rights litigation against the Estate of Ferdinand E. Marcos in MDL No. 840, CA No. 88-0390 in the US Federal District Court of Honolulu, Hawaii. The Samahan ng Ex-Detainees Laban sa Detensyon at Aresto (SELDA), an organization of political prisoners and former political detainees in the country, also took part in the petition.

The second petition (*Lagman* petition) was also filed on 15 August 2016 by Rep. Edcel C. Lagman, Rep. Teddy Brawner Baguilat, Jr., Rep. Tomasito S. Villarin, Rep. Edgar R. Erice, Rep. Emmanuel A. Billones, and the Families of Victims of Involuntary Disappearance (FIND). The incumbent members of the House of Representatives sued as legislators with duties including the protection of appropriated funds from being misused for void, illegal and improvident activities.

The third petition (*Rosales* petition) was filed on 19 August 2016 by the former chairperson of the Commission on Human Rights, Loretta Ann Paragas –Rosales; Hilda B. Narciso; Aida F. Santos-Maranan; Jo-Ann Q. Maglipon; Zenaida S. Mique; Fe B. Mangahas; Ma. Cristina P. Bawagan; Mila D. Aguilar; Minerva G. Gonzales; Ma. Cristina V. Rodriguez; Francisco E. Rodrigo, Jr.; Louie G. Crismo; Abdulmari De Leon Imao, Jr.; and Liwayway D. Arce. All the petitioners sued as victims of allegedly State-sanctioned human rights violations during Martial Law.

The fourth petition (*Alvarez* petition) was filed on 22 August 2016 by Former Senator Heherson T. Alvarez; Joel C. Lamangan, a martial law victim; Francis X. Manglapus; Edilberto C. De Jesus; Belinda O. Cunanan; Cecilia G. Alvarez; Rex De Garcia Lores; Arnold Marie Noel Sr.; Carlos Manuel; Edmund S. Tayao; Danilo P. Olivares; Noel F. Trinidad; Jesus Dela Fuente; Rebecca M. Quijano; Fr. Benigno Beltran, SVD; Roberto S. Verzola;

Augusto A. Legasto, Jr.; Julia Kristina P. Legasto, all of whom came to court Filipino citizens and tax payers.

The fifth petition (*Baniaga* petition) was filed on 22 August 2016 by Zaira Patricia B. Baniaga, John Arvin Buenaagua, Joanne Rose Sace Lim, and Juan Antonio, also as Filipino citizens and taxpayers.

The Respondents are Honorable Salvador C. Medialdea, in his capacity as the Executive Secretary of the Republic of the Philippines; Honorable Delfin N. Lorenzana, in his capacity as the Secretary of the Department of National Defense; General Ricardo R. Visaya, in his capacity as Chief of Staff of the Armed Forces of the Philippines; Rear Admiral Ernesto C. Enriquez, in his capacity as Deputy Chief of Staff for Reservist and Retiree Affairs of the Armed Forces of the Philippines; Lt. Gen. Ernesto G. Carolina (Ret.), in his capacity as Administrator of the Philippine Veterans Affairs Office (PVAO); and the heirs of Marcos.

All the contentions espoused by the five petitions pivot around the alleged grave abuse of discretion committed by public respondents when they allowed the burial of the remains of the Former President Marcos at the *Libingan ng mga Bayani*.

All the petitioners argue that the Memorandum and Directive for the burial mock and are in contravention of Republic Act No. 289 (An Act Providing for the Construction of a National Pantheon for Presidents of the Philippines, National Heroes and Patriots of the Country), which petitioners argue created the *Libingan ng mga Bayani*. They cite Section 1 of the statute that the purpose of the construction of the National Pantheon is "to perpetuate the memory of all presidents of the Philippines, national heroes and patriots for the inspiration and emulation of this generation and of generations still unborn."[10] The petitioners contend that the Former President's transgressions against the Filipino people hardly make him an inspiration and

[10] Section 1 of R.A. No. 289 (An Act Providing for the Construction of a National Pantheon for Presidents of the Philippines, National heroes and Patriots of the Country).

do not make him worthy of emulation by this generation and the next.[11] The petitioners further aver that the public respondents had no authority to allow the burial, considering that only members of the Board of the National Pantheon may cause to be interred therein the mortal remains of all presidents, national heroes, and patriots.[12] The Board is composed of the Secretary of Interior, Secretary of Public Works and Communications, and the Secretary of Education, and two private citizens to be appointed by the President of the Philippines with the consent of the Commission on Appointments.[13]

Petitioners who took part in the *Ocampo, Lagman* and *Rosales* petitions maintain that the Memorandum and the Directive are inconsistent with Republic Act No. 10368 (Human Rights Victims Reparation and Recognition Act of 2013), a law which serves as an indubitable validation by the Legislative and Executive departments of the widespread human rights violations attributable to the late President Marcos under his martial law regime.[14] In their petitions, great weight is attributed to Section 2 of the law, which reads:

"x x x [I]t is hereby declared the policy of the State to recognize the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986 and restore the victims' honor and dignity. The State hereby acknowledges its moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime."[15]

Thus, for petitioners, allowing the burial is inconsistent with the declared policy of the State. The *Lagman* Petition in

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[11] Lagman Petition, p. 12; Alvarez Petition, p. 31

[12] Baniaga Petition, p. 10.

[13] Sec. 2, R.A. No. 289.

[14] Lagman Petition, p. 15.

[15] Sec. 2, R.A. No. 10368.

particular, espouses the view that R.A. No. 10368 amended the burial requirements and entitlements issued by the Armed Forces of the Philippines respecting the *Libingan ng mga Bayani* by excluding the Former President from being interred therein.[16] Similarly, those who took part in the *Ocampo* and the *Lagman* petitions assert that a hero's burial at the *Libingan ng mga Bayani* for the Former President is contrary to public policy, premised on the fact that he committed crimes involving moral turpitude against the Filipino People.[17]

The *Ocampo*, *Rosales*, and *Alvarez* petitions attack the constitutionality of the Memorandum and Directive. Petitioners therein contend that a burial at the *Libingan ng mga Bayani* will amount to a denial of the history of authoritarian rule and a condonation of the abuses committed by the Marcos Regime.[18] For those who took part in the *Rosales* petition, burying the Former President at the *Libingan ng mga Bayani*, a place supposedly for heroes and patriots, is to desecrate the raison d'etre of the 1987 Constitution.[19] That the burial of the Former President at the *Libingan ng Bayan* runs counter to judicial pronouncements is another argument raised in the *Rosales* and the *Lagman* petitions. In support of such argument, judicial decisions of the Philippine Supreme Court, as well as foreign courts, which established the culpability of Former President Marcos for human rights atrocities and plunder were cited.[20]

The *Baniaga* and the *Alvarez* petitions advance a related argument, with petitioners therein maintaining that the Memorandum and Directive are violative of the Faithful Execution Clause of the 1987 Constitution.[21] Citing Article VII Section 17 of the Constitution, petitioners argue that President Duterte, acting through his alter ego, respondent Sec. Lorenzana,

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[16] Lagman Petition, p. 16.

[17] Ocampo Petition, p. 21, Lagman Petition, p. 12.

[18] Rosales Petition, p. 20.

[19] *Id*. at 29.

[20] Lagman Petition, p. 17; Rosales Petition, p. 37, Rosales Petition, pp. 37-44.

[21] Baniaga Petition, p. 14.

would not be faithfully executing R.A. No. 10368 and R.A. No. 289 by burying Former President Marcos in the *Libingan ng mga Bayani*.[22] The *Baniaga* petition likewise argues that the Memorandum and Directive violate the equal protection guaranteed by the Constitution,[23] given that the Former President is in a different class from the other Presidents already buried in the *Libingan ng mga Bayani*.

Tackling the issue from a broader perspective, the parties who took part in the *Rosales* petition maintain that a burial at the *Libingan ng mga Bayani* violates the international duties of the Philippines to combat impunity and to guarantee non-repetition of violations of international human rights law.[24] Petitioners insist that allowing the burial could potentially hinder and violate human rights victims' remedies and could lead to a distortion of the findings of previous authorities thus, creating an injustice to the victims rightly afforded a remedy from the Former President's actions.[25] For the petitioners, such injustice would put the Philippines in violation of the International Covenant on Civil and Political Rights, specifically Section 2 thereof, *viz*:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been omitted by persons acting in an official capacity;
(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
(c) To ensure that the competent authorities shall enforce such remedies when granted.

At the core of all the controversy is AFP Regulation G 161-373: Allocation of Cemetery Plots at the LNMB, as amended by

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[22] *Id*. at 14; Alvarez Petition, p. 11.

[23] *Id*. at 13.

[24] Rosales Petition, p. 60.

[25] *Id*. at 62.

AFP Regulation G 161-375. The regulation was issued on 9 April 1986 by then AFP Chief of Staff Fidel V. Ramos and then President Corazon Aquino. The said Regulation provides that the following deceased persons are qualified to be interred in the *Libingan ng mga Bayani*:

1. Medal of Valor awardees
2. Presidents or commanders-in-chief AFP
3. Secretaries of National Defense
4. Chiefs of staff, AFP
5. Generals/ flag officers of the AFP
6. Active and retired military personnel of the AFP
7. Former AFP members who laterally entered/joined the Philippine National Police and the Philippine Coast Guard
8. Veterans of Philippine Revolution of 1896, World War I, World War II and recognized guerillas
9. Government dignitaries, statesmen, national artists and other deceased persons whose interment or re-interment has been approved by the Commander-in-chief, Congress, or the Secretary of National Defense
10. Former Presidents, secretaries of defense, CSAFP, generals/ flag officers, dignitaries, statesmen, national artists, widows of former presidents, secretaries of national defense and chief of staff

In the same vein, the regulation disallows the interment in the *Libingan ng mga Bayani* of the following:

1. Personnel who were dishonorably separated, reverted, and/ or discharged from the service
2. Authorized personnel who were convicted by final judgment of an offense involving moral turpitude

Petitioners who took part in the *Ocampo, Rosales,* and *Baniaga* petitions submit that notwithstanding the fact that Ferdinand E. Marcos was a Former President, he is disqualified from being buried in the *Libingan ng mga Bayani* because he falls under the category of "personnel who were dishonorably separated or discharged from the service."[26] Therein petitioners emphasize

[26] Baniaga Petition, p. 11; Rosales Petition, p. 37; Ocampo Petition, p. 15.

that the Former President was deposed and removed from the presidency because of the atrocities he committed during his tenure. Insisting that such facts are matters of judicial notice, petitioners maintain that such removal through revolution is tantamount to being dishonorably separated or discharged from the service, thereby effectively disqualifying him from being buried at the *Libingan ng mga Bayani*. Alternatively, the *Ocampo* petition attacks the legality and constitutionality of the AFP Regulation. Petitioners therein submit that the AFP Regulation unduly expands the parameters of R.A. No. 289 by allowing one unworthy to be considered an inspiration and unworthy of emulation by generations to be buried at the *Libingan ng mga Bayani*.[27]

Finally, for those who took part in the *Ocampo*, *Lagman*, and *Rosales* petitions, even if it be conceded that Former President Marcos is qualified under the law and the AFP Regulation, whatever benefits and courtesies due him have already been waived and contracted away by the Marcos family when they agreed to bury him in Batac, Ilocos Norte pursuant to their agreement with then President Fidel V. Ramos. It was likewise submitted that the 1993 Agreement should be treated as a compromise agreement that was voluntarily entered into by the Philippine Government and the Marcos family, making it the law between the parties.[28] Stated otherwise, petitioners contend that respondents are bound to observe the terms of the Agreement as it is a binding contract between the parties. Petitioners insist that the High Court should take judicial notice of such Agreement as it was an official act of the Executive Department.[29] Moreover, it is averred that an abandonment of the Agreement, a reboot of the entire process, by allowing the burial at the *Libingan ng mga Bayani* is tantamount to reliving the terror and horrors of the victims.[30]

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[27] Ocampo Petition, p. 25.

[28] Rosales Petition, p. 68.

[29] *Id*. at 67.

[30] Ocampo Petition, p. 26.

I join the opinion to dismiss the consolidated petitions for the issuance in their favor and against the respondents, of the special writ of certiorari. President Rodrigo R. Duterte did not gravely abuse his discretion, was neither whimsical nor capricious when upon assumption of the office to which he was elected he forthwith proceeded to implement his election promise to have the remains of the late President Ferdinand E. Marcos buried in the *Libingan ng mga Bayani.*

This position is fixed and firmed by the origins of the petitions so impressively presented in the petition itself in G.R. No. 225973:

"10. During the campaign period for the 2016 Presidential Elections then candidate Rodrigo Duterte publicly announced that he will allow the burial of former President Ferdinand Marcos at the *Libingan ng mga Bayani.* He reiterated this public pronouncement when he became president without giving details on how this will be implemented, leaving the Marcoses to process the same with the proper authorities.

"11. These pronouncements were met with opposition by various sectors including victims or relatives of human rights violations of torture, illegal arrest, arbitrary detention, disappearances and summary executions during martial law. Family members of the thousands who died during martial law also protested these public pronouncements with the hope that the plan will not push through."

As judicial admissions,[31] petitioners state as fact that the burial of former President Marcos at the *Libingan ng mga Bayani* is a matter about which the Filipino public was consulted as a campaign promise of candidate Duterte who, when he became president redeemed the pledge.

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[31] Section 4, Rule 129 of the Revised Rules of Court:

Section 4. Judicial admissions. An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

A party may take judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding. (*Spouses Binarao v. Plus Builders, Inc.*, G.R. No. 154430, June 16, 2006).

Significantly, petitioners further admitted that they, as "the various sectors" participated in the election of options and met with opposition the pronouncements favoring the *Libingan* as burial of Marcos' remains and protested the public pronouncements of the promisor.

Thus did the petitioners admit that the determination of the issue can be, if not ought to be, left to the will of the people. True to the admission, petitioners sought to forge that will into the shape they hoped for. The petitioners objected against the publicly announced Marcos *Libingan* burial; they protested the pronouncement. Indeed the issue was made public and was resolved through a most political process, a most appropriate process: the election of the President of the Republic.[32] A juxtaposition of two concepts, people and suffrage, show this. In his treatise, as old as it is respected, Dean Vicente Sinco expounds:

> The same meaning, that of all the citizens considered as a collective unit acting under a majority rule, is given to the term people in an Illinois decision which states that "in a representative government all powers of government belong ultimately to the people in their sovereign corporate capacity." Obviously it is in this sense that the term people is used in the Constitution of the Philippines when it declares in its Article II thus: "The Philippines is a republican state. Sovereignty resides in the people and all governmental authority from them.[33]

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[32] Rodrigo R. Duterte garnered a total of 16,601,997 votes; 6,623,822 votes more than his closest rival Mar Roxas who got 9,978,175 votes. The rest of the candidates got the following votes:

> Jojo Binay – 5,416,140 votes
> Miriam Defensor Santiago – 1,455,532 votes
> Grace Poe – 9,100,991 votes
> Roy Señeres – 25,779 votes

[33] Sinco, *Philippine Political Law: Principles and Concepts*, 10th Edition, pp. 8-9; Article II in the 1935 Constitution is now Sec. 1 of Article II of the 1987 Constitution.

Suffrage, or the right to vote, is a political right. Different views have been expressed about its nature. One is that it is merely a privilege to be given or withheld by the law-making power in the absence of constitutional limitations. Another view considers it as a natural right included among the liberties guaranteed to every citizen in a republican form of government, and may not therefore be taken away from him except by due process of law. A third view maintains that the right of suffrage is one reserved by the people to a definite portion of the population possessing the qualifications prescribed in the constitution. This view is based on the theory that the sovereign political power in a democratic state remains with the people and is to be exercised only in the manner indicated by the constitution. Consequently, a person who belongs to the class to whom the constitution grants this right may not be deprived of it by any legislative act except by due process of law. It is in this sense that suffrage may be understood in the Philippines at present.[34] (Underscoring supplied)

The people or the qualified voters elected as president of the Philippines the candidate who made the election pronouncement, objected to by the persons who are now the petitioners, that he will allow the burial of former President Ferdinand Marcos at the *Libingan ng mga Bayani*.

As things are, it is hardly debatable that, by word and deed, petitioners have accepted that the issue they now, after losing the vote, present before the Court is a political issue, defined over and over again, by variations of phrases that have one meaning:

". . . What is generally meant, when it is, said that a question is political, and not judicial, is that it is a matter which, is to be exercised by the people in their primary political capacity, or that it has been specifically delegated to some other department or particular officer of the government, with discretionary power to act. See State vs. Cunningham, 81 Wis. 497, 51 L. R. A. 561; In Re Gunn, 50 Kan. 155; 32 Pac. 470, 948, 19 L. R. A. 519; Green vs. Mills, 69 Fed. 852, 16, C. C. A. 516, 30 L. R. A. 90; Fletcher vs. Tuttle, 151 Ill. 41, 37 N. E. 683, 25 L. R. A. 143, 42 Am. St. Rep. 220. Thus the

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[34] *Id*. at 402-403.

Legislature may in its discretion determine whether it will pass a law or submit a proposed constitutional amendment to the people. The courts have no judicial control over such matters, not merely because they involve political question, but because they are matters which the people have by the Constitution delegated to the Legislature. The Governor may exercise the powers delegated to him, free from judicial control, so long as he observes the laws and acts within the limits of the power conferred. His discretionary acts cannot be controllable, not primarily because they are of a political nature, but because the Constitution and laws have placed the particular matter under his control. But every officer under a constitutional government must act according to law and subject him to the restraining and controlling power of the people, acting through the courts, as well as through the executive or the Legislature. One department is just as representative as the other, and the judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action. The recognition of this principle, unknown except in Great Britain and America, is necessary, to the end that the government may be one of laws and not men'- words which Webster said were the greatest contained in any written constitutional document." (pp. 411, 417; emphasis supplied.).

In short, the term "political question" connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words, in the language of Corpus Juris Secundum (supra), it refers to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government." It is concerned with issues dependent upon the wisdom not legality, of a particular measure.[35]

There were ripostes. They were feeble though; and, notably they concern not the political nature of the issue but rather the indications of the electoral response.

There was reference to the nitpicked significance of "majority" in the definition of "people" the argument being that the 16,601,997 votes in favor of the promising candidate is not the majority of the total number of those who voted for the position. What makes the observation specious is the fact that it was

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[35] *Tañada v. Cuenco*, G.R. No. L-10520, 28 February 1957.

only candidate Duterte who made the serious and specific promise of a *Libingan* burial for Marcos. The other four candidates for president were unclear about their preference. The votes for the four cannot be definitely counted as against the burial.

Referring to the variety of the electoral issues, there were those who submit that not all those who voted for Duterte did so because they favored the burial of Marcos at the *Libingan*. It is contended that the votes for Duterte were determined by items in his platform other than the burial issue. That may be plausible; but what cannot be questioned is that Duterte did not lose because of his burial pronouncement.

It was urged that the *Libingan* allowance was not a commitment to the nation, not a principled promise, a mere propaganda pitch. Thus, was the issue sought to be reduced as a promise made to be broken, treacherous trap for undiscerning electors. That the allegations are unfounded is clearly shown by the prefatory phrase in the memorandum[36] of respondent Secretary of National Defense Delfin N. Lorenzana to respondent Gen. Ricardo R. Visaya, AFP:

> In compliance to the verbal order of the President to implement his election campaign promise to have the remains of the late former President Ferdinand E. Marcos be interred at the Libangan ng mga Bayani, kindly undertake the necessary planning and preparations to facilitate the coordination of all agencies concerned specially the provisions for ceremonial and security requirements. Coordinate closely with the Marcos family regarding the date of interment and the transport of the late former President's remains from Ilocos Norte to the LNMB
>
> The overall OPR for this activity will the PVAO since the LNMB is under its supervision and administration. PVAO shall designate the focal person for this activity who shall be the overall overseer of the event.
>
> Submit your Implementing Plan to my office as soon as possible.

The Marcos interment at *Libingan*, borrowing the petitioners' words, was a principled commitment which President Duterte

[36] Annex "A" (Petition in G.R. 225984).

firmly believed was so when he offered it to the Filipino voters whom he considered capable of intelligent choice such that upon election he had to "implement his election promise." That, precisely, resulted in the filing of the consolidated petitions before the Court.

Quite obviously, the petitions were submitted because the petitioners did not prevail in the political exercise that was the National Elections of 2016. Right away, we have the reason why the petitions should be dismissed. The petitions with premises and prayer no different from those that were publicly debated, for or against, between and among the people including petitioners themselves proceeding to a conclusion unacceptable to them, cannot be pursued in lieu of the failed public submission.

Adamant in their position, petitioners nonetheless went to Court with their cause now in legal clothing. Still, petitioners cannot thereby bring the matter within the adjudication of the Court.

There was heavy reference to R.A. No. 10368, titled "An Act Providing for Reparation and Recognition of Victims of Human Rights Violations during the Marcos Regime, Documentations of Said Violations, Appropriating Funds Therefor And For Other Purposes." Notably, the petitioners, as they described themselves, are the same persons for whose favor the statute was enacted; the reasons they mention in their petition consisting of the provisions of the Constitution and of the international agreement are the same reasons mentioned in Section 2 of the statute in the "Declaration Policy." Quite specifically the statute defines "Human Rights Violation" as any act or omission committed during the period from September 21, 1972 to February 25, 1986 carried out pursuant to the declaration of Martial Law by former President Ferdinand E. Marcos including warrantless arrest, ASSO, PCO, PDA, torture, killing, involuntary disappearances, illegal takeover of business, confiscation of property, sexual offenses and "analogous" abuses. And, it is provided that Human Rights Violations Victim (HRVV) refers to a person whose human rights were violated by persons acting in an official capacity and to qualify for reparations "the human rights violation must have been committed during the period from September 21, 1972 to February 25, 1986."

Clearly, as proclaimed human rights victims, they squarely fall under the definition of R.A. No.10368. For the same reasons and basis that they are now before this Court, petitioners have already, by the proper political body, been given the recognition and reparation due them, in specific, direct and detailed provisions that even include the creation of a Human Rights Victims' Claims Board to implement the recognition and reparation granted to them by statute.

R.A. No. 10368 is a complete law. It has defined their rights, not just for reparation for damages suffered as HRV's but also they will have by the law their names enshrined in a Roll of Human Rights Victims. A Memorial/Museum/Library shall be established in their Honor. A compendum of their sacrifice shall be prepared and be readily viewed in the internet. There will even be a Human Rights Violations Victims' Memorial Commission. The definition of what their rights are limits any further inclusions except, perhaps, through the same legislative action. There too is significance in the "sunset clause" of the law which states that the Human Rights Victims' Claims Board shall complete its work within two years from the effectivity of the IRR promulgated by it, after which it shall become functus officio. By its concrete and definite terms, R.A. No. 10368 is a completed exercise of legislative wisdom. The Court cannot allow the collected petitions at bar to interfere with that wisdom.

The urgings for judicial action inspite of the limits of R.A. No. 10368 can be gleaned from the presentation by petitioners during the oral arguments. They testified on the details of their suffering during the term of President Ferdinand E. Marcos and pleaded that the burial of Marcos at the *Libingan ng mga Bayani* would "retraumatize" them. They supported the claim and prayer with the submission that their suffering accompanied by the other commission of Marcos, was a national experience that became sovereign contempt culminating in a revolt against Marcos and eventually the "constitutionalization" of both sin and sinner. Hence, the prayer that the allowance of the burial at the *Libingan ng mga Bayani* of the constitutionalized offender is in grave abuse of discretion.

Relative to the petitioners' prayer, an explanation was made by the Solicitor General:

Justice Caguioa:

Was this a unilateral act on the part of the President or was this a request from the Marcos family?

Solicitor General Calida:

I do not know the circumstances in which this promise was made, Your Honor, but if I know President Duterte, he already had a plan for the Philippines, a plan to unite all the Filipinos of different persuasions, ideologist, in fact, this policy of reconciliation is now manifested in the recent Oslo, Norway talks, Your Honor. He wants an inclusive government, Your Honor.

Justice Caguioa:

So, what are we saying here that the testimonials made by human rights victims and other people like them which the Claims Board has numbered at around seventy-five thousand (75), those pain, the pain that they feel they do not reflect the national phyche today, is that what you're saying?

Solicitor General Calida:

Your Honor, I'm human being I feel their pain, but we are in a Court of law, Your Honor. And there are venues where that pain will be expressed by the victims, and as far as I know, making them recount their horrible experience is a form of retraumatization.

Justice Caguioa:

I understand from their testimonies and the summation made by the human rights, what is retraumatizing them is the act of burying President Marcos, do you dispute that?

Solicitor General Calida:

I do not agree with that, Your Honor.

Justice Caguioa:

When the President made this decision to allow the interment of President Marcos in the *Libingan*, did they also considered the injury that the Marcos family would suffer if the burial did not take place?

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Solicitor General Calida:

Well, the urgency, Your Honor, is that President Duterte has already stated that among his policies, Your Honor, is the policy of reconciliation, national healing, and any day that is, shall I rephrase if Your Honor. This is the policy that he has adopted: the remains of Marcos should now be interred at the *Libingan* even the 218 Congressmen, Your Honor, of the 15th Congress agreed that this place is the most fitting place where former President Marcos will be buried, Your Honor.

Justice Caguioa:

And this wisdom, this decision is over and above the pain and sufferings of the human rights victims do I understand that correctly as a political decision that he made?

Solicitor General Calida:

Well, the President will take every matter into consideration, Your Honor, and I assume he considered that too.

Justice Caguioa:

Alright, thank you.[37]

Whether the policy of healing and reconciliation "over and above the pain and suffering of the human rights victims" is in grave abuse of executive discretion or not is answered by the evidently substantial Marcos vote during the fresh and immediately preceding national elections of 2016. The election result is a showing that, while there may have once been, there is no longer a national damnation of President Ferdinand E. Marcos; that the "constitutionalization" of the sin and its personification is no longer of national acceptance. A Marcos vote came out of the elections, substantial enough to be a legitimate consideration in the executive policy formulation. To go back, a *Libingan* Burial for Marcos was a promise made by President Duterte, which promise was opposed by petitioners, inspite of which opposition, candidate Duterte was elected President.

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[37] TSN of Oral Arguments, Wednesday 7 September 2016 10:00 a.m.

All in all, the redemption of an election pledge and the policy which has basis in the result of the election, cannot be tainted with grave abuse of discretion. As things are the issue presented by the petitioners should not even be touched by the Court since it is a political question already resolved politically.

I vote to DISMISS the consolidated petitions before this Court.

## SEPARATE OPINION

**MENDOZA, *J.*:**

The Court should not take sides in this political controversy.

The questions being truly political, there is simply no justiciable controversy.

Hence, the petitions should be dismissed.

Ferdinand Edralin Marcos *(President Marcos)* was not, and will never be, a hero. His interment in the Libingan Ng Mga Bayani *(LNMB)* will not erase the atrocities committed during his authoritarian rule. His place in history will ultimately be judged by the people.

His worthiness as a hero, however, is not the issue at hand. The current controversy revolves around the decision of the administration of President Rodrigo Roa Duterte *(President Duterte)* to allow the burial of the remains of President Marcos in the LNMB in the exercise of his discretion as Chief Executive.

In the course of his campaign for the May 2016 national elections, President Duterte promised to have the remains of the late president buried in the LNMB as a step towards national conciliation or healing. After winning the elections, he followed through on his campaign promise. Pursuant thereto, the public respondents began to take steps to implement his verbal order.

Herein petitioners, majority of whom are either victims or kin of victims of human rights violations committed during the regime of the deposed dictator, assert that the interment is contrary to the Constitution, laws and regulations, and international law. The petitioners claim that a recognized dictator,

plunderer and human rights violator has no place in the LNMB, which is reserved for persons who are worthy of emulation or a source of inspiration.

*Issues involved are truly political questions which are non-justiciable*

The Court has refused to take cognizance of cases which do not present any justiciable controversy, such as when the issue presented is a truly political question. In the landmark case of *Tañada v. Cuenco*,[1] the Court expounded on the concept of political question, *viz*:

> As already adverted to, the objection to our jurisdiction hinges on the question whether the issue before us is political or not. In this connection, Willoughby lucidly states:
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> > "Elsewhere in this treatise the well-known and well-established principle is considered that it is not within the province of the courts to pass judgment upon *the policy* of legislative or executive action. **Where, therefore, *discretionary* powers are granted by the Constitution or by statute, the *manner* in which those powers are exercised is not subject to judicial review.** The courts, therefore, concern themselves only with the question as to the *existence and extent of these discretionary powers*.
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> **In short, the term "political question" connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy.** In other words, in the language of Corpus Juris Secundum (*supra*), it refers to "those questions which, under the Constitution, are to be *decided by the people* in their sovereign capacity, or in regard to which *full discretionary authority* has been delegated to the Legislature or executive branch of the Government." **It is concerned with issues dependent upon the *wisdom*, not legality, of a particular measure.** [Emphases supplied]

It is true that under the present constitutional milieu, the scope of judicial power has been expanded. Under Section 1,

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[1] G.R. No. L-10520, February 28, 1957.

Article VIII of the Constitution, "[j]udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government."

The expanded judicial power bestowed by the Constitution is an offshoot of the prevalence, during the Marcos regime, of invoking the political question doctrine every time government acts were questioned before the courts. The present Constitution, thus, empowered the courts to settle controversies if there would be grave abuse of discretion.

Notwithstanding the expanded power of the courts, the political question doctrine remains operative. The present provision on judicial power does not mean to do away with the political question doctrine itself, and so "**truly political questions"** are still recognized.[2] In *Francisco v. HRET*,[3] the Court explicitly recognized the political question doctrine and explained how the same was determined:

> From the foregoing record of the proceedings of the 1986 Constitutional Commission, it is clear that judicial power is not only a power; it is also a *duty*, a duty which cannot be abdicated by the mere specter of this creature called the political question doctrine. Chief Justice Concepcion hastened to clarify, however, that **Section 1, Article VIII was not intended to do away with truly political questions. From this clarification it is gathered that there are two species of political questions: (1) truly political questions and (2) those which "are not truly political questions."**
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> **Truly political questions are thus beyond judicial review, the reason for respect of the doctrine of separation of powers to be maintained. On the other hand, by virtue of Section 1, Article VIII of the Constitution, courts can review questions which are not truly political in nature.**

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[2] Joaquin G. Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (2003).

[3] 460 Phil. 830 (2003).

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Section 1, Article VIII of the Constitution does not define what are justiciable political questions and non-justiciable political questions, however. Identification of these two species of political questions may be problematic. There has been no clear standard. The American case of *Baker v. Carr* attempts to provide some:

> . . . Prominent on the surface of any case held to involve a political question is found a *textually demonstrable constitutional commitment* of the issue to a coordinate political department; or a *lack of judicially discoverable and manageable standards for resolving it*; or the *impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion*; or the *impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government*; or an *unusual need for questioning adherence to a political decision already made*; or the *potentiality of embarrassment from multifarious pronouncements by various departments on one question*.

Of these standards, the more reliable have been the first three: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) the lack of judicially discoverable and manageable standards for resolving it; and (3) the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion. These standards are not separate and distinct concepts but are interrelated to each in that the presence of one strengthens the conclusion that the others are also present.

The problem in applying the foregoing standards is that the American concept of judicial review is radically different from our current concept, for Section 1, Article VIII of the Constitution provides our courts with far less discretion in determining whether they should pass upon a constitutional issue.

**In our jurisdiction, the determination of a truly political question from a non-justiciable political question lies in the answer to the question of <u>whether there are constitutionally imposed limits on powers or functions conferred upon political bodies</u>.** If there are, then our courts are duty-bound to examine whether the branch or instrumentality of the government properly acted within such limits.[4] x x x. [Emphases and underscoring supplied]

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[4] *Id*. at 910-912.

Thus, a political question will not be considered justiciable if there are no constitutionally imposed limits on powers or functions conferred upon the political bodies.[5] Nonetheless, even in cases where matters of policy may be brought before the courts, there must be a showing of grave abuse of discretion on the part of any branch or instrumentality of the government before the questioned act may be struck down. **"If grave abuse is not established, the Court will not substitute its judgment for that of the official concerned and decide a matter which by its nature or by law is for the latter alone to decide."**[6] "We cannot, for example, question the President's recognition of a foreign government, no matter how premature or improvident such action may appear. We cannot set aside a presidential pardon though it may appear to us that the beneficiary is totally undeserving of the grant. Nor can we amend the Constitution under the guise of resolving a dispute brought before us because the power is reserved to the people."[7]

Guided by the foregoing, it is my considered view that the decision of President Duterte to allow President Marcos to be interred in the LNMB is beyond the ambit of judicial review.

*Interment of President Marcos in the LNMB is a discretionary act of President Duterte*

Executive power is vested in the President of the Philippines.[8] Inherent in the executive power is the duty to faithfully execute the laws of the land and is intimately related to the other executive functions.[9] Section 17, Article VII of the Constitution[10] embodies

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[5] *The Diocese of Bacolod v. COMELEC*, G.R. No. 205728, January 21, 2015.

[6] *Marcos v. Manglapus*, 258 Phil. 479, 506-507 (1989).

[7] *Id.* at 506.

[8] Section 1, Article VII of the Constitution.

[9] *Saguisag v. Executive Secretary Ochoa*, G.R. No. 212426, January 12, 2016.

[10] The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

the faithful execution clause. The Executive is given much leeway in ensuring that our laws are faithfully executed.[11] Thus, any act pursuant to the faithful execution clause should be deemed a political question as the President is merely executing the law as it is. There is no question as to the legality of the act but on its wisdom or propriety.

Indeed, the duty to execute the laws of the land is not discretionary on the part of the President, in the same manner that it is not discretionary on the part of the citizens to obey the laws. In *Spouses Marquez v. Spouses Alindog*,[12] the Court drew a fine line between a discretionary act and a ministerial one.

> A clear line demarcates a discretionary act from a ministerial one. Thus:
>
> The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. **If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial.** The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment. [Emphasis and underscoring supplied]

The President may also exercise his judgment in the manner of implementing the laws. For as long as he faithfully executes the law, any issue on the wisdom or propriety of his acts is deemed a political question.

Moreover, the authority of President Duterte to allow the interment of President Marcos in the LNMB is derived from the **residual powers** of the executive. In the landmark case of *Marcos v. Manglapus*,[13] the Court had expounded on the residual powers of the President, to wit:

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[11] *Biraogo v. The Philippine Truth Commission*, 651 Phil. 394, 449 (2010).

[12] G.R. No. 184045, January 22, 2014.

[13] 258 Phil. 479, 504-505 (1989).

To the President, the problem is one of balancing the general welfare and the common good against the exercise of rights of certain individuals. **The power involved is the President's residual power to protect the general welfare of the people. It is founded on the duty of the President, as steward of the people.** To paraphrase Theodore Roosevelt, it is not only the power of the President but also his **duty to do anything not forbidden by the Constitution or the laws that the needs of the nation demand** [*See* Corwin, *supra*, at 153]. It is a power borne by the President's duty to preserve and defend the Constitution. It also may be viewed as a power implicit in the President's duty to take care that the laws are faithfully executed [*see* Hyman, *The American President*, where the author advances the view that an allowance of discretionary power is unavoidable in any government and is best lodged in the President].

More particularly, this case calls for the exercise of the President's powers as protector of the peace. [Rossiter, *The American Presidency*]. The power of the President to keep the peace is not limited merely to exercising the commander-in-chief powers in times of emergency or to leading the State against external and internal threats to its existence. **The President is not only clothed with extraordinary powers in times of emergency, but is also tasked with attending to the day-to-day problems of maintaining peace and order and ensuring domestic tranquillity in times when no foreign foe appears on the horizon.** Wide discretion, within the bounds of law, in fulfilling presidential duties in times of peace is not in any way diminished by the relative want of an emergency specified in the commander-in-chief provision. For in making the President commander-in-chief the enumeration of powers that follow cannot be said to exclude the President's exercising as Commander-in-Chief powers short of the calling of the armed forces, or suspending the privilege of the writ of *habeas corpus* or declaring martial law, in order to keep the peace, and maintain public order and security. [Emphases and underscoring supplied]

To reiterate, President Duterte's rationale in allowing the interment of President Marcos in the LNMB was for national healing, reconciliation and forgiveness amidst our fragmented society, so that the country could move forward in unity far from the spectre of the martial law regime.

To this, however, the petitioners vehemently disagree. Thus, in their petitions, they challenge the wisdom of the decision of

the President. They bewail, and understandably so, that Marcos was not a hero who deserved to be buried in the hallowed grounds of the LNMB. They view him as not worthy of being buried alongside those who were true heroes, as they hold him responsible for the illegal detention, arrest, torture, disappearances, and summary executions of those who opposed his regime.

The Court should not comment on those points for now. It is not unaware of the sufferings of the victims of human rights during martial law. The Court, however, should defer exercising jurisdiction when the acts of the State are challenged based on their wisdom or propriety. It should be stressed, however, that the interment of President Marcos in the LNMB will not bestow upon him the title of a hero. It will not erase from the memories of the victims what have been etched in their minds – that President Marcos was a heartless dictator and rapacious plunderer of our national economy and patrimony.

*No Grave Abuse of Discretion*

Granting that the discretionary act of President Duterte was covered by the expanded scope of judicial power, the petitions would still lack merit. There is absolutely no showing that the acts of the public respondents are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Grave abuse of discretion is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[14]

In the situation at hand, no grave abuse of discretion is manifest as there is no violation of any constitutional provision or law. In fact, the public respondents were guided by, and complied with, the law. Under AFP Regulation G 161-375, the following are eligible for interment in the LNMB:

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[14] *Intec Cebu, Inc. v. CA*, G.R. No. 189851, June 22, 2016.

1. Medal of Valor Awardees;
2. Presidents or Commanders-in-Chief;
3. Secretaries of National Defense;
4. Chiefs of Staff;
5. General/Flag Officers of the AFP;
6. Active and **retired military personnel** of the AFP to include active draftees and trainees who died in line of duty, active reservists and CAFGU Active Auxiliary *(CAA)* who died in combat operations or combat related activities;
7. Former members of the AFP who laterally entered or joined the PCG and the PNP;
8. **Veterans of Philippine Revolution of 1890, WWI, WWII and recognized guerrillas**;
9. Government Dignitaries, Statesmen, National Artists and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, Congress, or the Secretary of National Defense; and
10. **Former Presidents**, Secretaries of Defense, Dignitaries, Statesmen, National Artists, widows of Former Presidents, Secretaries of National defense and Chief of Staff.

In the absence of any law to the contrary, AFP Regulation G 161-375 remains to be the sole legal basis in determining who are qualified to be buried in the LNMB.

When the public respondents based their decision on the applicable laws and regulations, they cannot be said to have committed grave abuse of discretion. Besides, it is not for the Court to determine who is worthy of inspiration or emulation.

It is true that the present Constitution was crafted to prevent the occurrence of abuse prevalent during the Marcos Regime. This is evident in numerous provisions of the Constitution such as the Bill of Rights and the provisions under the Executive Department limiting the power to declare Martial Law. Nevertheless, the Constitution neither expressly nor impliedly prohibits the interment of President Marcos in the LNMB.

Moreover, the decision to allow the interment of President Marcos in the LNMB is not contrary to R.A. No. 289 and R.A. No. 10368. As explained by the public respondents, the National

Pantheon mentioned in R.A. No. 289 was quite different from the LNMB. As such, the standards claimed by the petitioners in R.A. No. 289 are not applicable to the LNMB.

Likewise, the interment of President Marcos in the LNMB is not repugnant to the avowed policy of R.A. No. 10368, which seeks to recognize the heroism of human rights violation victims *(HRVV)* during martial law. *First*, R.A. No. 10368 neither expressly nor impliedly prohibits his burial in the LNMB. *Second*, his interment is not incongruous with honoring HRVVs considering that the burial is not intended to confer upon him the title of a hero. *Third*, the State can continue to comply with its obligation under R.A. No. 10368 to provide recognition and reparation, monetary or non-monetary, to the HRVVs, notwithstanding his burial in the LNMB.

*A Final Note*

Lest it be misunderstood, the Court is not passing judgment on whether President Marcos truly deserves to be buried in the LNMB. It is merely exercising judicial restraint as the issues at hand are truly political in nature and, therefore, are best left to the discretion of the President.

The Court sympathizes with the HRVVs and acknowledges the harrowing ordeals they suffered in the hands of government forces during martial law. The stigma left by the martial law regime will never be forgotten by the Filipino people and the burial of President Marcos in the LNMB will not re-write history.

On the matter, however, the Supreme Court should not have a hand. It should not resolve the issues in this truly political controversy.

Accordingly, I vote to dismiss these petitions and move on.

## DISSENTING OPINION

**SERENO, *C.J.*:**

The whole thesis of respondents on the substantive issues lies in the absence of an express prohibition against the burial

of former President Marcos; hence, they argue that this Court cannot characterize the current President's decision to have him buried at the *Libingan ng mga Bayani* (LMB) as one made in grave abuse of discretion.

Nothing can be more wrong, and no view more diminishing of the Judiciary's mandated role under the 1987 Constitution.

If the absence of an express prohibition were to be the primary or sole determinant of the merits of this case, then even the processing clerk of the administrative office supervising the LMB could decide this matter by simply ticking off the appropriate box in a Yes or No question that asks: "Is there an express statute that prohibits a President from burying a former bemedalled soldier or president in the *Libingan ng Mga Bayani*? If yes, bury. If no, do not bury."

To the contrary, the case can only be decided by deeply and holistically analyzing the extent and implications of the legal phenomenon called the power to exercise presidential discretion, and how it should be measured in this case.

In light of allegations that the decision to bury the late President will run counter to the Constitution, statutory standards and judicial pronouncements, this Court must take a step back in history to understand what the Constitution that it is defending stands for; whether it is in danger of being violated in spirit or in letter; and whether this danger is of such kind and degree that the exercise of presidential discretion should be restrained. This Court must also compare the statutory standards that have been raised and determine whether the course of action proposed by the President would run counter to those standards. This Court must also examine the doctrines and language employed in many of its decisions if it is to guard against heresy directed at the spirit of the Constitution that could undermine not just one doctrine, but perhaps the moral legitimacy of the Court itself.

This is how consequential any statement coming from the Court on this issue could be.

***The Court's bounden duty is not only to preserve the Constitution, but also itself.***

It has been posited that the Court should not meddle in a political maneuver that the President is compelled to make. Whether it is a maneuver that is animated by the need to maintain credibility in the eyes of important supporters, or whether it is necessary to advance unity in this country, is not a motivation that the President should be accountable for.

Likewise, it has been proposed that this Court should look beyond the past and shift its focus to today's political reality – that the present decision-maker is the most powerful and the most popular politician in the republic; that for him to undertake the reforms he has promised requires that he be able to deliver on his promises; that the key to unity in this day and age is to forgive the past and give former President Marcos the honors due the office that he held and the bemedalled soldiering he rendered; and that in any event, the state has enacted many measures not only to compensate Martial Law victims but also to advance the cause of human rights.

At the initial stage of any discussion in this Court, these kinds of arguments are usually met with skepticism by its Members under the express unction of the Constitution as interpreted in the post-Marcos decisions.[1] For the relevant judicial powers provisions of the 1987 Constitution impels the Court to relegate the political question argument, and any semblance of such argument – deference, political wisdom, etc. – to a status of non-importance, especially if it fails to satisfy the threshold test. Simply put, that test is whether indeed the question is one addressed to purely political exercises internal to the workings of the legislature;[2] or whether, on the part of the

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[1] *Saguisag v. Ochoa, Jr.*, G.R. Nos. 212426 & 212444, 12 January 2016; *Francisco, Jr. v. House of Representatives*, 460 Phil. 830 (2003)*; Estrada v. Desierto*, 406 Phil. 1 (2001); *Oposa v. Factoran, Jr.*, G.R. No. 101083, 30 July 1993, 224 SCRA 792; *Bondoc v. Pineda*, 278 Phil. 784 (1991); *Marcos v. Manglapus*, 258 Phil. 479 (1989).

[2] *Arroyo v. De Venecia*, 343 Phil. 42 (1997).

President, there are no legal standards against which his particular action can be evaluated.[3] Indeed, the Court has, in questions of grave national importance, generally exercised judicial review when the allegations of grave abuse of discretion are sufficiently serious.

For the implications of this case goes to the very fulcrum of the powers of Government: the Court must do what is right by correctly balancing the interests that are present before it and thus preserve the stability of Philippine democracy.

If the Court unduly shies away from addressing the principal question of whether a decision to bury the former President would contradict the anti-Martial Law and human rights underpinnings and direction of the 1987 Constitution, it would, wittingly or unwittingly, weaken itself by diminishing its role as the protector of the constitutional liberties of our people. It would dissipate its own moral strength and progressively be weakened, unable to promptly speak against actions that mimic the authoritarian past, or issue judicial writs to protect the people from the excesses of government.

This Court must, perforce, painstakingly go through the process of examining whether any claim put forth herein by the parties genuinely undermines the intellectual and moral fiber of the Constitution. And, by instinct, the Court must defend the Constitution and itself.

***The 1987 Constitution is the embodiment of the Filipino nations' enduring values, which this Court must zealously protect.***

Countless times, this Court has said in so many words that the 1987 Constitution embodies the Filipinos' enduring values.[4]

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[3] *David v. Macapagal-Arroyo*, 522 Phil. 705 (2006); *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618 (2000); *Llamas v. Orbos*, 279 Phil. 920 (1991).

[4] 1987 Constitution, Preamble. Also see Concurring Opinion of Chief Justice Sereno in *Poe-Llamanzares v. COMELEC*, G.R. Nos. 221697 & 221698-700, 8 March 2016.

The protection of those values has consequently become the duty of the Court. That this is the legal standard by which to measure whether it has properly comported itself in its constitutional role has been declared in various fashions by the Court itself.

See, for example, how this Court articulated its duty to protect the environment,[5] women,[6] children,[7] labor,[8] the indigenous people,[9] and consistently, those who have been or are in danger of being deprived of their human rights.[10]

Note the power that the Constitution vests in the Court to actively promulgate rules for the protection of human rights, and how the Court in turn described this duty when it promulgated the writs of *kalikasan*, *habeas data*, and *amparo*.[11]

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[5] *Resident Marine Mammals of the Protected Seascape Tanon Strait v. Secretary Angelo Reyes*, G.R. No. 180771, 21 April 2015; *West Tower Condominium Corp. v. First Phil. Industrial Corp.*, G.R. No. 194239, 16 June 2015; *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, 595 Phil. 305 (2008); *Oposa v. Factoran, Jr., supra* note 1.

[6] *Spouses Imbong v. Ochoa, Jr.*, G.R. Nos. 204819, 204934, 204957, 204988, 205003, 205043, 205138, 205478, 205491, 205720, 206355, 207111, 207172, 207563, 8 April 2014; *Garcia v. Drilon*, 712 Phil. 44 (2013); *Philippine Telegraph and Telephone Co. v. National Labor Relations Commission*, 338 Phil. 1093 (1997).

[7] *Poe-Llamanzares v. Commission on Elections*, G.R. Nos. 221697 & 221698-700, 8 March 2016; *Dela Cruz v. Gracia*, 612 Phil. 167 (2009); *People v. Abadies*, 433 Phil. 814 (2002).

[8] *Seagull and Maritime Corp. v. Dee*, 548 Phil. 660 (2007); *Lopez v. Metropolitan Waterworks and Sewerage System*, 501 Phil. 115 (2005).

[9] *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, 486 Phil. 754 (2004).

[10] *The Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, 21 January 2015, 747 SCRA 1; *Land Bank of the Philippines v. Heirs of Angel T. Domingo*, G.R. No. 168533, 4 February 2008, 543 SCRA 627; *Guazon v. De Villa*, 260 Phil. 673 (1990).

[11] See *Rules of Procedure for Environmental Cases*, A.M. No. 09-6-8-SC, 13 April 2010; *The Rule on the Writ of Amparo*, A.M. No. 07-9-12-SC, 25 September 2007; *Rule on the Writ of Habeas Data*, A.M. No. 08-1-16-SC, 22 January 2008.

Any conclusion in this case that betrays a lack of enthusiasm on the part of this Court to protect the cherished values of the Constitution would be a judicial calamity. That the Judiciary is designed to be passive relative to the "active" nature of the political departments is a given. But when called upon to discharge its relatively passive role, the post-1986 Supreme Court has shown zealousness in the protection of constitutional rights, a zealousness that has been its hallmark from then up to now. It cannot, in the year 2016, be reticent in asserting this brand of protective activism.

***Not everything legally required is written in black and white; the Judges' role is to discern within the penumbra.***

As early as 1950, the Civil Code, a creation of the Legislature, has instructed the Judiciary on how to proceed in situations where there is no applicable law or where there is ambiguity in the legislation that seems to apply to the case at hand. The code provides:

> Article 9. No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws.
>
> Article 10. In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.

I do not believe that this Court is bereft of sufficient guides that can aid in the exercise of its role of protecting and advancing constitutional rights. It must with a magnifying lens examine whether clear intent, historical references, and express mandates can be found in the 1987 Constitution and whether these are relevant to this case. We must pick them out and examine them. The ill-gotten wealth statutes, the remedial human rights legislation – all describe the burden of a nation that must recover from the financial and moral plunder inflicted upon this nation by Marcos, his family and his cronies. We must get our bearings from these guideposts and find out if they instruct us on what must be done with respect to his proposed burial beyond the express and implied condemnation of the wrongs he has

committed against the country. The pronouncements of this Court and those of the Sandiganbayan**,** the legal pleadings and administrative propositions submitted by the Philippine government to international and local tribunals from 1987 to the present – a full 29 years – from these we must infer an indication of the treatment that should be given to the proposed action of the Government.

That constitutional and statutory interpretation is the bread and butter of adjudication is beyond cavil. From the oldest cases in the *Philippine Reports* to its latest decision,[12] this Court has been in the business of filling in gaps, interpreting difficult texts, so that "right and justice will prevail." That this is the entire reason for the existence of the Judiciary is self-evident. The end of "judg-ing" is not to do what an administrative clerk can very well do; it is to ensure that "right and justice" will prevail.

Indeed, that judges must interpret statutes as well as declare the existence and protection of individual rights so that "justice and right" might prevail has been the essence of an independent Judiciary. This has been so from the time that the necessity for such independence was first recognized by the 1215 Magna Carta signed by King John; that no man, not even the highest ruler of the land – and King John believed in his divine right to rule – can exercise power in such a way that denies the fundamental liberty of any man.

And the modern Judiciary has progressed considerably from that time. The Philippine Judiciary will thus be measured by the universal standard of whether it has discharged its power of review, so that "right and justice will prevail."

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[12] See, among others, *Vda. de Padilla v. Vda. de Padilla,* 74 Phil. 377 (1943*); Republic v. de los Angeles*, 148-B Phil. 902 (1971); *Floresca v. Philex Mining Corp*., 220 Phil. 533 (1985); *Salvacion v. Central Bank of the Philippines*, 343 Phil. 539 (1997); Concurring Opinion of Chief Justice Maria Lourdes P.A. Sereno in *Corpuz v. People,* 734 Phil. 353 (2014) citing the Report of the Code Commission, p. 78; *Social Weather Stations, Inc. v. COMELEC*, G.R. No. 208062, 7 April 2015; *Carpio-Morales v. Court of Appeals*, G.R. Nos. 217126-27, 10 November 2015; *Poe-Llamanzares v. Commission on Elections, supra* note 7.

There was a time when this Court hid under the "political question" doctrine and evaded constitutional and moral responsibility for the long period of suppression of the people's basic rights. Rightly so, that same Court, after the repudiation by our people of the Marcos regime in 1986, likewise repudiated the acts of the majority of the Court during Martial Law.

This Court cannot afford to retrogress and make the same mistakes as those made by its predecessor courts during Martial Law. To do so would possibly merit the same kind of condemnation that former President Marcos reaped in the fullness of time.

***Is the preference for the protection of human rights encoded in the legal DNA of the Constitution?***

There is no question that the importance given to human rights is encoded in the very building blocks of the Philippine Constitution. For the Constitution to make sense, the Supreme Court has to recognize that it is programmed to reject government actions that are contrary to the respect for human rights, and to uphold those that do.

The recognition of the hallowed place given to the protection of human rights has been tirelessly repeated by all the Justices who ever walked the halls of Padre Faura. Not one has said that it was unimportant; or that it should be sacrificed at the altar of something else – not economic progress, not even peace – not even by those who saw when, why, and how Martial Law began and progressed.

Former Chief Justice Reynato Puno has said:

> The sole purpose of government is to promote, protect and preserve these [human] rights. And when government not only defaults in its duty but itself violates the very rights it was established to protect, it forfeits its authority to demand obedience of the governed and could be replaced with one to which the people consent. The Filipino people exercised this highest of rights in the EDSA Revolution of February 1986.[13]

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[13] Concurring Opinion of Chief Justice Puno in *Republic v. Sandiganbayan*, 454 Phil. 504 (2003).

Chief Justice Puno unequivocably repudiated the "ends-justifies-means" mantra of Martial Law when he catapulted the rights that Marcos trampled upon to the highest pinnacle of government priorities, and when as Chief Justice he made as his tenure's flagship the promulgation of the extraordinary and novel human rights writs of *amparo* and *habeas data*.

If it is true that when the Government itself violates the very rights it was established to protect, that violation forfeits its right to govern, then it becomes necessary for this Court to reject any governmental attempt that encourages the degradation of those rights. For this Court guards not only against clear and direct violations of the Constitution, but also against actions that lead this country and its rulers to a slippery slope that threatens to hurl its people to the abyss of helpless unprotectedness.

Contrary to the thesis of my esteemed colleague Justice Diosdado Peralta, the constitutional provisions guaranteeing the protection of human rights are not inert, coming to life only when there is a specific law that would make these rights accessible in specific cases. Each right that is sought to be protected by the Constitution acts as a prohibition against the Government's derogation of those rights. Not all of the rights guaranteed by the Constitution direct the commission of positive acts. Yet these rights can, under the right circumstances, be invoked either singly or collectively to bar public officers from performing certain acts that denigrate those rights.

***Summary of the arguments on the substantive issues***

Credit must be given to the Solicitor General for immediately agreeing that the Constitution, decisions of this Court, human right statutes and the ill-gotten wealth laws and proceedings – in their totality – condemn the Martial Law regime of the late President Marcos, his family and his cronies.[14] Nevertheless, he posits that all of these are in the past; human rights victims

[14] Consolidated Comment dated 22 August 2016, p. 62; Oral Arguments Transcript of Stenographic Notes [hereinafter TSN], 7 September 2016, p. 243; Memorandum dated 27 September 2016, pp. 134-136.

are to be compensated, anyway; and the recovery of ill-gotten wealth would continue, including the pursuit of criminal cases against the Marcos family and their cronies. In other words, while he admits that it would be most difficult to make former President Marcos out as a hero, considering the latter's martial rule and recorded plunder, nevertheless, Marcos was a bemedalled war soldier, and that, in addition, his being a former President who was never dishonorably discharged as a soldier – this fact alone – entitles him to be interred at the LMB. To the Solicitor General, it is *non sequitur* for human rights victims to claim that the burial of Marcos at a cemetery called *Libingan ng mga Bayani* will entomb him as a hero and negate the plethora of legal pronouncements that he is not.

The candid admission made by the Solicitor General has made the job of this Court much easier. For the substantive issue now boils down to whether, in fact and in law, the proposed burial of the late President Marcos at the LMB

(1) will derogate from the state's duty to protect and promote human rights under the Constitution, domestic statutes, and international law;

(2) will violate Presidential Decree No. 105, and Republic Act Nos. 10066, 10086 and 289;

(3) is an unconstitutional devotion of public property to a private purpose;

(4) is an illegal use of public funds;

(5) cannot be sourced from the residual powers of the President or his powers to reserve lands for public purposes;

(6) cannot find legal mooring in AFP Regulation G 161-375;

(7) is in violation of the clause on faithful execution of the laws

and thus the proposed burial is unconstitutional and illegal, and the presidential discretion sought to be exercised is being committed in grave abuse of discretion.

On the procedural points, this Opinion fully agrees with the *Dissenting Opinion* of Justice Alfredo Benjamin S. Caguioa, Jr., but will nevertheless, attempt to augment what has been so ably discussed by Justice Caguioa on the political question defense.

On the substantive points, I fully agree with Justice Caguioa, whose *Dissenting Opinion* had first been proposed as the main decision. I had prepared this Opinion to elucidate my independent understanding of some of the issues he has covered.

## DISCUSSION

## I.

## THE COURT HAS THE AUTHORITY TO RESOLVE THIS CONTROVERSY UNDER THE EXPANDED CONCEPT OF JUDICIAL REVIEW IN THE 1987 CONSTITUTION.

Respondents contend that the issue in this case is a matter within the discretion of the Executive and must consequently be considered beyond our power of judicial review.

As will be further discussed, this Court cannot refuse to review an issue simply because it is alleged to be a political question. That train has departed a long time ago. Prevailing jurisprudence is a generation apart from the former usefulness of the political question doctrine as a bar to judicial review. The reason for that departure – Philippine Martial Law experience.

### *A. With the advent of the 1987 Constitution, respondents can no longer utilize the traditional political question doctrine to impede the power of judicial review.*

The 1987 Constitution has expanded the concept of judicial review[15] by expressly providing in Section 1, Article VIII, as follows:

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[15] *Integrated Bar of the Philippines v. Zamora, supra* note 3.

Section 1. The Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The above provision delineates judicial power and engraves, for the first time, the so-called *expanded certiorari jurisdiction* of the Supreme Court.[16]

The first part of the provision represents the traditional concept of judicial power involving the settlement of conflicting rights as conferred by law. The second part represents the expansion of judicial power to enable the courts of justice to review what was before forbidden territory; that is, the discretion of the political departments of the government.[17]

As worded, the new provision vests in the judiciary, particularly in the Supreme Court, the power to rule upon even the wisdom of the decisions of the executive and the legislature, as well as to declare their acts invalid for lack or excess of jurisdiction, should they be tainted with grave abuse of discretion.[18]

The deliberations of the 1986 Constitutional Commission provide the nature and rationale of this expansion of judicial power. In his Sponsorship Speech, former Chief Justice and Constitutional Commissioner Roberto R. Concepcion stated:

The first section starts with a sentence copied from former Constitutions. It says:

> The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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[16] *Francisco, Jr. v. House of Representatives,* 460 Phil. 830 (2003).

[17] *Oposa v. Factoran, Jr., supra* note 1.

[18] *Id*.

I suppose nobody can question it.

The next provision is new in our constitutional law. I will read it first and explain.

> Judicial power includes the duty of courts of justice to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part or instrumentality of the government.

Fellow Members of this Commission, **this is actually a product of our experience during martial law.** As a matter of fact, it has some antecedents in the past, but **the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political questions and got away with it.** As a consequence, certain principles concerning particularly the writ of habeas corpus, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime. . . .

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Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

**This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question**.[19] (Emphasis supplied)

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[19] I RECORD of the 1986 Constitutional Commission 434-436 (1986).

The expansion of judicial power resulted in constricting the reach of the political question doctrine.[20] *Marcos v. Manglapus*[21] was the first case that squarely dealt with the issue of the scope of judicial power *vis-a-vis* the political question doctrine under the 1987 Constitution. In that case, the Court explained:

> The present Constitution limits resort to the political question doctrine and broadens the scope of judicial inquiry into areas which the Court, under previous constitutions, would have normally left to the political departments to decide.
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> x x x x x x x x x
>
> x x x When political questions are involved, the Constitution limits the determination to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned. If grave abuse is not established, the Court will not substitute its judgment for that of the official concerned and decide a matter which by its nature or by law is for the latter alone to decide.[22]

The prerogative of the Court to review cases in order to determine the existence of grave abuse of discretion was further clarified in *Estrada v. Desierto*:[23]

> To a great degree, the 1987 Constitution has narrowed the reach of the political question doctrine when it expanded the power of judicial review of this court not only to settle actual controversies involving rights which are legally demandable and enforceable but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Heretofore, the judiciary has focused on the "thou shalt not's" of the Constitution directed against the exercise of its jurisdiction. **With the new provision, however, courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of**

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[20] *Estrada v. Desierto, supra* note 1.

[21] *Marcos v. Manglapus, supra* note 1.

[22] *Supra* note 20, at 506-507.

[23] *Estrada v. Desierto, supra* note 1.

**government.** Clearly, the new provision did not just grant the Court power of doing nothing.[24] (Citations omitted and emphasis supplied)

Notably, the present Constitution has not only vested the judiciary with the *right* to exercise judicial power, but made it a *duty* to proceed therewith – a duty that cannot be abandoned "by the mere specter of this creature called the political question doctrine."[25] This duty must be exercised "to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions."[26]

Chief Justice Concepcion had emphatically explained to the 1986 Constitutional Commission that the Supreme Court, which he had been a part of, used the political question theory to avoid reviewing acts of the President during Martial Law, and thus enabled the violation of the rights of the people. In his words:

> It [referring to the refusal of the Supreme Court to review] did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime.[27]

The question I now pose to my colleagues in the Majority: "Are we not, by refusing to pass upon the question of the effects of the Marcos burial at the LMB, encouraging authoritarianism, plunder, and the violation of human rights, by signaling that what Marcos and his Martial Rule represents is not anathema?"

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[24] *Id.* at 42-43.

[25] *Francisco, Jr. v. House of Representatives, supra* note 16, at 910.

[26] *Araullo v. Aquino III*, G.R. Nos. 209287, 209135, 209136, 209155, 209164, 209260, 209442, 209517, 209569, 1 July 2014, 728 SCRA 1, 74.

[27] *Supra* note 19.

### *B. In the exercise of its expanded judicial power, the Court has decided issues that were traditionally considered political questions.*

Following the effectivity of the present Constitution, only a select number of issues continue to be recognized by the Court as truly political and thus beyond its power of review. These issues include the executive's determination by the executive of sovereign or diplomatic immunity,[28] its espousal of the claims of its nationals against a foreign government,[29] and the electorate's expression of confidence in an incumbent official.[30]

Apart from these matters, all other acts of government have been the subject of the expanded *certiorari* jurisdiction of the Court under Article VIII, Section II of the Constitution. As demonstrated in the following cases, the Court has reviewed the acts of the President, the Senate, the House of Representatives, and even of independent bodies such as the electoral tribunals and the Commission on Elections, even for acts that were traditionally considered political.

#### *Acts of the President*

The Court in *Marcos v. Manglapus*[31] ascertained the validity of the President's determination that the return of the Marcoses posed a serious threat to the national interest and welfare, as well as the validity of the prohibition on their return. As previously stated, the political question doctrine was first invoked

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[28] *Department of Foreign Affairs v. National Labor Relations Commission,* 330 Phil. 573 (1996); *Callado v. International Rice Research Institute,* 314 Phil. 46 (1995); *Lasco v. United Nations Revolving Fund for Natural Resources Exploration,* 311 Phil. 795 (1995); *The Holy See v. Rosario, Jr.*, G.R. No. 101949, 1 December 1994, 238 SCRA 524; *International Catholic Migration Commission v. Calleja,* G.R. Nos. 85750, 89331, 268 Phil. 134 (1990).

[29] *Vinuya v. Romulo,* 633 Phil. 538 (2010).

[30] *Evardone v. Commission on Elections,* G.R. Nos. 94010, 95063, 2 December 1991, 204 SCRA 464.

[31] *Marcos v. Manglapus, supra* note 121.

– and then rejected – by the Court in that case in view of its expanded power of judicial review under the 1987 Constitution.

The Court then reviewed the constitutionality of a presidential veto in *Gonzales v. Macaraig, Jr.*[32] It ruled that "the political question doctrine neither interposes an obstacle to judicial determination of the rival claims. The jurisdiction to delimit constitutional boundaries has been given to this Court."

The expanded power of judicial review was likewise utilized to examine the grant by the President of clemency in administrative cases;[33] and the President's power to call out the armed forces to prevent or suppress lawless violence, invasion or rebellion.[34] The Court even tackled the legitimacy of the Arroyo administration in *Estrada v. Desierto.*[35] Although it resolved the question as a constitutional issue, the Court clarified that it would not defer its resolution based merely on the political question doctrine.

In *David v. Macapagal-Arroyo*,[36] it was the validity of then President Arroyo's declaration of national emergency that was assailed before the Court. Significantly, it reviewed the issue even while it recognized that the matter was solely vested in the wisdom of the executive:

> While the Court considered the President's "calling-out" power as a discretionary power solely vested in his wisdom, it stressed that 'this does not prevent an examination of whether such power was exercised within permissible constitutional limits or whether it was exercised in a manner constituting grave abuse of discretion." This ruling is mainly a result of the Court's reliance on Section 1, Article VIII of 1987 Constitution which fortifies the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Under the new definition of judicial power,

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[32] *Gonzales v. Macaraig, Jr.*, 269 Phil. 472 (1990).

[33] *Llamas v. Orbos*, 279 Phil. 920 (1991).

[34] *Integrated Bar of the Philippines v. Zamora, supra* note 3.

[35] *Estrada v. Desierto, supra* note 1.

[36] *David v. Macapagal-Arroyo*, 522 Phil. 705 (2006).

the courts are authorized not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."[37] (Citations omitted)

In *Biraogo v. Philippine Truth Commission of 2010*,[38] even the President's creation of a Truth Commission was reviewed by the Court. **As will be further explained, the fact that the commission was created to implement a campaign promise did not prevent the Court from examining the issue.**

***Acts of the Legislature***

The Court has likewise exercised its expanded power of judicial review in relation to actions of Congress and its related bodies. In *Daza v. Singson*,[39] it reviewed the manner or legality of the organization of the Commission on Appointments by the House of Representatives. While the review was premised on the fact that the question involved was legal and not political, the Court nevertheless held that "even if we were to assume that the issue presented before us was political in nature, we would still not be precluded from resolving it under the expanded jurisdiction conferred upon us that now covers, in proper cases, even the political question."

In later cases, the Court rejected the political question doctrine and proceeded to look into the following political acts of the legislature: (a) the decision of the House of Representatives to allow the dominant political party to change its representative in the House Electoral Tribunal; [40] (b) the decision of the Senate Blue Ribbon Committee to require the petitioners to testify and produce evidence at its inquiry;[41] (c) the propriety of

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[37] *Id*. at 766.

[38] *Biraogo v. Philippine Truth Commission of 2010*, 651 Phil. 374 (2010).

[39] *Daza v. Singson*, 259 Phil. 980 (1989).

[40] *Bondoc v. Pineda*, 278 Phil. 784 (1991).

[41] *Bengzon Jr. v. Senate Blue Ribbon Committee*, G.R. No. 89914, 20 November 1991.

permitting logging in the country;[42] (d) the validity of the filing of a second impeachment complaint with the House of Representatives;[43] (d) the validity of an investigation conducted in aid of legislation by certain Senate committees;[44] and (e) the decision of the House of Representatives Committee on Justice to take cognizance of two impeachment complaints.[45]

We also exercised our constitutional duty "to determine whether or not there had been a grave abuse of discretion amounting to lack or excess of jurisdiction"[46] on the part of the Senate when it ratified the WTO Agreement and the three Annexes thereof in *Tañada v. Angara.*[47] The Court firmly emphasized in that case that "it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality, or department of the government."[48]

***Latest Jurisprudence***

The most recent jurisprudence in this area remains in line with the notion of expanded *certiorari* jurisdiction. The Court has been consistent in its rejection of the political question doctrine as a bar to its expanded power of review.

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[42] In *Oposa v. Factoran, Jr., supra* note 1, the Court declared that "the political question doctrine is no longer the insurmountable obstacle to the exercise of judicial power or the impenetrable shield that protects executive and legislative actions from judicial inquiry or review."

[43] *Francisco, Jr. v. House of Representatives, supra* note 16.

[44] *Neri v. Senate Committee on Accountability of Public Officers and Investigations,* 573 Phil. 554 (2008).

[45] *Gutierrez v. House of Representatives Committee on Justice*, 658 Phil. 322 (2011). We explained therein that "the Court is not asserting its ascendancy over the Legislature in this instance, but simply upholding the supremacy of the Constitution as the repository of the sovereign will."

[46] *Tañada v. Angara*, 338 Phil. 546 (1997), at 575.

[47] *Id*.

[48] *Id*.

In 2013, the constitutionality of the pork barrel system was resolved in *Belgica v. Ochoa*.[49] While the Court clarified that the issue involved legal questions, it nonetheless rejected the invocation of the political question doctrine and upheld the expanded judicial powers of the Court.

In 2014, *Araullo v. Aquino III*[50] delved into the constitutionality of the Disbursement Acceleration Program of the executive department, again emphasizing the Court's expanded power of review.

In 2015, the Court in *The Diocese of Bacolod v. Commission on Elections*[51] rejected the application of the political question doctrine. It ruled that the right of the non-candidate petitioners to post the subject tarpaulin in their private property was an exercise of their right to free expression. In rejecting the COMELEC's political question defense, it held that "the concept of a political question… never precludes judicial review when the act of a constitutional organ infringes upon a fundamental individual or collective right."[52]

A few months after *Diocese of Bacolod*, the policy of the Judicial and Bar Council (JBC) requiring judges of first-level courts to render five years of service before they could qualify as applicants to second-level courts was assailed as unconstitutional in *Villanueva v. Judicial and Bar Council*.[53] The Court resolved the issue by stating "since the formulation of guidelines and criteria, including the policy that the petitioner now assails, is necessary and incidental to the exercise of the JBC's constitutional mandate, a determination must be made on whether the JBC has acted with grave abuse of discretion

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[49] *Belgica v. Ochoa*, 721 Phil. 416 (2013).

[50] *Araullo v. Aquino III*, *supra* note 26.

[51] *The Diocese of Bacolod v. Commission on Elections*, *supra* note 10.

[52] *Id*. at 53.

[53] *Villanueva v. Judicial and Bar Council*, G.R. No. 211833, 7 April 2015, 755 SCRA 182.

amounting to lack or excess of jurisdiction in issuing and enforcing the said policy."[54]

Early this year, the Court in *Saguisag v. Ochoa, Jr.*,[55] determined the constitutionality of the Enhanced Defense Cooperation Agreement between the Republic of the Philippines and the United States of America. The Court affirmed therein its expanded jurisdiction:

> The power of judicial review has since been strengthened in the 1987 Constitution. The scope of that power has been extended to the determination of whether in matters traditionally considered to be within the sphere of appreciation of another branch of government, an exercise of discretion has been attended with grave abuse. The expansion of this power has made the political question doctrine "no longer the insurmountable obstacle to the exercise of judicial power or the impenetrable shield that protects executive and legislative actions from judicial inquiry or review."[56] (Citations omitted)

Notably, while there were instances when the Court deferred from interfering with an issue involving a political question, it did so not because political questions were involved but because of a finding that there was no grave abuse of discretion.[57] Otherwise stated, the Court still exercised its expanded judicial power, but found no reason to annul the questioned acts. It held in *Defensor-Santiago v. Guingona, Jr.*,[58] "the all-embracing and plenary power and duty of the Court 'to determine whether or not there has been a grave abuse of discretion amounting to

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[54] *Id*. at 197.

[55] *Saguisag v. Ochoa, Jr*., G.R. Nos. 212426 & 212444, 12 January 2016.

[56] *Id*.

[57] See *Pimentel, Jr. v. Senate Committee on the Whole*, 660 Phil. 202 (2011); *Spouses dela Paz v. Senate Committee on Foreign Relations*, 598 Phil. 981 (2009); *Garcia v. Executive Secretary*, 602 Phil. 64 (2009); *Sanlakas v. Reyes*, 466 Phil. 482 (2004); *Eastern Assurance & Surety Corp. v. LTFRB*, 459 Phil. 395 (2003); *Lim v. Executive Secretary*, 430 Phil. 555 (2002); *Bagatsing v. Committee on Privatization*, 316 Phil. 404 (1995); *Co v. House of Representatives Electoral Tribunal*, 276 Phil. 758 (1991); *Garcia v. Executive Secretary*, 281 Phil. 572 (1991).

[58] *Defensor-Santiago v. Guingona, Jr.*, 359 Phil. 276 (1998).

lack or excess of jurisdiction on the part of any branch or instrumentality of the Government' is restricted only by the definition and confines of the term 'grave abuse of discretion.'"

It is evident from this long line of cases that the Court can no longer refuse to adjudicate cases on the basis of the "political question doctrine." Whenever issues of a political nature are raised before it, it is the duty of the Court to meet the questions head-on for as long as grave abuse of discretion or constitutionality is seriously involved.

### *C. The assertion that the burial is intended to implement an election campaign promise does not render the matter non-justiciable.*

In view of the above rulings of this Court, it is evident that we must resolve the present controversy, notwithstanding the allegation that the decision of the President to allow the burial is purely political in character. That the order was supposedly founded on an "election campaign promise" does not transform the matter into a political issue that is beyond our power to review.

In fact, in *Biraogo v. Philippine Truth Commission of 2010*,[59] the Court reviewed the validity of the creation of the Truth Commission, despite its recognition that the act was meant to implement a campaign promise made by then President Benigno Aquino III:

> The genesis of the foregoing cases can be traced to the events prior to the historic May 2010 elections, when then Senator Benigno Simeon Aquino III declared his staunch condemnation of graft and corruption with his slogan, "*Kung walang corrupt, walang mahirap*." The Filipino people, convinced of his sincerity and of his ability to carry out this noble objective, catapulted the good senator to the presidency.
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> To transform his campaign slogan into reality, President Aquino found a need for a special body to investigate reported cases of graft and corruption allegedly committed during the previous administration.

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[59] *Supra* note 38.

Thus, at the dawn of his administration, the President on July 30, 2010, signed Executive Order No. 1 establishing the *Philippine Truth Commission of 2010 (Truth Commission)*.[60]

Even under those circumstances, however, the Court still decided the controversy and ultimately declared the creation of the Truth Commission unconstitutional. While I maintain my dissenting view because unknowable standards were imposed in that case, I believe that the Court correctly took cognizance of the dispute, notwithstanding the fact that a campaign promise was involved. There is no reason for the Court to deviate from that course in the present case.

Having established the duty of the Court to review the assailed acts, it is now necessary to examine whether the decision of the President to allow the burial of former President Marcos at the LMB is consistent with the Constitution and the laws.

## II.

## THE PRESIDENT ACTED WITH GRAVE ABUSE OF DISCRETION AND IN VIOLATION OF HIS DUTY TO FAITHFULLY EXECUTE THE LAWS WHEN HE ORDERED THE BURIAL OF MARCOS IN THE *LIBINGAN NG MGA BAYANI*.

The 1987 Constitution mandates the president to ensure that laws are faithfully executed.[61] This duty of faithful execution circumscribes all the actions of the President as the Chief Executive. It also limits every exercise of his discretion. As this Court declared in *Almario v. Executive Secretary*:

> Discretion is not a free-spirited stallion that runs and roams wherever it pleases but is reined in to keep it from straying. In its classic formulation, "discretion is not unconfined and vagrant" but "canalized within banks that keep it from overflowing."
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> The President's power must be exercised in accordance with existing laws. Section 17, Article VII of the Constitution prescribes faithful execution of the laws by the President:

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[60] *Id.* at 428.

[61] 1987 CONSTITUTION, Article VII, Section 17.

> Sec. 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

The President's discretion in the conferment of the Order of National Artists should be exercised in accordance with the duty to faithfully execute the relevant laws. **The faithful execution clause is best construed as an obligation imposed on the President, not a separate grant of power. It simply underscores the rule of law and, corollarily, the cardinal principle that the President is not above the laws but is obliged to obey and execute them.** This is precisely why the law provides that "[a]dministrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution."[62] (Citations omitted and emphasis supplied)

In fulfilling this duty, the President is not only obligated to enforce the express terms of the Constitution or the statutes; he is likewise bound to implement any right, duty, or obligation inferable from these primary sources.[63] This rule finds support in *Cunningham v. Neagle*,[64] in which the United States Supreme Court suggested that the **duty of the President to faithfully execute the law is not limited to the enforcement of the express terms of acts of Congress or of treaties, that duty extends to "all rights, duties and obligations growing out of the Constitution itself, our international relations, and all the protection implied by the nature of the government under the Constitution.**"[65]

As a consequence of these principles, any act of the President that contravenes the law, its policies, or any right or duty inferable therefrom must be considered grave abuse of discretion.[66] By

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[62] 714 Phil. 127, 163-164 (2013).

[63] *See* Concurring Opinion of Associate Justice Arturo Brion, *Biraogo v. Philippine Truth Commission of 2010*, 651 Phil. 374 (2010).

[64] 135 U.S. 1, pp. 82-84.

[65] *Id*. at 64.

[66] In *Carpio Morales v. Court of Appeals*, *supra* note 12, the Court defined grave abuse of discretion in this manner:

the same token, a refusal to execute the laws when necessary must be invalidated in the absence of any statutory justification.[67]

As will be demonstrated, the directive of President Duterte to allow the burial of Marcos at the LMB contravenes the constitution, laws, policies, and jurisprudence. Moreover, the basis for the directive was an invalid regulation issued by the Armed Forces of the Philippines (AFP) in excess of its statutory authority. Considering that the order was made in contravention of law, it cannot be justified by mere reference to the President's residual powers. Such act is tainted with grave abuse of discretion.

### *A. Statutes and jurisprudence establish a clear policy to condemn the acts of Marcos and what he represents, which effectively prohibits the incumbent President from honoring him through a burial in the* Libingan ng mga Bayani.

It is the duty of the Court to give effect not only to the letter of the law, but more importantly to the spirit and the policy that animate it. In *Alonzo v. Intermediate Appellate Court*,[68] the Court explained:

> Thus, we interpret and apply the law not independently of but in consonance with justice. Law and justice are inseparable, and we must keep them so. x x x
>
> *The spirit, rather than the letter of a statute determines its construction, hence, a statute must be read according to its*

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It is well-settled that an act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. It has also been held that "grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence." [citations omitted]

[67] *Supra* note 63.

[68] 234 Phil. 267 (1986).

> *spirit or intent. For what is within the spirit is within the statute although it is not within the letter thereof, and that which is within the letter but not within the spirit is not within the statute. Stated differently, a thing which is within the intent of the lawmaker is as much within the statute as if within the letter; and a thing which is within the letter of the statute is not within the statute unless within the intent of the lawmakers.*[69]

To carry out this duty, the Court must examine not only the subject law itself, but the entire body of related laws including the Constitution, domestic statutes, administrative issuances and jurisprudence. It is only by taking a holistic view of the matter that the Court can ensure that its reading of the law is consistent with the spirit thereof. In *Social Weather Stations, Inc. v. COMELEC*,[70] we explained the importance of taking a holistic view when interpreting the law:

> Third, the assumption that there is, in all cases, a universal plain language is erroneous. In reality, universality and uniformity of meaning is a rarity. A contrary belief wrongly assumes that language is static.
>
> The more appropriate and more effective approach is, thus, holistic rather than parochial: to consider context and the interplay of the historical, the contemporary, and even the envisioned. Judicial interpretation entails the convergence of social realities and social ideals. The latter are meant to be effected by the legal apparatus, chief of which is the bedrock of the prevailing legal order: the Constitution. Indeed, the word in the vernacular that describes the Constitution — *saligan* — demonstrates this imperative of constitutional primacy.
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> Thus, we refuse to read Section 5.2(a) of the Fair Election Act in isolation. Here, we consider not an abstruse provision but a stipulation that is part of the whole, i.e., the statute of which it is a part, that is aimed at realizing the ideal of *fair* elections. We consider not a cloistered provision but a norm that should have a present authoritative effect to achieve the ideals of those who currently read, depend on, and demand fealty from the Constitution.[71]

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[69] *Id*. at 272-273.

[70] G.R. No. 208062, 7 April 2015, 755 SCRA 124.

[71] *Id*. at 167.

In this case, we are being asked to decide whether the President may validly order the burial of Former President Marcos in the LMB. The resolution of this question requires more than an examination of the text of AFP Regulations 161-375. More than finding a textual anchor, we are compelled by this issue to scrutinize the implications of the President's order and determine if it conflicts with the text, the policy, and the spirit of the law.

**At its core, the present dispute turns on whether the state, through the President and the AFP, may legally honor Former President Marcos and his family. For that is the essence of the proposed burial at the LMB regardless of whether Marcos is to be buried as a hero, as a soldier or as a former president. A clear understanding of our Constitution, laws, jurisprudence, and our international obligations must lead to the conclusion that the grant of any such honors for the late dictator is prohibited.**

Setting aside the validity of AFP Regulations 161-375 for the moment, their blind application to the present case would be an egregious mistake. Considering that various laws and jurisprudence reveal the clear policy of the state to denounce both former President Marcos and the Martial Law regime, it would be inappropriate, if not absurd, for the state to honor his memory.

*1. Marcos is perpetuated as a plunderer and a perpetrator of human rights violations in our organic and statutory laws.*

As soon as the EDSA Revolution succeeded in 1986, the revolutionary government – installed by the direct exercise of the power of the Filipino people[72] – declared its objective to immediately recover the ill-gotten wealth amassed by Marcos, his family, and his cronies. The importance of this endeavor is

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[72] Provisional Constitution, First Whereas Clause; Also see *In re: Puno*, A.M. No. 90-11-2697-CA (Resolution), 29 June 1992.

evident in the fact that it was specifically identified in the 1986 Provisional Constitution as part of the mandate of the people. Article II, Section 1 of that Constitution states:

*SECTION 1. Until a legislature is elected and convened under a New Constitution, the President shall continue to exercise legislative power.*

*The President shall give priority to measures to achieve the mandate of the people to:*

*x x x* *x x x* *x x x*

*d) Recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets of accounts;*

Pursuant to this mandate, then President Corazon Aquino issued three executive orders focused entirely on the recovery of the ill-gotten wealth taken by Marcos and his supporters:

a) Executive Order No. 1[73] created the Presidential Commission on Good Government (PCGG) tasked to, among others, assist the President in the "recovery of all ill-gotten wealth accumulated by former President Marcos, his immediate family, relatives, subordinates and close associates x x x by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship."[74]

b) Executive Order No. 2[75] authorized the freezing and sequestration of assets pertaining to Marcos, his relatives, associates, dummies, agents or nominees, which had

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[73] EXECUTIVE ORDER NO. 1, *Creating the Presidential Commission on Good Government* (1987).

[74] *Id.*, Section 2(a).

[75] EXECUTIVE ORDER NO. 2, *Regarding the funds, moneys, assets, and properties illegally acquired or misappropriated by former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees* (1987).

been "acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines;"[76] or "by taking undue advantage of their office, authority, influence, connections or relationship."[77]

c) Executive Order No. 14[78] empowered the PCGG to file and prosecute all cases it had investigated pursuant to Executive Order Nos. 1 and 2.

All three executive orders affirmed that Marcos, his relatives and supporters had acquired assets and properties through the improper or illegal use of government funds or properties by taking undue advantage of their office, authority, influence, or connections. These acts were proclaimed to have caused "grave damage and prejudice to the Filipino people and the Republic of the Philippines."[79]

The gravity of the offenses committed by former President Marcos and his supporters even prompted the Court to describe the mandate of the PCGG as the recovery of "the tremendous wealth plundered from the people by the past regime in the most execrable thievery perpetrated in all history."[80] The importance of this mandate was further underscored by the sovereign Filipino people when they ratified the 1987 Constitution, including the following provision:

ARTICLE XVIII
Transitory Provisions

SECTION 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the

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[76] *Id*. First Whereas Clause.

[77] *Id*.

[78] Executive Order No. 14, *Defining the jurisdiction over cases involving the ill-gotten wealth of former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, members of their immediate family, close relatives, subordinates, close and/or business associates, dummies, agents and nominees*.

[79] EXECUTIVE ORDER NO. 2, *supra* note 75, First Whereas Clause.

[80] *PCGG v. Peña,* 243 Phil. 93 (1998).

recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.

Apart from being declared a plunderer, Marcos has likewise been pronounced by the legislature as a perpetrator of human rights violations. In Republic Act No. (R.A.) 10368, the state recognized the following facts:

a) Human rights violations were committed during the Martial Law period "from September 21, 1972 to February 25, 1986 by persons acting in an official capacity and/or agents of the State;"[81] and

b) A number of these human rights violations occurred because of decrees, declarations or issuances made by Marcos;[82] and by "acts of force, intimidation or deceit"[83]

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[81] Section 3 of RA 10368 defines a "human rights violation" as "any act or omission committed during the period from September 21, 1972 to February 25, 1986 by persons acting in an official capacity and/or agents of the State."

[82] The definition of human rights violations in Section 3 of R.A. 10368 includes: any search, arrest and/or detention without a valid search warrant or warrant of arrest issued by a civilian court of law, including any warrantless arrest or detention carried out pursuant to the declaration of Martial Law by former President Ferdinand E. Marcos as well as any arrest, detention or deprivation of liberty carried out during the covered period on the basis of an "Arrest, Search and Seizure Order (ASSO)," a "Presidential Commitment Order (PCO)" or a "Preventive Detention Action (PDA)" and such other similar executive issuances as defined by decrees of former President Ferdinand E. Marcos, or in any manner that the arrest, detention or deprivation of liberty was effected."

[83] A human rights violation under Section 3(b)(5) of R.A. 10368 includes "[a]ny act of force, intimidation or deceit causing unjust or illegal takeover of a business, confiscation of property, detention of owner/s and or their families, deprivation of livelihood of a person by agents of the State, including those caused by Ferdinand E. Marcos, his spouse Imelda R. Marcos, their immediate relatives by consanguinity or affinity, as well as those persons considered as among their close relatives, associates, cronies and subordinates under Executive Order No. 1, issued on February 28, 1986 by then President Corazon C. Aquino in the exercise of her legislative powers under the Freedom Constitution."

done by him, his spouse, Imelda Marcos, and their immediate relatives by consanguinity or affinity, associates, cronies and subordinates.[84]

Because of the human rights violations perpetrated by Marcos and his associates, the legislature has decreed that victims are entitled to both monetary[85] and non-monetary[86] reparations to be principally sourced from the funds transferred to the Philippine government by virtue of the Order of the Swiss Federal Supreme Court.[87] Those funds were earlier declared part of the ill-gotten wealth of the Marcos family and forfeited in favor of the Philippine government.

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[84] Under Section 3(d) of R.A. 10368, human rights violations may be compensation if they were committed by "Persons Acting in an Official Capacity and/or Agents of the State." This includes former President Ferdinand E. Marcos, spouse Imelda R. Marcos, their immediate relatives by consanguinity or affinity, as well as their close relatives, associates, cronies and subordinates.

[85] R.A. 10368, Section 4 states:

SECTION 4. Entitlement to Monetary Reparation. — Any [Human Rights Violation Victim] qualified under this Act shall receive reparation from the State, free of tax, as herein prescribed x x x.

[86] R.A. 10368, Section 5 provides:

SECTION 5. Nonmonetary Reparation. — The Department of Health (DOH), the Department of Social Welfare and Development (DSWD), the Department of Education (DepEd), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA), and such other government agencies shall render the necessary services as nonmonetary reparation for HRVVs and/or their families, as may be determined by the Board pursuant to the provisions of this Act.

[87] R.A. 10368, Section 7 provides:

SECTION 7. Source of Reparation. — The amount of Ten billion pesos (₱10,000,000,000.00) plus accrued interest which form part of the funds transferred to the government of the Republic of the Philippines by virtue of the December 10, 1997 Order of the Swiss Federal Supreme Court, adjudged by the Supreme Court of the Philippines as final and executory in *Republic vs. Sandiganbayan* on July 15, 2003 (G.R. No. 152154) as Marcos ill-gotten wealth and forfeited in favor of the Republic of the Philippines, shall be the principal source of funds for the implementation of this Act.

**The statements in the above laws were clear indictments by both the revolutionary government and the legislature against the massive plunder and the countless abuses committed by Marcos and his cronies during his tenure as President. These laws not only condemn him as a thief; they equally recognize his criminal liability for the atrocities inflicted on innumerable victims while he was in power.**

*2. Decisions of this Court have denounced the abuses committed by Marcos during the Martial Law dictatorship.*

Apart from earning the condemnation of the legislature, Marcos and the Martial Law regime have likewise received harsh criticism from this Court. In dozens of decisions, it denounced the abuses he had committed; the pernicious effects of his dictatorship; and the grave damage inflicted upon the nation by his corruption, thievery, and contempt for human rights. Foremost among these denunciations are found in are four cases ordering the forfeiture of the ill-gotten wealth he amassed with the assistance of his relatives and cronies.

In *Republic v. Sandiganbayan*,[88] the Court forfeited a total of USD 658 million in favor of the government. These funds, contained in Swiss deposit accounts in the name of certain foundations, were declared ill-gotten, as they were manifestly out of proportion to the known lawful income of the Marcos family. The Court used the same reasoning in *Marcos, Jr. v. Republic*[89] to justify the forfeiture of the assets of Arelma, S.A., valued at USD 3,369,975 in 1983.

On the other hand, in *Republic v. Estate of Hans Menzi*[90] and in *Yuchengco v. Sandiganbayan*,[91] the Court scrutinized

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[88] *Republic v. Sandiganbayan*, 453 Phil. 1059 (2003).

[89] 686 Phil. 980 (2012).

[90] 512 Phil. 425 (2005).

[91] 515 Phil. 1 (2006).

the beneficial ownership of certain shares of Bulletin Publishing Corporation and Philippine Telecommunications Investment Corporation, respectively. The Court concluded in the two cases that the shares, although registered in the names of cronies and nominees of Marcos, were part of the ill-gotten wealth of the dictator and were subject to forfeiture.

It must be emphasized that in the preceding cases, the Court noted the grand schemes employed by Marcos and his supporters to unlawfully amass wealth and to conceal their transgressions. In *Yuchengco,* it declared:

> In *PCGG v. Peña*, this Court, describing the rule of Marcos as a "well-entrenched plundering regime" of twenty years, noted the "magnitude of the past regime's 'organized pillage' and the ingenuity of the plunderers and pillagers with the assistance of the experts and best legal minds available in the market." The evidence presented in this case reveals one more instance of this grand scheme. This Court – guardian of the high standards and noble traditions of the legal profession – has thus before it an opportunity to undo[,] even if only to a certain extent, the damage that has been done.[92] (citations omitted)

In addition to the plunder of the public coffers, Marcos was harshly condemned by this Court for the human rights abuses committed during the Martial Law period.[93] In *Mijares v. Ranada, et al.*,[94] it stated:

> Our martial law experience bore strange unwanted fruits, and we have yet to finish weeding out its bitter crop. While the restoration of freedom and the fundamental structures and processes of democracy have been much lauded, according to a significant number, the changes, however, have not sufficiently healed the colossal damage wrought under the oppressive conditions of the martial law period. **The cries of justice for the tortured, the murdered, and the *desaparecidos* arouse outrage and sympathy in the hearts of the fair-minded,** yet the dispensation of the appropriate relief due them cannot be extended through the same caprice or whim that characterized the

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[92] *Id*. at 48-49.

[93] See *Contado v. Tan,* 243 Phil. 546 (1988).

[94] 495 Phil. 372 (2005).

ill-wind of martial rule. The damage done was not merely personal but institutional, and the proper rebuke to the iniquitous past has to involve the award of reparations due within the confines of the restored rule of law.

The petitioners in this case are prominent victims of human rights violations who, **deprived of the opportunity to directly confront the man who once held absolute rule over this country, have chosen to do battle instead with the earthly representative, his estate.**[95] (Emphasis supplied)

Marcos himself was severely criticized for abuses he had **personally** committed while in power. For instance, he was found to have unlawfully exercised his authority for personal gain in the following cases: (a) *Tabuena v. Sandiganbayan*,[96] in which he ordered the general manager of the Manila International Airport Authority to directly remit to the Office of the President the amount owed by the agency to the Philippine National Construction Corporation; (b) *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,[97] in which Marcos made a marginal note prohibiting the foreclosure of the mortgaged assets of Mindanao Coconut Oil Mills and waiving the liabilities of the corporation and its owners to the National Investment and Development Corporation; and (c) *Republic v. Tuvera*,[98] in which Marcos himself granted a Timber License Agreement to a company owned by the son of his longtime aide, in violation of the Forestry Reform Code and Forestry Administrative Order No. 11.

Marcos was likewise deemed **personally** responsible for the corruption of the judicial process in *Galman v. Sandiganbayan.*[99] Affirming the findings of a commission created to receive evidence on the case, the Court stated:

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[95] *Id.* at 372.

[96] 335 Phil. 795 (1997).

[97] 664 Phil. 16 (2011).

[98] 545 Phil. 21 (2007).

[99] 228 Phil. 42 (1986).

The Court adopts and approves the Report and its findings and holds on the basis thereof and of the evidence received and appreciated by the Commission and duly supported by the facts of public record and knowledge set forth above and hereinafter, that **the then President (code named Olympus) had stage-managed in and from Malacanang Palace "a scripted and pre-determined manner of handling and disposing of the Aquino-Galman murder case;" and that "the prosecution in the Aquino Galman case and the Justices who tried and decided the same acted under the compulsion of some pressure which proved to be beyond their capacity to resist",** and which not only prevented the prosecution to fully ventilate its position and to offer all the evidences which it could have otherwise presented, but also pre-determined the final outcome of the case" of total absolution of the twenty-six respondents accused of all criminal and civil liability.

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The record shows suffocatingly that from beginning to end, **the then President used, or more precisely, misused the overwhelming resources of the government and his authoritarian powers to corrupt and make a mockery of the judicial process in the Aquino-Galman murder cases**. x x x

Indeed, the secret Malacañang conference at which the authoritarian President called together the Presiding Justice of the Sandiganbayan and Tanodbayan Fernandez and the entire prosecution panel headed by Deputy Tanodbayan Herrera and told them how to handle and rig (moro-moro) the trial and the close monitoring of the entire proceedings to assure the pre-determined ignominious final outcome are without parallel and precedent in our annals and jurisprudence.[100] (Emphasis supplied)

Because of the abuses committed, the Court condemned the Marcos years as a "dark chapter in our history,"[101] a period of "national trauma"[102] dominated by a "well-entrenched plundering regime,"[103] which brought about "colossal damage wrought under

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[100] *Id.* at 71-83.

[101] See *Heirs of Licaros v. Sandiganbayan*, 483 Phil. 510, 524 (2004).

[102] See *Republic v. Tuvera*, *supra* note 98, p. 61.

[103] See *PCGG v. Peña*, 243 Phil. 93, 115 (1988).

the oppressive conditions of the Martial Law period."[104] The attempt by the dictator to return to the country after the EDSA Revolution was even described by the Court as "the case of a dictator forced out of office and into exile after causing twenty years of political, economic and social havoc in the country."[105]

The foregoing pronouncements are considered part of the legal system of the Philippines[106] and must be considered binding, since they are integral parts of final and immutable judgments. It may be presumed that the Court made the above declarations only after a judicious consideration of the evidence and the applicable law. Consequently, those declarations cannot be questioned, reversed, or disregarded without running afoul of the doctrine of immutability of judgment. This doctrine of finality of judgments applies even to the highest court of the land.[107]

The claim that judgment has not been rendered against Marcos for the plunder and the atrocities committed under his regime is belied by the declarations of this very Court. In his Separate Opinion in *Olaguer v. Military Commission No. 34*,[108] former Chief Justice Claudio Teehankee wrote of our nation's history during the Martial Law regime, and it would be well to recall his words:

> It was a long and horrible nightmare when our people's rights, freedoms and liberties were sacrificed at the altar of "national security" even though it involved nothing more than the President-dictator's perpetuation in office and the security of his relatives and some officials in high positions and their protection from public accountability of their acts of venality and deception in government, many of which were of public knowledge.
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[104] *Mijares v. Ranada, supra* note 94, p. 372.

[105] *Marcos v. Manglapus, supra* note 1, at 492.

[106] CIVIL CODE, Article 8.

[107] *Government Service Insurance System v. Group Management Corp.*, 666 Phil. 277 (2011).

[108] 234 Phil. 144 (1987).

The treacherous assassination on August 21, 1983 of the martyred Benigno S. Aquino, Jr., within minutes of his arrival at the Manila International Airport, although ringed with 2,000 soldiers, shocked and outraged the conscience of the nation. After three years of exile following almost eight years of detention since martial law, Aquino, although facing the military commission's predetermined death sentence, *supra*, yet refused proper travel documents, was returning home "to strive for genuine national reconciliation founded on justice." The late Senator Jose W. Diokno who passed away this year was among the first victims of the martial law *coup d'etat* to be locked up with Senator Aquino. In March, 1973, all of their personal effects, including their eyeglasses were ominously returned to their homes. Their wives' visitation privileges were suspended and they lost all contact for over a month. It turned out that Aquino had smuggled out of his cell a written statement critical of the martial law regime. In swift retribution, both of them were flown out blindfolded to the army camp at Fort Laur in Nueva Ecija and kept in solitary confinement in dark boarded cells with hardly any ventilation. When their persons were produced before the Court on *habeas corpus* proceedings, they were a pitiable sight having lost about 30 to 40 lbs. in weight. Senator Diokno was to be released in September, 1974 after almost two years of detention. No charges of any kind were ever filed against him. His only fault was that he was a possible rival for the presidency.

Horacio Morales, Jr., 1977 TOYM awardee for government service and then executive vice-president of the Development Academy of the Philippines, was among the hard-working government functionaries who had been radicalized and gave up their government positions. Morales went underground on the night he was supposed to receive his TOYM award, declaring that "(F)or almost ten years, I have been an official in the reactionary government, serviced the Marcos dictatorship and all that it stands for, serving a ruling system that has brought so much suffering and misery to the broad masses of the Filipino people. (I) refuse to take any more part of this. I have had enough of this regime's tyranny and treachery, greed and brutality, exploitation and oppression of the people," and "(I)n rejecting my position and part in the reactionary government, I am glad to be finally free of being a servant of foreign and local vested interest. I am happy to be fighting side by side with the people." He was apprehended in 1982 and was charged with the capital crime of subversion, until he was freed in March, 1986 after President Corazon C. Aquino's assumption of office, together with other political prisoners

and detainees and prisoners of conscience in fulfillment of her campaign pledge.

Countless others forfeited their lives and stand as witnesses to the tyranny and repression of the past regime. Driven by their dreams to free our motherland from poverty, oppression, iniquity and injustice, many of our youthful leaders were to make the supreme sacrifice. To mention a few: U.P. Collegian editor Abraham Sarmiento, Jr., worthy son of an illustrious member of the Court pricked the conscience of many as he asked on the front page of the college paper: *Sino ang kikibo kung hindi tayo kikibo? Sino ang kikilos kung hindi tayo kikilos? Kung hindi ngayon, kailan pa?* He was locked up in the military camp and released only when he was near death from a severe attack of asthma, to which he succumbed. Another TOYM awardee, Edgar Jopson, an outstanding honor student at the Ateneo University, instinctively pinpointed the gut issue in 1971 — he pressed for a "non-partisan Constitutional Convention;" and demanded that the then president-soon-to-turn dictator "put down in writing" that he was not going to manipulate the Constitution to remove his disqualification to run for a third term or perpetuate himself in office and was called down as "son of a grocer." When as he feared, martial law was declared, Jopson went underground to continue the struggle and was to be waylaid and killed at the age of 34 by 21 military troops as the reported head of the rebel movement in Mindanao. Another activist honor student leader, Emmanuel Yap, son of another eminent member of the Court, was to disappear on Valentine's Day in 1976 at the young age of 24, reportedly picked up by military agents in front of Channel 7 in Quezon City, and never to be seen again.

One of our most promising young leaders, Evelio B. Javier, 43, unarmed, governor of the province of Antique at 28, a Harvard-trained lawyer, was mercilessly gunned down with impunity in broad daylight at 10 a.m. in front of the provincial capitol building by six mad-dog killers who riddled his body with 24 bullets fired from M-16 armalite rifles (the standard heavy automatic weapon of our military). He was just taking a breather and stretching his legs from the tedious but tense proceedings of the canvassing of the returns of the presidential snap election in the capitol building. This was to be the last straw and the bloodless EDSA revolt was soon to unfold. The Court in *Javier vs. Comelec*, through Mr. Justice Cruz, "said these meager words in tribute to a fallen hero who was struck down in the vigor of his youth because he dared to speak against tyranny. Where many

kept a meekly silence for fear of retaliation, and still others feigned and fawned in hopes of safety and even reward, he chose to fight. He was not afraid. Money did not tempt him. Threats did not daunt him. Power did not awe him. His was a singular and all-exacting obsession: the return of freedom to his country. And though he fought not in the barricades of war amid the sound and smoke of shot and shell, he was a soldier nonetheless, fighting valiantly for the liberties of his people against the enemies of his race, unfortunately of his race too, who would impose upon the land a perpetual night of dark enslavement. He did not see the breaking of the dawn, sad to say, but in a very real sense Evelio B. Javier made that dawn draw nearer because he was, like Saul and Jonathan, 'swifter than eagles and stronger than lions."[109] (Citations omitted)

The pronouncements of the Court on this matter must be respected and considered conclusive. Hence, while Marcos may have evaded a criminal proceeding by choosing to go on exile after the EDSA Revolution, the atrocities committed against the Filipino people during his regime must be remembered. Our declarations on this matter cannot be disregarded or forgotten, as Chief Justice Teehankee reminded us in *Olaguer*:

**The greatest threat to freedom is the shortness of human memory**. **We must note here the unforgettable and noble sacrifices of the countless brave and patriotic men and women who feel as martyrs and victims during the long dark years of the deposed regime.** In vacating the death sentence imposed on the petitioners who survived the holocaust, we render them simple justice and we redeem and honor the memory of those who selflessly offered their lives for the restoration of truth, decency, justice and freedom in our beloved land.[110] (Emphasis supplied)

*3. The President may not contradict or render ineffective the denunciations, or the policies and principles enunciated in the foregoing statutes and jurisprudence.*

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[109] *Id.* at 173-177.

[110] *Id.* at 177.

It is the obligation of the President to give effect to the pronouncements of the Legislature and the Judiciary as part of his duty to faithfully execute the laws. At the very least, the President cannot authorize an act that runs counter to the letter and the spirit of the law.

In this case, the foregoing statutes and jurisprudence condemning Marcos and his regime effectively prohibit the incumbent President from granting him any form of tribute or honor. The President's discretion in this matter is not unfettered. **Contrary to the assertions of respondents, the President cannot arbitrarily and whimsically decide that the acts attributed to Marcos during Martial Law are irrelevant, solely because "he possessed the title to the presidency until his eventual ouster from office."**[111]

**Indeed, it would be the height of absurdity for the Executive branch to insist on paying tribute to an individual who has been condemned by the two other branches of government as a dictator, a plunderer, and a human rights violator. Whether Marcos is to be buried in the LMB as a hero, soldier, or former President is of little difference. The most important fact is that the burial would accord him honor. For the Court to pretend otherwise is to sustain a delusion, as this controversy would not have arisen if not for this reality.**

A state of affairs that would allow Marcos to reap any accolade or tribute from the state using public funds and property would obviously contradict the laws and judicial findings described above. Clearly, there is more than sufficient basis to reject the proposed burial.

***B. The AFP does not have the power to determine which persons are qualified for interment in the* Libingan.**

The argument of respondents that the burial is permitted under AFP Regulations 161-375 is unavailing, as the AFP does not

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[111] Public Respondents' Memorandum with Prayer to Lift Status Quo Ante Order, (hereinafter Public Respondents' Memorandum), p. 106.

have the authority to select which persons are qualified to be buried in the LMB. For this reason, the enumeration contained in AFP Regulations 161-375 must be deemed invalid.

In Proclamation No. 208,[112] then President Marcos reserved a certain parcel of land in Taguig – the proposed site of the LMB – for "national shrine purposes." This parcel of land was placed "under the administration" of the National Shrines Commission (NSC). The NSC was later transferred to the Department of National Defense (from the Department of Education) and then abolished through the Integrated Reorganization Plan. The functions of the former NSC were then transferred to the National Historical Institute (NHI).

On 26 January 1977, Presidential Decree No. (P.D.) 1076[113] created the Philippine Veterans Affairs Office (PVAO) under the Department of National Defense. The PVAO was tasked to, among others, "administer, maintain and develop military memorials and battle monuments proclaimed as national shrines." P.D. 1076 also abolished the NHI and transferred its functions to the PVAO. The transferred functions pertained to military memorials, including the authority to "administer" the LMB.

The authority of the PVAO to administer, maintain and develop the *LMB* pertains purely to the management and care of the cemetery. Its power does not extend to the determination of which persons are entitled to be buried there. **This authority pertains to Congress, because the power to deal with public property, including the right to specify the purposes for which the property may be used, is legislative in character.**[114]

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[112] PROCLAMATION NO. 208, *Excluding from the operation of Proclamation No. 423, dated July 12, 1957, which established the Fort Bonifacio Military Reservation a certain portion of the land embraced therein situated in the Municipality of Taguig, Province of Rizal, and reserving the same for national shrine purposes*, 28 May 1967.

[113] PRESIDENTIAL DECREE NO. 1076, *Amending Part XII (Education) and Part XIX (National Security) of the Integrated Reorganization Plan,* 26 January 1977.

[114] *Rabuco v. Villegas,* 154 Phil. 615 (1974).

Accordingly, the provision in AFP Regulations 161-375 enumerating the persons qualified to be interred in the LMB cannot bind this Court.

At any rate, the AFP Regulations cannot be considered in isolation. As part of the legal system, administrative issuances must be interpreted and implemented in a manner consistent with statutes, jurisprudence, and other rules.[115] In the same manner, the purported discretion of the President to determine the persons who may be interred in the LMB must be considered limited by statutes and judicial decisions.[116]

Since the proposed interment of Marcos in the *LMB* runs counter to law as explained in the preceding section, AFP Regulations 161-375 must be interpreted to mean that Marcos is specifically disqualified from being buried in that cemetery. Only by adhering to this interpretation can the Court ensure that the issuance is in harmony with other existing laws. Consequently, we cannot choose to implement AFP Regulations 161-375 exclusively while disregarding the statutes and jurisprudence referred to above.

### *C. The burial cannot be justified by mere reference to the President's residual powers; it is not unfettered, and such power can only be exercised in conformity with the entire Constitution.*

During the oral arguments, respondents attempted to justify the decision of the President to allow the burial primarily on the basis of his residual power.[117] Citing *Marcos v. Manglapus*[118] and *Sanlakas v. Executive Secretary*,[119] they argued that the

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[115] Civil Code, Article 7.

[116] See *Almario v. Executive Secretary*, 714 Phil. 127 (2013).

[117] TSN, 7 September 2016, pp. 11-12.

[118] 258 Phil. 479 (2008).

[119] *Sanlakas v. Reyes*, 466 Phil. 482 (2004).

President is vested with powers other than those enumerated in the Constitution and statutes, and that these powers are implicit in the duty to safeguard and protect the general welfare.[120]

It must be emphasized that the statement in *Marcos v. Manglapus* acknowledging the "**President's residual power to protect the general welfare of the people" was not unconditional.** The Court, in fact, explicitly stated that **only acts "not forbidden" by the Constitution or the laws were permitted** under this concept:

> To the President, the problem is one of balancing the general welfare and the common good against the exercise of rights of certain individuals. **The power involved is the President's residual power to protect the general welfare of the people. It is founded on the duty of the President, as steward of the people. To paraphrase Theodore Roosevelt, it is not only the power of the President but also his duty to do anything not forbidden by the Constitution or the laws that the needs of the nation demand** [See Corwin, supra, at 153]. It is a power borne by the President's duty to preserve and defend the Constitution. It also may be viewed as a power implicit in the President's duty to take care that the laws are faithfully executed [see Hyman,The American President, where the author advances the view that an allowance of discretionary power is unavoidable in any government and is best lodged in the President].[121] (Emphasis supplied)

The Court in that case also reiterated the underlying principles that must guide the exercise of presidential functions and powers, residual or otherwise:

> Admittedly, **service and protection of the people, the maintenance of peace and order, the protection of life, liberty and property, and the promotion of the general welfare** are essentially ideals to guide governmental action. But such does not mean that they are empty words. Thus, in the exercise of presidential functions, in drawing a plan of government, and in directing implementing action for these plans, or from another point of view, in making any decision as

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[120] TSN, 7 September 2016, p. 11.

[121] *Supra* note 105, p. 504.

President of the Republic, the President has to consider these principles, among other things, and adhere to them.[122] (Emphasis supplied)

Clearly, the residual power of the President cannot be used to justify acts that are contrary to the Constitution and the laws. To allow him to exercise his powers in disregard of the law would be to grant him unbridled authority in the guise of inherent power. Clearly, that could not have been the extent of the residual powers contemplated by the Court in *Marcos v. Manglapus.*

To reiterate, the President is not above the laws but is, in fact, obliged to obey and execute them.[123] This obligation is even more paramount in this case because of historical considerations and the nature of the norms involved, i.e., peremptory norms of human rights that are enshrined both in domestic and international law.

## III.

## TO ALLOW MARCOS TO BE BURIED IN THE *LIBINGAN NG MGA BAYANI* WOULD VIOLATE INTERNATIONAL HUMAN RIGHTS LAW AS AN INDEPENDENT SOURCE OF STATE OBLIGATIONS, AND WOULD NEGATE THE REMEDIES PROVIDED BY REPUBLIC ACT NO. 10368.

An examination of the vast body of international human rights law establishes a duty on the part of the state to provide the victims of human rights violations during the Marcos regime a range of effective remedies and reparations. This obligation is founded on the state's duty to ensure respect for, and to protect and fulfill those rights.

Allowing the proposed burial of Marcos in the LMB would be a clear violation of the foregoing international law obligations. Consequently, the planned interment must be enjoined in light of Article II, Section II of the Constitution, the established principle of *pacta sunt servanda,* and the fact that the state has

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[122] *Id.* at 503.

[123] *Supra* note 62.

already acknowledged these duties and incorporated them in our domestic laws.

### *A. Under international law, the Philippines is obligated to provide effective remedies, including holistic reparations, to human rights victims.*

The obligation of the Philippines to respect, protect, and fulfill human rights has its legal basis in international agreements and customary international law. As will be discussed, this obligation includes the duty to provide effective remedies, which, in turn, incorporates the grant of holistic reparations to victims of human rights violations.

#### *1. The Philippines is bound to respect, protect, and fulfill human rights under its treaty obligations and customary international law.*

As a party to the United Nations (UN) Charter[124] and the International Covenant on Civil and Political Rights (ICCPR),[125] the Philippines is bound to comply in good faith with our obligations therein pursuant to the principle of *pacta sunt servanda*.[126] These treaties form the normative foundation of the duty of the state

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[124] United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI [hereinafter UN Charter].

[125] UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, Vol. 999, p. 171 [hereinafter ICCPR].

[126] In *Government of the United States of America v. Purganan*, G.R. No. 148571, 17 December 2002, the Court explained the principle of *pacta sunt servanda* as follows:

> Article 2, Section 2, of the 1987 Philippine Constitution provides for an adherence to general principles of international law as part of the law of the land. One of these principles is the basic rule of *pacta sunt servanda* or the performance in good faith of a state's treaty obligations. *Pacta sunt servanda* is the foundation of all conventional international law, for without it, the superstructure of treaties, both bilateral and multilateral, which comprise a great part of international law, could well be inconsequential.

to provide effective remedies and reparations to victims of human rights violations.

The promotion, protection and fulfilment of human rights norms are obligations woven throughout the entire UN Charter, beginning with the Preamble which "reaffirm[s] faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."[127] In line with this statement, the promotion of "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion"[128] was identified as one of the basic purposes of the United Nations.[129] These principles became part of a concrete obligation via Article 56 of the Charter, as states were mandated to take joint and separate action in cooperation with the UN for the achievement of its purposes.[130]

On the other hand, the ICCPR obligates states parties to respect and ensure the human rights of all individuals within its territory. Article 2(1) of this covenant provides:

> 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.

Interpreting this provision, the United Nations Human Rights Committee[131] (UNHRC) issued General Comment No. 31[132]

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[127] UN CHARTER, *supra* note 124, Preamble.

[128] *Id*., Art. 55.

[129] *Id*.

[130] *Id*., Art. 56.

[131] Pursuant to Article 40 of the ICCPR, the UN HRC is described as the official body that monitors compliance with the ICCPR.

[132] UN Human Rights Committee (HRC), *General Comment No. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13 [hereinafter UNHRC General Comment No. 31].

declaring that the obligation in Article 2(1) is owed not just to individuals as the rights holders under the ICCPR, but to every state party therein.[133] The duty to respect basic human rights is likewise considered an *erga omnes* obligation in view of the importance of the rights involved.[134] In other words, it is an obligation towards the international community as a whole.[135]

Further establishing the obligation to respect human rights is the Universal Declaration of Human Rights (UDHR) which defines and codifies human rights norms provided for in the UN Charter. Considered the most important human rights document in the world,[136] the UDHR enumerates the human rights that states are bound to respect, including the right to life, liberty, and security of persons;[137] the prohibition against torture and arbitrary arrest or detention;[138] and the right to freedom from interference with one's privacy, family, home, or correspondence.[139] While not a legally binding treaty, the UDHR is generally considered a codification of the customary international law on human rights.[140] Hence, it binds all nations including the Philippines.

The foregoing instruments clearly create rights that every state is obliged to recognize and respect. To give effect to these entitlements, a violation of protected rights brings about the

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[133] *Id*., par. 2.

[134] *Case concerning the Barcelona Traction Light and Power Company, Ltd.* (Second Phase, Belgium v. Spain), I.C.J. Reports 1970, p. 32 [hereinafter Barcelona Traction Case].

[135] *Id*.

[136] Hurst Hannum, *The Universal Declaration of Human Rights*, *in* THE ESSENTIALS OF HUMAN RIGHTS 351 (Rhona K.M. Smith and Christian van den Anker eds., 2005).

[137] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Art. 3 [hereinafter UDHR].

[138] *Id*., Arts. 4, 5, 9.

[139] *Id*., Art. 12.

[140] Hannum, *supra* note 136.

obligation on the part of the offending state to provide a corresponding remedy.

*2. The duty to respect, protect, and fulfill human rights includes the obligation to provide an effective remedy.*

The international guarantee of a remedy for human rights violations is well established[141] as one of the bedrock principles of contemporary international human rights law.[142] *Ubi ius ibi remedium* – "where there is a right, there is a remedy."[143] It is settled that gross human rights violations give rise to a right to remedy for victims, which in turn implies a duty on the part of states to provide the same.[144] This obligation is based on the principle that failure to provide an adequate remedy for violations renders the duty to respect the rights involved meaningless and illusory.[145]

***Under Treaties***

International human rights law instruments, both global and regional, impose upon states the duty not merely to offer a remedy, but also to ensure that the remedy provided is "effective." This rule is clearly demonstrated in the provisions discussed below.

It is an accepted principle that "[e]veryone has the right to an effective remedy by the competent national tribunals for

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[141] DINAH SHELTON, *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW*, 37 (1999 ed.).

[142] Sonja B. Starr, *Rethinking "Effective Remedies:" Remedial Deterrence in International Courts*, 83 N.Y.U. L. Rev. 693, 698 (2008), p. 693.

[143] *Id.*; *Black's Law Dictionary* 6th edn. (1990), 1120.

[144] OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES: REPARATIONS PROGRAMMES, at 7, U.N. Sales No. E.08.XIV.3 (2008); SHELTON, *supra* note 141, at 15.

[145] DINAH SHELTON, *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW*, 61 (2015 ed.).

acts violating the fundamental rights granted him by the constitution or by law."[146] This rule is further developed in Article 2 of the ICCPR, which provides:

> 3. Each State Party to the present Covenant undertakes:
>
> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> (c) To ensure that the competent authorities shall enforce such remedies when granted.[147]

Explaining the nature of the obligations imposed by this provision, the UNHRC stated that the grant of reparations to individual victims is a central component of this legal obligation.[148]

A similar guarantee of effective remedies is included in the Convention on the Elimination of Racial Discrimination (CERD),[149] while the Convention against Torture and other Cruel,

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[146] UDHR, *supra* note 137, Art. 8.

[147] ICCPR, *supra* note 125, Art. 2.

[148] In General Comment No. 31, *supra* note 132, the UNHRC explains:

> Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of Article 2, paragraph 3, is not discharged.

[149] UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, Vol. 660, p. 195 [hereinafter CERD]. Article 6 of this treaty provides:

> States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals

Inhuman or Degrading Treatment or Punishment (Convention Against Torture)[150] refers to an equivalent right in the form of redress and compensation.[151] This right to redress was clarified in General Comment No. 3[152] of the UN Committee Against Torture (UNCAT) as a comprehensive reparative concept, which embraces both "effective remedy" and "reparation." Redress "entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention."[153] The committee also emphasized that reparative measures must take into account the particular needs of the victims and the gravity of the violations committed against them.[154]

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and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

[150] UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, Vol. 1465, p. 85 [hereinafter CAT].

[151] Article 14 of the CAT states:

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

[152] UN Committee Against Torture (CAT), *General Comment No. 3; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: implementation of Article 14 by States parties*, 13 December 2012 [hereinafter General Comment No. 3].

[153] *Id.*, par. 2.

[154] General Comment No. 3, par. 6 states:

Reparation must be adequate, effective and comprehensive. States parties are reminded that in the determination of redress and reparative measures provided or awarded to a victim of torture or ill-treatment,

Even regional instruments such as the European Convention for the Protection of Human Rights and Fundamental Freedoms,[155] the American Convention on Human Rights,[156] and the Protocol to the African Charter,[157] provide for effective remedies for human rights violations.

***Under Customary International Law***

At the same time, customary international law, as discerned from the law of state responsibility and the progressive development of human rights treaty law, is further solidifying

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the specificities and circumstances of each case must be taken into consideration and redress should be tailored to the particular needs of the victim and be proportionate in relation to gravity of the violations committed against them. The Committee emphasi[z]es that the provision of reparation has an inherent preventive and deterrent effect in relation to future violations.

[155] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5 [hereinafter ECPHR]. Article 13 of the Convention provides:

> Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

[156] Organization of American States (OAS), *American Convention on Human Rights, "Pact of San Jose," Costa Rica*, 22 November 1969 [hereinafter ACHR]. Article 63 of the treaty talks about remedies and compensation, as follows:

> If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

[157] African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003. Article 27 of the Protocol states:

> If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

the legal basis of the right to remedy of victims of human rights violations.[158]

The Articles on the Responsibility of States for Internationally Wrongful Acts codified by the International Law Commission (ILC Articles) provides that state responsibility arising from an internationally wrongful act[159] gives rise to the duty to make reparations. Under the ILC Articles, a state held liable for the breach of an obligation may be required to perform the following acts: (1) cessation of the violation,[160] (2) guarantee of non-repetition,[161] and (3) full reparation for the injury caused.[162]

Because of the emergence of human rights in international law,[163] the duty to remedy a breach under the ILC Articles is deemed owed not only to the injured state as traditionally imagined, but also to individuals whose human rights have been impaired by the breach under a state's jurisdiction.[164] The right

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[158] OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *supra* note 144, at 5-6.

[159] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No. 10 (A/56/10), Chp.IV.E.1 , Art. 1 [hereinafter ILC Articles].

[160] ILC Articles, Art. 30(a).

[161] *Id*., Art. 30(b).

[162] *Id*., Art. 31(a).

[163] OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *supra* note 144, at 6.

[164] UN Sub-Commission on the Promotion and Protection of Human Rights, *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms: final report / submitted by Theo van Boven, Special Rapporteur.*, 2 July 1993, E/CN.4/Sub.2/1993/8, paragraphs 43-46 [hereinafter Van Boven Report]; See also Antoine Buyse, *Lost and regained? Restitution as a remedy for human rights violations in the context of international law*, 68 Heidelberg J. of I. L. 129, 134-135 (2008), wherein the author posits as follows: "The ICJ in its Advisory Opinion *Reparation for Injuries Suffered in the Service of the United Nations* recognized that a nonstate entity – the international organization of the United Nations – had the right to claim reparation at the international level from a state. Extending this, one could argue that if other new subjects of international law arise, they too can claim. Individuals have

to effective remedies and just reparations for individual victims may be culled from the obligations of the state to cease violations, guarantee non-repetition and make full reparation.[165] This right is further affirmed by Article 33 of the ILC Articles, which declares that the obligation of the state to provide reparations is "without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State."[166]

To further substantiate the existence of a rule of customary international law on this matter, two declarations approved by the UNHRC and the UN General Assembly, respectively, may be cited.

The Declaration on the Protection of All Persons from Enforced Disappearance[167] issued by the UNHRC is a body of principles concerning enforced disappearances, including a provision for the right of victims of acts of enforced disappearance to adequate compensation and complete rehabilitation.[168]

On the other hand, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[169] offers

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been recognized as being such subjects of international law. To the extent that they are accorded rights under international law, they should therefore have the possibility to claim."

[165] Van Boven Report, *supra* note 164, par. 45.

[166] ILC Articles, *supra* note 159, Art. 33(2).

[167] UN Commission on Human Rights, *Declaration on the Protection of All Persons from Enforced Disappearance*, 28 February 1992, E/CN.4/RES/1992/29.

[168] Article 19 of the Declaration provides:

> The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation.

[169] UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: resolution / adopted by the General Assembly*, 29 November 1985, A/RES/40/34.

guidelines in relation to abuse of economic and political power. Through this declaration, the UN General Assembly recognized that millions of people suffer harm as a result of crime and abuse of power, and that these victims are entitled to prompt redress and access to the mechanisms of justice.[170]

These instruments and customary norms of international human rights law clearly provide for the duty to grant effective remedies to a victim of violations. More than being an essential component of other substantive norms, they create a distinct obligation; hence, the failure to provide effective remedies is an additional and independent violation of internationally recognized human rights.[171]

***Defining Effective Remedies***

Because an exact definition of an *effective* remedy is not provided by the foregoing international instruments, it is necessary to examine the interpretations of authorized bodies, as well as the theory and practice of international courts, in order to determine the exact scope of the obligation.[172]

As the succeeding discussion will show, the duty to provide an "effective remedy" does not embrace a singular concept. Rather, that duty embodies a variety of measures more aptly referred to as holistic "reparations."

*3. The obligation of the state to provide an effective remedy incorporates the duty to offer holistic reparations.*

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[170] The *Declaration of Basic Principles of Justice for Victims of Crime* (par. 4) states:

> Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

[171] SHELTON, *supra* note 141, at 37.

[172] *Id*.

The right to effective remedy is comprised of two dimensions: procedural and substantive.[173] As explained by the UNCAT in General Comment No. 3:

> The obligations of States parties to provide redress under Article 14 are two-fold: procedural and substantive. To satisfy their **procedural obligations,** States parties shall **enact legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies**, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and bodies are effective and accessible to all victims. At the **substantive level**, States parties shall ensure that victims of torture or ill-treatment obtain **full and effective redress and reparation**, including **compensation** and the means for as **full rehabilitation** as possible.[174] (Emphasis supplied)

In other words, the procedural dimension refers to the legal means by which alleged human rights violations are addressed by an impartial authority; the substantive dimension involves prompt and effective reparation for the harm suffered.[175]

The right to reparations is therefore but one side of an effective remedy, and is a crucial element in delivering justice to victims.[176] As such, the duty to provide reparations is as binding as the duty to provide effective remedies. This principle is clearly enunciated in international instruments, to the extent that it has achieved a non-derogable status.[177] As the International

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[173] Diana Contreras-Garduño, *Defining Beneficiaries of Collective Reparations: the Experience of the IACtHR*, 4 AMSTERDAM LAW FORUM, 43 (2012).

[174] General Comment No. 3, *supra* note 152, par. 5.

[175] Contreras-Garduño, *supra* note 173, at 43.

[176] *Id*.

[177] UN Human Rights Committee (HRC), *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001, CCPR/C/21/Rev.1/Add.11, par. 14 [hereinafter General Comment No. 29] which states: "Article 2, paragraph 3, of the Covenant (ICCPR) requires a State party to the Covenant to provide remedies for any violation of the provisions of the Covenant. This clause is not mentioned in the list of non-derogable provisions in Article 4, paragraph 2, but it constitutes a treaty

Criminal Court (ICC) in *Prosecutor v. Thomas Lubanga Dyilo* (Lubanga Case)[178] ratiocinated:

> The Chamber accepts that the **right to reparations is a well-established and basic human right, that is enshrined in universal and regional human rights treaties, and in other international instruments**, including the UN Basic Principles; the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; the Nairobi Declaration; the Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa; and the Paris Principles. These international instruments, as well as certain significant human rights reports, have provided guidance to the Chamber in establishing the present principles.[179] (Emphasis supplied)

***Understanding Reparations***

The term *reparation* is derived from the word *repair*. Thus, it is often perceived as making of amends by providing recompense to persons who suffered loss or harm due to gross human rights violations.[180] Within the context of State responsibility, it pertains to a series of actions expressing the State's acknowledgment and acceptance of its responsibility in consequence of the gross violations. Reparation therefore denotes all types of redress for victims of human rights violations,[181] all seeking to make

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obligation inherent in the Covenant as a whole. Even if a State party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of its procedures governing judicial or other remedies, the State party must comply with the fundamental obligation, under article 2, paragraph 3, of the Covenant to provide a remedy that is effective."

[178] *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-803-tEN, 14 May 2007.

[179] *Id.*, par. 185.

[180] Jeremy Sarkin, *Providing reparations in Uganda: Substantive recommendations for implementing reparations in the aftermath of the conflicts that occurred over the last few decades*, 14 AHRLJ 526, 534-535 (2014).

[181] Van Boven Report, *supra* note 164, at 7.

them whole again to the fullest extent possible. The *Chorzow Factory* case[182] decided by the Permanent Court of International Justice (PCIJ) in 1928 provides the leading definition of the concept:

> Reparation must, as far as possible, wipe out all consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.[183]

Reparation, as a means to provide redress for past violations, goes to the very heart of human protection. It has been recognized as a "vital process in the acknowledgment of the wrong done to the victim, and a key component in addressing the complex needs of victims in the aftermath of violations of international human rights and humanitarian law."[184] As explained by the Inter-American Commission of Human Rights (IACtHR) in its Report on the Implementation of the Justice and Peace Law:[185]

> The [Inter-American Court of Human Rights] considers that, beyond the established legal system, the State has a key role and a primary responsibility to guarantee that victims of crimes against international law will have effective access under conditions of equality to measures of reparation, consistent with the standards of international law governing human rights. Access to reparations for victims of crimes against humanity must never be subject exclusively to determination of the criminal liability of the perpetrators, or the prior disposal of their personal goods, licit or illicit.[186]

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[182] *Factory At Chorzów, Germany v. Poland,* Judgment, Claim for Indemnity, Merits, Judgment No 13, (1928) PCIJ Series A No. 17, ICGJ 255 (PCIJ 1928), 13 September 1928.

[183] *Id*., par. 124.

[184] Sarkin, *supra* note 180, at 528.

[185] Organization of American States (OAS) Inter-American Commission on Human Rights, *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings*, OEA/Ser.L/V/II, Doc. 3, 2 October 2007 [hereinafter Report on the Implementation of the Justice and Peace Law].

[186] *Id*., par. 98.

The State must play a primary, rather than a secondary, role in guaranteeing victims' access to reparations in accordance with the standards of international law.[187]

***UN Reparations Principles***

The most important text dealing with the concept of reparations is the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Reparations Principles).[188] This text is regarded as the international standard for the provision of reparations around the world.[189]

The UN Reparations Principles was the product of the work of Theodoor Van Boven, who was appointed in 1989 by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, to examine the possibility of developing basic principles and guidelines on remedies for gross violations.[190] Van Boven's work resulted in a landmark final report in 1993, also known as the Van Boven Principles, which declared that human rights violations give rise to a right of reparation for victims.[191] These principles attribute the State's duty to make such reparations to its obligation to afford remedies and ensure respect for human rights and fundamental freedoms.[192]

After 15 years of consideration, the UN General Assembly adopted the UN Reparations Principles on 16 December 2005[193]

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[187] *Id.*, par. 110 (6).

[188] UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: resolution / adopted by the General Assembly*, 21 March 2006, A/RES/60/147 [hereinafter UN Reparations Principles].

[189] Sarkin, *supra* note 180, at 536.

[190] United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1989/13 of 31 August 1989.

[191] Van Boven Report, *supra* note 164, at par. 137, General Principle No. 1.

[192] *Id.*, par. 137, General Principle No. 2.

[193] UN General Assembly Resolution 60/147, 16 December 2005.

without a vote. While these principles are argued to be soft law, they are considered binding on states because they elucidate the basic standards applicable to reparations internationally and domestically.[194] The number of states in the UN General Assembly that accepted the resolution by consensus likewise indicates the authoritative weight of the principles, and signifies the status of these rules as part of emerging customary international law.[195]

It must be emphasized that the UN Reparations Principles is not a source of new commitments but rather a statement of existing obligations, as it expresses the content of international law on reparations to ensure that this is respected. This view was explicitly set out in the prefatory statement of the principles:

> *Emphasizing* that the Basic Principles and Guidelines contained herein do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms x x x.[196]

Therefore, the state obligation to provide reparations to victims of human right violations – as established in this text – takes its normative character from existing legal obligations under international human rights law. As declared in the Preamble[197]

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[194] Sarkin, *supra* note 180, at 546.

[195] Buyse, *supra* note 164, at 140.

[196] UN Reparations Principles, *supra* note 188, at 3.

[197] The Preamble of the UN Reparations Principles states in relevant part:

> *Recalling* the provisions providing a right to a remedy for victims of violations of international human rights law found in numerous international instruments, x x x
>
> *Recalling* the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, x x x
>
> *Recognizing* that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms the international legal principles of accountability, justice and the rule of law[.]

and Parts I[198] and II[199] of the UN Reparations Principles, the underlying framework of this document is grounded on the right to effective remedies enshrined in international human rights law.

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[198] The UN Reparations Principles, *supra* note 188, Part I, states:

I. Obligation to respect, ensure respect for and implement international human rights law and international humanitarian law
   1. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law emanates from:
      (a) Treaties to which a State is a party;
      (b) Customary international law;
      (c) The domestic law of each State.
   2. If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by:
      (a) Incorporating norms of international human rights law and international humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;
      (b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;
      (c) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below;
      (d) Ensuring that their domestic law provides at least the same level of protection for victims as that required by their international obligations.

[199] The UN Reparations Principles, *supra* note 188, Part II, provides:

II. Scope of the obligation
   3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, *inter alia*, the duty to:
      (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;
      (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;

"Adequate, effective and prompt reparation for harm suffered" is, in fact, a component of the remedies required to be accorded to victims of gross violations of international human rights law, and serious violations of international humanitarian law.[200] Elaborating on the purpose and scope of reparation, the UN Reparations Principles provides:

IX. Reparation for harm suffered

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

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18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

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(c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and
(d) Provide effective remedies to victims, including reparation, as described below.

[200] UN Reparations Principles, *supra* note 188, Part VII.

***Holistic Approach to Reparations***

Although the PCIJ in the *Chorzow Factory* case[201] declared that the ultimate goal of reparation is *restitutio in integrum*,[202] or the return of the victims to a situation prior to the unlawful conduct, it is acknowledged that human rights violations are impossible to rectify. As aptly stated by Special Rapporteur Van Boven in his final report:

> It is obvious that gross violations of human rights and fundamental freedoms, particularly when they have been committed on a massive scale, are by their nature **irreparable**. In such instances **any remedy or redress stands in no proportional relationship to the grave injury inflicted upon the victims.** It is nevertheless an imperative norm of justice that the responsibility of the perpetrators be clearly established and that the rights of the victims be sustained to the fullest possible extent.[203] (Emphasis supplied)

This view was seconded by Judge A.A. Cançado Trindade of the IACtHR in his Separate Opinion in *Bulacio v. Argentina*.[204] He opined "the harm cannot be erased. Instead, reparations for human rights violations only provide the victims the means to attenuate their suffering, making it less unbearable, perhaps bearable."[205]

These statements reflect the underlying idea that the reparations in the UN Reparations Principles are envisioned to extend beyond the pecuniary or material dimension. Rather, holistic reparation is the key. This conclusion is supported by Principles 19 to 23 of the UN Reparations Principles pertaining to the five forms of full and effective reparation:

> 19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human

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[201] *Supra* note 182.

[202] Contreras-Garduño, *supra* note 173, at 43.

[203] Van Boven Report, *supra* note 164, par. 131.

[204] I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of 18 September 2003. Series C No. 100.

[205] *Id*., Judge A.A.Cançado Trindade (Separate Opinion), Sec. 25.

rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

(a) Physical or mental harm;

(b) Lost opportunities, including employment, education and social benefits;

(c) Material damages and loss of earnings, including loss of earning potential;

(d) Moral damage;

(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. *Rehabilitation* should include medical and psychological care as well as legal and social services.

22. *Satisfaction* should include, where applicable, any or all of the following:

(a) Effective measures aimed at the cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

(c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;

(f) Judicial and administrative sanctions against persons liable for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(a) Ensuring effective civilian control of military and security forces;

(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

(c) Strengthening the independence of the judiciary;

(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

Clearly, aside from addressing the injuries suffered by victims through financial compensation, reparation also addresses a broader set of issues, through the prevention of future human rights violations. It addresses "democracy, good governance, and building an inclusive political community. Reparations includes recognition, acknowledgment of violations and state responsibility. It can contribute to structural transformation"[206] while also seeking to promote peace and reconciliation.[207] This holistic approach to reparation is followed in other human rights institutions like the UNCAT, the UNHRC, the ICC, the IACtHR and the European Court of Human Rights (ECHR).

General Comment No. 3 of the UNCAT emphasizes that "monetary compensation alone may not be sufficient redress for a victim of torture and ill-treatment. The Committee affirms that the provision of only monetary compensation is inadequate for a State party to comply with its obligations under article 14."[208] General Comment No. 31 of the UNHRC likewise notes that "where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations."[209]

The holistic approach was likewise applied by the ICC to the Lubanga Case,[210] in which it held that victims of war crimes, crimes against humanity, and genocide have a fundamental right to receive reparations. The trial chamber observed that reparations "go beyond the notion of punitive justice, towards a solution

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[206] Sarkin, *supra* note 180, at 542.

[207] Contreras-Garduño, *supra* note 173, at 41.

[208] General Comment No. 3, *supra* note 152, par. 9.

[209] UNHRC General Comment No. 31, *supra* note 132, par. 16.

[210] *The Prosecutor v. Thomas Lubanga Dyilo*, *supra* note 178.

which is more inclusive, encourages participation and recognizes the need to provide effective remedies for victims."[211] It then explained that reparations must be applied in a broad and flexible manner, so as to allow it to approve the widest possible remedies for violations of the rights of the victims.[212]

In *Blazek v. Czech Republic*, the UNHRC declared that a remedy is only effective if it results in adequate measures of reparation granted to victims. It further provided that the approach must be holistic so as to put the needs and interests of the victim at the center of the process with the aim of restoring the latter's dignity.[213]

For its part, the IACtHR made it clear that as a principle of international law, every violation of an international obligation that results in harm creates a duty to make adequate reparation. In this respect, the Court ruled that reparation

> consists in full restitution (*restitutio in integrum*), which includes the re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the rights that have been violated and to redress the consequences of the violations. Therefore, the Court has found it necessary to award different measures of reparation in order to redress the damage fully, so that, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition, have special relevance to the harm caused.[214]

It is noteworthy that the IACtHR has constantly addressed human rights violations of a widespread nature, which can be

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[211] *Id.*, par. 177.

[212] *Id.*, par. 180.

[213] UN Human Rights Committee, *Blazek, et al. v. The Czech Republic*, Communication No. 847/1999, CCPR/C/72/D/857/1999, 12 July 2001, par. 7.

[214] I/A Court H. R., Case of *Gonzales Lluy, et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 01, 2015. Series C No. 298.; *Cf. Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Cruz Sánchez, et al. v. Peru*, para. 452.

attributed to the authoritarian regimes and violent conflicts in Latin America during the 1970s and early 1980s.[215] Consequently, IACtHR rulings are particularly relevant to our discussion of the authoritarian Marcos regime.

Lastly, while the ECHR has awarded "just satisfaction" partaking of a pecuniary nature in most of its cases,[216] the intention to provide a holistic approach in providing effective satisfaction can be discerned in its *Vagrancy Cases* against the Belgian Government:

> [I]f the victim, after exhausting in vain the domestic remedies before complaining at Strasbourg of a violation of his rights, were obliged to do so a second time before being able to obtain from the Court just satisfaction, the total length of the procedure instituted by the Convention would scarcely be in keeping with the idea of the effective protection of human rights. Such a requirement would lead to a situation incompatible with the aim and object of the Convention.[217]
>
> x x x x x x x x x
>
> Nevertheless, the provisions of Article 50 which recognise the Court's competence to grant to the injured party a just satisfaction also cover the case where the impossibility of *restitutio in integrum* follows from the very nature of the injury; indeed common sense suggests that this must be so *a fortiori*.[218]

### *B. The burial would contravene the duty of the Philippines to provide reparations to victims of human rights violations during the Marcos regime.*

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[215] Contreras-Garduño, *supra* note 173, at 45, citing C. Medina-Quiroga, *The Battle of Human Rights: Gross, Systematic Violations and the Inter-American System*, 1988, p. 369.

[216] Van Boven Report, *supra* note 164, par. 81 citing the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 50.

[217] Van Boven Report, *supra* note 164, par. 82, citing European Court of Human Rights, *De Wilde, Ooms and Versijp Cases ("Vagrancy" Cases)*, Judgment of 10 March 1972 (Article 50), Series A, vol. 14, par. 16.

[218] *Id*., par. 20.

It is evident from the foregoing discussion that the Philippines is obligated to provide holistic reparations to victims of human rights violations during Martial Law. In fact, as discussed in the previous section, R.A. 10368 acknowledged the "moral and legal obligation [of the State] to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime."[219] As stated in the Explanatory Note of House Bill No. 54 — one of the progenitors of R.A. 10368 — this recognition was one of the main features of the law:

> Among the important features of this bill are:
>
> One, Congress recognition that those who have filed a case against the Marcoses before the US Federal District Court in Hawaii and are given favorable judgment are considered human rights violations victims. This is called legislative cognizance.
>
> Two, any person who has secured or can secure a favorable judgment from any court in the country arising from a human rights violation is given a so-called conclusive presumption that he or she is a human rights violation victim.
>
> Three, some ten billion pesos of funds seized from bank accounts and discovered investments of the Marcos family shall be used to compensate the victims; and
>
> Four, an independent Human Rights Victims Compensation Board is created attached to, but not necessarily under the direct supervision of the CHR to ensure the proper disposition of the funds guided by this Act.
>
> No amount of money can really be enough to compensate our living heroes and those survived by their kinds for the democracy that our people are now enjoying. The least we can do though is pass this bill to honor, in our small way, the sacrifices, that they have made for our country.[220]

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[219] RA 10368, Section 2.

[220] Explanatory Note of House Bill 54, introduced by Rep. Lorenzo R. Tanada, III, 15th Congress, First Regular Session.

The law also recognized the binding nature of the Decision of the US Federal District Court of Honolulu, Hawaii,[221] by creating a *conclusive presumption* that the claimants in the case against the Estate of Ferdinand Marcos were human rights violations victims.[222] In that case, compensatory and exemplary damages were awarded to (a) the class plaintiffs who were declared to have been tortured; or (b) the heirs and beneficiaries of those who were summarily executed, or who disappeared while in the custody of Philippine military or paramilitary groups.[223] Several petitioners in the present case were claimants

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[221] MDL No. 840, CA No. 86-0390, Human Rights Litigation Against the Estate of Ferdinand E. Marcos.

[222] RA 10368, Section 17.

[223] The Final Judgment in Human Rights Litigation Against the Estate of Ferdinand E. Marcos states in relevant part:

1) The Court incorporates herein its Judgment on Liability entered October 20, 1992 and its Order entered December 17, 1992 denying defendant's posttrial motions re liability.
2) Judgment for compensatory damages is entered for the below named randomly selected class claims as follows:
   Torture Subclass
   Summary Execution Subclass
   Disappearance Subclass
3) Judgment for compensatory damages is entered for the remaining members of the Plaintiff class as follows:
   a) for the remaining Plaintiff subclass of all current citizens of the Republic of the Philippines, their heirs and beneficiaries, who between September 1972 and February 1986 were tortured while in the custody of the Philippine military or para-military groups in the aggregate of $251,819,811.00, to be divided pro rata.
   b) for the remaining Plaintiff Subclass of all current citizens of the Republic of the Philippines, their heirs and beneficiaries, who between September 1972 and February 1986 were summarily executed while in the custody of the Philippine military or para-military groups in the aggregate of $409,191,760.00 to be divided pro rata.
   c) for the remaining Plaintiff Subclass of all current citizens of the Republic of the Philippines, their heirs and beneficiaries, who between September 1972 and February 1986 disappeared (and are presumed dead) while in the

therein and are thus conclusively considered victims of human rights during the Marcos regime.

Both monetary[224] and non-monetary[225] forms of reparations were provided for in R.A. 10368. These measures notwithstanding, the members of the Bicameral Conference Committee emphasized the symbolic value of recognition in acknowledgment of the fact that material forms of reparation are not sufficient to atone for the suffering of the victims of atrocities:

Sen. Guingona: Page 5, letter (d) "Monetary Compensation refers to financial consideration equivalent to." Then, we changed "economically assessable damage" just to – We just make it "refers to financial consideration extended to human rights violation victims."

Ang rationale dito kasi this one implies – **The present definition implies that the damage – When you're human rights victim, it can be equivalent to a material damage when actually there is no adequate compensation when your human rights are violated. So we just make it just "financial consideration extended to human rights violation victims as defined in this Act."** Ganoon.

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custody of the Philippine military or para-military groups in the aggregate of $94,910,640.00 to be divided pro rata.

4) Judgment for exemplary damages, to make an example for the public good, is entered in the aggregate of $1,197,227,417.90 to be divided pro rata among all members of the Plaintiff class.

[224] R.A. 10368, Section 4 states:

SECTION 4. Entitlement to Monetary Reparation. — Any HRVV qualified under this Act shall receive reparation from the State, free of tax, as herein prescribed x x x.

[225] R.A. 10368, Section 5 provides:

SECTION 5. Nonmonetary Reparation. — The Department of Health (DOH), the Department of Social Welfare and Development (DSWD), the Department of Education (DepEd), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA), and such other government agencies shall render the necessary services as nonmonetary reparation for HRVVs and/or their families, as may be determined by the Board pursuant to the provisions of this Act.

Rep. Lagman: Baka instead of financial consideration, maski iyong consideration, ano, eh – **Ah, financial reparation**.

Sen. Guingona: Okay.

Rep. Lagman: Reparation.

Sen. Guingona: Reparation**. Instead of "economically assessable" parang sinasabi mo you[r] right has been violated but that's equivalent to this amount**.[226]

x x x x x x x x x

Sen. Arroyo: x x x Here, we seemed to be concerned about the physical aspects of human rights, meaning torture and all that. But take for instance, those who were economically depressed, harassed. You mean to say the family of Chino Roces, who lost his entire Manila Times and his family, is not really living in poverty x x x.

**Now they will not ask for compensation but they would want recognition. This is the purpose of recognition. That is why to us that roll of honor is very important. Because to others, they just want to be recognized**.[227] (Emphasis supplied)

Considering the foregoing, the intent is that not only must material reparation be provided by the state to human rights victims, the prohibition against public acts and symbolisms that degrade the recognition of the injury inflicted – although not expressly mentioned in the statute – are likewise included in the obligation of the state. Therefore, while the passage of legislative measures and the provision of government mechanisms in an effort to comply with this obligation are lauded, the State's duty does not end there.

Contrary to the implications of the *ponencia*, the statutes, issuances, and rules enacted by the different branches of government to promote human rights cannot suffice for the purpose of fulfilling the state's obligation to the human rights

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[226] Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill 3334 and House Bill No. 5990 (Human Rights Victims Reparation and Compensation Act), 16 January 2013, I-2, pp. 6-7.

[227] *Id.* at IV-6, p. 7 and I-7, p. 1.

victims of former President Marcos. These enactments cannot erase the violations committed against these victims, or the failure of the state to give them justice; more important, these enactments cannot negate the further violation of their rights through the proposed burial.

It must be emphasized that the obligation owed by the Philippine government to the victims of human rights violations during Martial Law is distinct from the general obligation to avoid further violations of human rights. As distinct species of obligations, the general duty to prevent further human rights violations cannot offset the right of past victims to full and holistic reparations. Their rights under international law have already been violated; they have already disappeared, been tortured or summarily executed.[228] The government cannot choose to disregard their specific claims and assert that it has fulfilled its obligation to them merely by enacting laws that apply in general to future violations of human rights.

As will be further discussed, victims of human rights violations during the Martial Law regime have a distinct right to holistic reparations, including the grant thereof in symbolic form.

*1. Symbolic reparation is an indispensable facet of an adequate reparations regime.*

Symbolic forms of reparation are mandated by international law and are considered hallmarks of any reparations regime.[229] Within the framework of the UN Reparations Principles,

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[228] See *In re Estate of Ferdinand Marcos, Human Rights Litigation. Hilao v. Estate of Ferdinand Marcos*, 25 F. 3d 1467.

[229] Frederic Megret, *Of Shines, Memorials and Museums: Using the International Criminal Court's Victim Reparation and Assistance Regime to Promote Transitional Justice*, 13, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1403929 (last accessed 20 September 2016) [Megret].; Frederic Megret, *The International Criminal Court and the Failure to Mention Symbolic Reparations*, 12, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1275087 [last accessed 20 September 2016] [Megret II].

satisfaction and guarantees of non-repetition are described as *symbolic*, because they involve a greater intangible element.[230] On the other hand, restitution, compensation, and rehabilitation are typically financial or material in character. As earlier explained, a comprehensive and holistic program of reparations is expected to contain aspects of both.[231]

***Symbols as sources of meaning***

The collective dimension of symbolic reparations is the source of their value.[232] Symbolic reparations extend beyond the victim and their families, and represent a demand for recognition, respect, dignity, and hope for a safe future.[233] They assist communities as a whole in dealing with the process of remembering and commemorating the past.[234] In other words, symbolic measures provide moral reparation,[235] which is considered by victims to be of equal or higher importance than material or physical reparation.

The United Nations, in its guidelines for reparation programs for post-conflict states, describes the significance of symbolic reparations in this manner:

As many recent reparations programmes have been proposed by truth commissions (which have broader mandates and goals than typical judicial instances), they are becoming less like mere compensation mechanisms and are increasingly proposing more complex reparations

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[230] Megret II, *supra* note 229, at 3.

[231] Sarkin, *supra* note 180, at 547.

[232] Megret II, *supra* note 229, at 6.

[233] Gina Doñoso, *Inter-American Court of Human Rights' reparation judgments: Strengths and challenges for a comprehensive approach*, 49 Revista IIDH 29, 58 (2009); Megret II, *supra* note 229, at 6.

[234] Sarkin, *supra* note 180, 548 citing the Report of Truth and Reconciliation Commission of South Africa.

[235] UN Sub-Commission on the Promotion and Protection of Human Rights, *Question of the impunity of perpetrators of human rights violations (civil and political)*, 26 June 1997, E/CN.4/Sub.2/1997/20, par. 40 [hereinafter Joinet Report]; Contreras-Garduño, *supra* note 173, at 42.

measures, including **symbolic ones.** Individualized letters of apology signed by the highest authority in Government, sending each victim a copy of the truth commission's report and supporting families to give a proper burial to their loved ones are some of the individual symbolic measures that have been tried with some success in different contexts. Some of the collective symbolic measures that have been tried are renaming public spaces, building museums and memorials, rededicating places of detention and torture, turning them into sites of memory, establishing days of commemoration and engaging in public acts of atonement. Like other reparations measures, symbolic benefits are, at least in part, geared towards fostering recognition. **However, in contrast to other benefits, symbolic measures derive their great potential from the fact that they are carriers of meaning, and therefore can help victims in particular and society in general to make sense of the painful events of the past. Symbolic measures usually turn out to be so significant because, by making the memory of the victims a public matter, they disburden their families from their sense of obligation to keep the memory alive and allow them to move on. This is essential if reparations are to provide recognition to victims not only as victims but also as citizens and as rights holders more generally.**[236] (Emphasis supplied)

Restitution, compensation, and rehabilitation under the UN Reparations Principles, while necessary, are lacking in this symbolic dimension. Monetary forms of reparation can indeed provide funds for certain necessities and improve the future of victims, but without more, it is unlikely that they would lead to the justice sought.

Moreover, it has been observed that human rights victims want an apology, above all else.[237] They also place a premium on obtaining recognition of the harm done to them.[238] In contrast, financial reparations or damages are considered less important than emotional or symbolic reparations, because the former fail

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[236] OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *supra* note 144, at 23.

[237] Thomas Antkowiak, *An Emerging Mandate for International Courts: Victim-Centered Remedies and Restorative Justice,* 47 Stan. J. Int'l. Law, 279, 284 (2011).

[238] Megret, *supra* note 229, at 13.

to squarely address a person's need for "dignity, emotional relief, participation in the social polity, or institutional reordering."[239] If given in isolation, monetary reparation may even have a trivializing effect on suffering in certain cultural, social, and political contexts.[240]

***Forms of Symbolic Reparation***

Because of its peculiar nature, symbolic reparation takes various forms. An examination of the UN Reparations Principles, as well as the decisions of international and regional courts, reveals that different measures have been utilized to satisfy this requirement.

The following have been identified as examples of measures intended to offer *satisfaction* to victims of atrocities: (a) "verification of the facts and full and public disclosure of the truth";[241] (b) "an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim";[242] (c) "public apology";[243] and (d) "commemorations and tributes to the victims."[244] These methods deal with the emotional, psychological, and symbolic aspects of the suffering of the victims,[245] and are primarily concerned with the restoration of their dignity through an acknowledgment by the state of the harm done.

Guarantees of non-repetition, on the other hand, focus on reform and restructuring initiatives pursuant to the state's commitment to never again engage in the practices that led to

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[239] Thomas Antkowiak, *supra* note 237.

[240] *Id*.

[241] UN Reparations Principles, *supra* note 188, Principle 22 (b).

[242] *Id*., Principle 22 (d).

[243] *Id*., Principle 22 (e).

[244] *Id*., Par. 22 (g).

[245] Megret, *supra* note 229, at 26.

human rights violations.[246] The actual steps taken by state institutions represent the guarantees of non-repetition. These steps include "promoting mechanisms for preventing and monitoring social conflicts and their resolution"[247] and "reviewing and reforming laws contributing to or allowing gross violations of international human rights law."[248]

Meanwhile, the ICC in the Lubanga Case considered the conviction and the sentence issued by the Court itself as forms of reparation on account of their significance to the victims and the communities.[249] In turn, the IACtHR – the most progressive court in terms of granting reparations to victims of human rights violations – has ordered the following measures as part of "other forms of reparation": (a) the construction of monuments to commemorate the suffering of victims,[250] (b) the naming of a school after them,[251] (c) the designation of a day of remembrance for them,[252] (d) the conduct by the state of public ceremonies offering apologies in honor of the fallen;[253] (e) the establishment of memorial scholarships;[254] and (f) human rights courses.[255]

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[246] Megret II, *supra* note 229, at 5.

[247] UN Reparations Principles, *supra* note 188, Principle 23 (g).

[248] *Id.*, Principle 23 (h).

[249] *The Prosecutor v. Thomas Lubanga Dyilo*, *supra* note 178, par. 237.

[250] I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, par. 218.

[251] I/A Court H.R., *Case of Trujillo Oroza v. Bolivia*. Reparations and Costs. Judgment of February 27, 2002. Series C No. 92, par. 122.

[252] I/A Court H.R., *Serrano-Cruz Sisters v. El Salvador*, Monitoring Compliance with Judgment, Order of the Court, 2010 Inter-Am. Ct. H.R. (Feb. 3, 2010).

[253] *Case of the Moiwana Community v. Suriname*, *supra* note 250, par. 191.

[254] I/A Court H. R., *Case of Norín Catrimán, et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*. Merits, Reparations and Costs. Judgment of May 29, 2014. Series C No. 279, par. 432.

[255] I/A Court H.R., *Case of Espinoza Gonzáles v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2014. Series C No. 289, par. 327.

***Memorials as Symbolic Reparation***

In a report on memorialization processes utilized by states transitioning from conflicts or periods of repression, Farida Shaheed, the UN Special Rapporteur in the field of cultural rights, identified *memorials* as "physical representation[s] or commemorative activities, located in public spaces, that concern specific events regardless of the period of occurrence (wars and conflicts, mass or grave human rights violations), or the persons involved (soldiers, combatants, victims, political leaders or activists for example)."[256]

In recent times, memorials have become principally focused on honoring the victims of human rights atrocities. As Special Rapporteur Shaheed explained, memorials were utilized as a means of "ensuring recognition for the victims, as reparation for mass or grave violations of human rights and as a guarantee of non-recurrence,"[257] as well as a way to combat injustice and promote reconciliation.[258] This trend was followed in post-conflict states, where memorials commemorating victims of human rights violations were regularly established. The Report states:

> An exhaustive list of all truth and reconciliation commissions that have advocated the construction of memorials is beyond the scope of this document. Nevertheless, one should mention the recommendations of the truth and reconciliation commissions in El Salvador, Germany, Guatemala, Peru, Morocco and South Africa and the commission of inquiry in Chad, even though not all their recommendations were implemented.
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> The Commission on the Truth for El Salvador clearly called in its report for the construction of a national monument in El Salvador bearing the names of all victims of the conflict, recognition of their good name and the serious crimes of which they were the victims

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[256] UN Human Rights Council, *Report of the Special Rapporteur in the field of cultural rights, Memorialization processes*, 23 January 2014, par. 5 [hereinafter Shaheed Report].

[257] *Id*., Summary.

[258] *Id*., par. 12.

and the institution of a national holiday in memory of the victims of conflict as a symbol of reconciliation.

Similarly, the Commission for Historical Clarification in Guatemala recommended, among other things, that monuments and parks be constructed and the names of victims assigned to public buildings and highways in memory of the victims. The Commission stated that "the historical memory, both individual and collective, forms the basis of national identity."[259]

The reason behind the creation of memorials intended to commemorate victims of atrocities was explained by Special Rapporteur Shaheed in relation to the duty to provide symbolic reparations:

With the passage of time, memorials have shifted from honouring soldiers dying in the line of duty to a victims' perspective and new visions of reconciliation. Starting in the 1980s, the creation of memorials has become linked to the idea that ensuring public recognition of past crimes is indispensable to the victims, essential for preventing further violence and necessary for redefining national unity. Memorialization is often a demand of victims and society at large and the path to national reconciliation is seen to pass through not only legal reparations, but also symbolic reparations such as memorials.[260]

*2. The proposed burial would be the antithesis of an act of symbolic reparation.*

In the present case, the dispute also involves the creation of a memorial in the form of a burial plot located at the LMB. Instead of commemorating victims, however, the memorial proposes to honor Marcos, the recognized perpetrator of countless human rights violations during the Martial Law regime. The establishment of this memorial would accomplish the exact opposite of what is intended by symbolic reparation, and would consequently violate the obligations of the Philippines under international human rights law.

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[259] *Id*., par. 39-41.

[260] *Id*., par. 9.

For reasons previously discussed, the burial of Marcos would be more than a simple matter of the interment of his remains, because it would involve his victims' right to symbolic reparations. Undoubtedly, to honor the very perpetrator of human rights atrocities would be the direct opposite of the duty of the state to respect, promote, and fulfil human rights.

These conclusions are supported by the opinion of UN Special Rapporteur Pablo De Greiff in the analogous case of another dictator, General Francisco Franco of Spain, and his burial place – the *Valle de los Caídos* (Valley of the Fallen).[261] The site, located in Madrid, serves as a monument and a memorial, as it is also the burial ground of almost 34,000 other individuals. The structure, however, is still considered by many as "an exaltation of Francoism"[262] and a reminder of the forced labor of thousands of political prisoners who were compelled to build the structure.[263]

In his *Report on the promotion of truth, justice, reparation and guarantees of non-recurrence*,[264] Special Rapporteur De Greiff studied the fate of symbols of Francoism in relation to the then newly enacted 2007 Law of Historical Memory.[265] This law dealt with the recognition of victims of human rights violations during the Spanish Civil War and the 40-year regime of General Franco.

Special Rapporteur De Greiff reviewed, in particular, the effects of a provision in the Law of Historical Memory requiring

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[261] UN Human Rights Council, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mission to Spain*, 22 July 2014, par. 5 [hereinafter de Greiff Report].

[262] *Id*., par. 29-30.

[263] *Id*., par. 32.

[264] *Supra* note 261.

[265] *Ley de Memoria Histórica* or *La Ley por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la Guerra Civil y la Dictadura*, Ley 52/2007 de 26 de Diciembre.

the removal of all memorials related to Franco and the latter's dictatorship. In his report, he welcomed the measures introduced to combat the exaltation of the *coup d'état*, the Civil War, and the repression by the Franco dictatorship, particularly through the removal of symbols and monuments.[266] He further noted "majority of inventoried symbols and monuments had been removed, and that the remaining symbols and monuments either required a lengthy administrative procedure or considerable expense, or were subject to protection rules for their historic or artistic value."[267]

As part of the implementation of the Law of Historical Memory, the removal of *Valle de los Caídos* was proposed because of its ties to General Franco and Francoism. However, because the structure could not be removed without disturbing the burial grounds of other individuals,[268] De Greiff made the following recommendation with respect to the site:

> The site can be put to good use and "reinterpreted", with suitable techniques and pedagogy, in favour of the promotion of truth and memory, and given an educational and preventive purpose. **It can hardly be construed as a place devoted to peace and reconciliation, so long as silence is maintained about the facts relevant to the context and origin of the site, and especially while the flower-covered tomb of the dictator remains in the centre of the monument.**[269] [Emphasis supplied]

The necessity for the reinterpretation and "recontextualization" of the *Valle de los Caídos* highlights the fact that far from being an ordinary burial plot, the final resting place of a dictator and perpetrator of human rights violations is a symbol and a source of meaning. The meaning it conveys, particularly to the victims of atrocities, cannot be underestimated. Special Rapporteur Shaheed, in her report on memorialization processes, also

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[266] De Greiff Report, *supra* note 261, par. 27.

[267] *Id*.

[268] *Id*., par. 30.

[269] *Id*., par. 33.

expressed concerns about the monuments and sites intended to honor past oppressive regimes:

> The question is how to manage an architectural legacy with strong symbolic connotations when oppressive regimes collapse. Should a new democratic Government destroy, conserve or transform these legacies? Answers vary from situation to situation, frequently giving rise to intense controversy, including amongst victims. Striking examples include debates in Spain over the memorial in *Valle de los caidos* (the Valley of the Fallen) where Franco is buried, in Bulgaria over the mausoleum of former communist leader Georgy Dimitrov, which was finally destroyed, and in Germany over Hitler's bunker, now located beneath a parking lot in the centre of Berlin, marked only by a small sign.[270]

Shaheed therefore concludes **"the choice to conserve, transform or destroy always carries meaning and so needs to be discussed, framed and interpreted."**[271] **In this undertaking, the concerns and views of victims are given primary consideration and for good reason – they are, after all, the persons most affected by any decision on the matter.**

In this case, **the victims of human rights violations have expressed their objection to the proposed burial of Marcos in the LMB. They assert that the burial would constitute a state-sanctioned narrative that would confer honor upon him.**[272] **This, in turn, would subject his human rights victims to the same indignity, hurt, and damage that they have already experienced under his regime.**[273]

These opinions must be given paramount consideration by the state in compliance with its duty to provide symbolic reparations to victims of human rights atrocities. For the President to allow the burial in disregard of these views would constitute

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[270] *Id*., par. 62.

[271] *Id*., par. 63.

[272] Rosales Petition, p. 61.

[273] *Id*. at 17.

a clear contravention of international human rights law and would amount to grave abuse of discretion.

### *C. The burial would run counter to the duty of the state to combat impunity.*

As part of their obligation to protect and ensure human rights under international law,[274] states have the duty to combat impunity and hold perpetrators of human rights violations accountable. In fact, the clear nexus between the impunity of perpetrators of gross violations of human rights, and the failure to provide adequate reparation to the victims[275] indicate that the two obligations must go hand in hand.

In his report, Special Rapporteur Theodoor Van Boven concluded that "in many situations where impunity has been sanctioned by the law or where *de facto* impunity prevails with regard to persons responsible for gross violations of human rights, the victims are effectively barred from seeking and receiving redress and reparation."[276] His conclusion is unsurprising, given the significant role of reparations in ensuring that the perpetrators are held responsible for their actions.

Certainly, states cannot claim to look after the interest of the victims and at the same time endorse a social and political climate where impunity prevails. This incongruity would be tantamount to a violation of the victims' right to effective remedy and reparations. In Van Boven's words, "it is hard to perceive that a system of justice that cares for the rights of victims can remain at the same time indifferent and inert towards the gross misconduct of perpetrators."[277]

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[274] Anja Seibert-Fohr, *Reconstruction Through Accountability* in MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 559 (A. Von Bogdandy and R. Wolfrum, eds., 2005) citing U.N. GAOR, Hum. Rts. Comm., 52d Sess., 1365th mtg. at 12, para. 54, U.N. Doc. CCPR/C/SR.1365 (1994); U.N. GAOR, Hum. Rts. Comm., 57th Sess. at 5, para. 32, U.N. Doc. CCPR/C/79/Add.65 (1996).

[275] Van Boven Report, *supra* note 164, par. 126.

[276] *Id*., par. 127.

[277] *Id*., par. 130.

***The UN Impunity Principles***

The primary instrument providing for the duty to combat impunity is the UN Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (UN Impunity Principles).[278] Like the UN Reparations Principles, this document does not impose new obligations, but only frames and emphasizes the existing state obligations under international human rights law. This rule is apparent in the Preamble of the Principles, which cites the UN Charter and the UDHR as the bases for the statement that "the duty of every State under international law to respect and to secure respect for human rights requires that effective measures should be taken to combat impunity."[279]

In these Principles, the UN Human Rights Committee enumerates the acts from which impunity may arise. Principle 1 states:

> Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.[280]

A reading of the UN Principles on Impunity reveals the close relationship between impunity and the concepts of reparations and the preservation of memory.

***Impunity and the Right to Reparation***

The provision of effective remedies and reparations for victims has been recognized as one of the means to combat impunity. Principles 31 and 34 provide:

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[278] UN Human Rights Committee, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, 8 February 2005 [hereinafter UN Impunity Principles].

[279] *Id*., Preamble.

[280] *Id*., Principle 1.

PRINCIPLE 31. RIGHTS AND DUTIES ARISING OUT OF THE OBLIGATION TO MAKE REPARATION

Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator.

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PRINCIPLE 34. SCOPE OF THE RIGHT TO REPARATION

The right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction as provided by international law.

In particular, symbolic reparations are considered significant. In his Report[281] on the Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political),[282] Special Rapporteur Louis Joinet concluded:

On a collective basis, symbolic measures intended to provide moral reparation, such as formal public recognition by the State of its responsibility, or official declarations aimed at restoring victims' dignity, commemorative ceremonies, naming of public thoroughfares or the erection of monuments, help to discharge the duty of remembrance. In France, for example, it took more than 50 years for the Head of State formally to acknowledge, in 1996, the responsibility of the French State for the crimes against human rights committed by the Vichy regime between 1940 and 1944. Mention can be made of similar statements by President Cardoso concerning violations committed under the military dictatorship in Brazil, and more especially of the initiative of the Spanish Government, which recently conferred the status of ex-servicemen on the anti-Fascists and International Brigade members who fought on the Republican side during the Spanish civil war.[283]

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[281] This report was accomplished pursuant to the request of the UNCHR Sub-Commission on Prevention of Discrimination and Protection of Minorities for Joinet to undertake a study on the impunity of perpetrators of human rights violations.

[282] Joinet Report, *supra* note 235.

[283] *Id*., par. 42.

***The Duty to Preserve Memory***

Another facet of the fight against impunity involves the duty of a state to preserve the memory of its people. In this regard, the UN Impunity Principles requires states to combat any measure that tends to encourage people to forget or downplay past human rights violations. Principle 3 provides:

> PRINCIPLE 3. THE DUTY TO PRESERVE MEMORY
>
> A people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfillment of the State's duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.

While the UN Impunity Principles sees reconciliation and justice as the primary goals, it is firm in asserting that these goals may not be achieved by disregarding human rights atrocities that occurred in the past. In fact, the principles emphasize that before true reconciliation can be achieved, the human rights violators must be held accountable. This dictum is reflected in the Preamble of the instrument:

> *Aware* that there can be no just and lasting reconciliation unless the need for justice is effectively satisfied,
>
> *Equally aware* that forgiveness, which may be an important element of reconciliation, implies, insofar as it is a private act, that the victim or the victim's beneficiaries know the perpetrator of the violations and that the latter has acknowledged his or her deeds,
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> *Convinced*, therefore, that national and international measures must be taken for that purpose with a view to securing jointly, in the interests of the victims of violations, observance of the right to know and, by implication, the right to the truth, the right to justice and the right to reparation, without which there can be no effective remedy against the pernicious effects of impunity.[284]

[284] UN Impunity Principles, *supra* note 278, Preamble.

Consistent with the foregoing, the UN Impunity Principles imposes restrictions on certain rules of law like limiting the entitlement of perpetrators to amnesties and other measures of clemency. In Principle 24, the restrictions are imposed even when clemency measures are "intended to establish conditions conducive to a peace agreement or to foster national reconciliation."[285] Joinet, in his report, emphasizes the importance of accountability in the context of reconciliation:

> [T]here can be no just and lasting reconciliation without an effective response to the need for justice; as a factor of reconciliation, forgiveness, insofar as it is a private act, implies that the victim must know the perpetrator of the violations and that the latter has been in a position to show repentance. For forgiveness to be granted, it must first have been sought.[286]

In this case, **the burial of Marcos in the LMB would be tantamount to a disregard of the human rights violations perpetrated by his regime. To allow it to proceed would sanction an egregious act of impunity and allow the government to bestow an honor that is clearly not due upon a perpetrator of human rights violations. To allow it would be a rampant violation of the rights of victims under international law.**

In the process of mapping through the vast body of international human rights law, each turn leads to the conclusion that the burial of Marcos in the LMB would be incompatible with the international obligations of the Philippines. For the Court to permit the burial would be to sanction these violations and allow the state to disregard the latter's duty to provide effective remedies to victims of human rights violations, particularly its duty to provide symbolic reparations and to combat impunity.

***Incorporation of international law principles in Philippine law***

The foregoing principles of international law have been incorporated in Philippine law as part of two domestic statutes intended for the protection of human rights.

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[285] *Id*., Principle 24.

[286] Joinet Report, *supra* note 235, par. 26.

As discussed above, R.A. 10368 was enacted pursuant to generally accepted principles of international law, as well as the specific obligations of the Philippines under international human rights laws and conventions.[287] In accordance with these principles, the statute recognized the "heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human

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[287] SECTION 2. Declaration of Policy. — Section 11 of Article II of the 1987 Constitution of the Republic of the Philippines declares that the State values the dignity of every human person and guarantees full respect for human rights. Pursuant to this declared policy, Section 12 of Article III of the Constitution prohibits the use of torture, force, violence, threat, intimidation, or any other means which vitiate the free will and mandates the compensation and rehabilitation of victims of torture or similar practices and their families.

By virtue of Section 2 of Article II of the Constitution adopting generally accepted principles of international law as part of the law of the land, the Philippines adheres to international human rights laws and conventions, the Universal Declaration of Human Rights, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) and Other Cruel, Inhuman or Degrading Treatment or Punishment which imposes on each State party the obligation to enact domestic legislation to give effect to the rights recognized therein and to ensure that any person whose rights or freedoms have been violated shall have an effective remedy, even if the violation is committed by persons acting in an official capacity. In fact, the right to a remedy is itself guaranteed under existing human rights treaties and/or customary international law, being peremptory in character (*jus cogens*) and as such has been recognized as non-derogable.

Consistent with the foregoing, it is hereby declared the policy of the State to recognize the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986 and restore the victims' honor and dignity. The State hereby acknowledges its moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime.

Similarly, it is the obligation of the State to acknowledge the sufferings and damages inflicted upon persons whose properties or businesses were forcibly taken over, sequestered or used, or those whose professions were damaged and/or impaired, or those whose freedom of movement was restricted, and/or such other victims of the violations of the Bill of Rights.

rights violations" and vowed to "restore the victims' honor and dignity" through the grant of reparations to victims and/or their families.[288]

The same principles were likewise incorporated in R.A. 9851,[289] a statute penalizing crimes against international humanitarian law, genocide, and other crimes against humanity. In providing remedies for offenses under this law, courts were specifically mandated to follow international principles relating to reparations for victims, including restitution, compensation, and rehabilitation.[290] The statute also enumerated the sources of international law that may guide the courts in the application and interpretation of the statute. These sources include

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[288] *Id*.

[289] Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity, Republic Act No. 9851, 11 December 2009.

[290] Sections 14 and 15 of RA 9851 state:

SECTION 14. Reparations to Victims. — In addition to existing provisions in Philippine law and procedural rules for reparations to victims, the following measures shall be undertaken:

(a) The court shall follow principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision, the court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and state the principles on which it is acting;
(b) The court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation; and
(c) Before making an order under this section, the court may invite and shall take account of representations from or on behalf of the convicted person, victims or other interested persons.

Nothing in this section shall be interpreted as prejudicing the rights of victims under national or international law.

SECTION 15. *Applicability of International Law.* — In the application and interpretation of this Act, Philippine courts shall be guided by the following sources:

(a) The 1948 Genocide Convention;
(b) The 1949 Geneva Conventions I-IV, their 1977 Additional Protocols I and II and their 2005 Additional Protocol III;

international instruments, decisions of international courts and tribunals, as well as writings of most highly qualified publicists and authoritative commentaries.

The obligation of the state to provide holistic reparations for victims of human rights violations is, therefore, enshrined in both international and domestic laws. This obligation includes the responsibility to provide victims with reparations – both financial and symbolic – in recognition of their suffering and heroism. The grant of reparations should likewise go hand in hand with the duty of the state to combat impunity by holding perpetrators of human rights violations accountable.

As previously discussed, the proposed burial of former President Marcos in the LMB contravenes these principles, because it would honor the identified perpetrator of human rights violations. As such, it would accomplish the exact opposite of what is intended to be accomplished by international and domestic principles on reparations, i.e., to recognize and honor the sufferings of victims; and to make amends for the physical, emotional and psychological harm they have sustained. The burial would also perpetuate a climate of impunity, as it would effectively disregard the human rights violations perpetrated by Marcos and permit the state to honor him despite his transgressions.

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(c) The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, its First Protocol and its 1999 Second Protocol;
(d) The 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the Involvement of Children in Armed Conflict;
(e) The rules and principles of customary international law;
(f) The judicial decisions of international courts and tribunals;
(g) Relevant and applicable international human rights instruments;
(h) Other relevant international treaties and conventions ratified or acceded to by the Republic of the Philippines; and
(i) Teachings of the most highly qualified publicists and authoritative commentaries on the foregoing sources as subsidiary means for the determination of rules of international law.
(j) Teaching of the most highly qualified publicists and authoritative commentaries on the foregoing sources as subsidiary means for the determination of rules of international law.

Clearly, the President cannot sanction the burial without going against domestic and international principles, as well as his solemn oath to faithfully execute the law.

**IV.**

**PUBLIC FUNDS AND PROPERTY CANNOT BE USED FOR THE BURIAL AS IT SERVES NO LEGITIMATE PUBLIC PURPOSE.**

On a final note, I must point out that the discretion of the President in this case is not unlimited, as argued by respondents. Because their proposal involves public funds and property, certain rules must be complied with.

Respondents propose the use of a portion of the LMB, a national cemetery owned by the government, for the interment of Marcos. They likewise intend to use money from the government coffers for the preparation and maintenance of the gravesite, as well as for military honors to be accorded to the deceased by the AFP.

Considering that public resources would be used for the interment, it is necessary for this Court to determine if the planned expenditures are for a legitimate public purpose. The reason is simple – public property, including public funds, belongs to the people.[291] Hence, it is the duty of the government to ensure the prudent use of these resources at all times to prevent dissipation and waste.[292] As a necessary corollary to these principles, it is settled that public property and funds may only be used for public purposes.[293]

This Court has explained the nature and the meaning of the term "public purpose" in the context of public expenditures in several cases. It has declared that the term includes not only

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[291] *Dimapilis-Baldoz v. Commission on Audit*, 714 Phil. 171 (2013).

[292] *Id*.

[293] PRESIDENTIAL DECREE 1445 (1978), Section 4(2); REPUBLIC ACT 7160 (1991), Section 305(b); See *Strategic Alliance Development Corp. v. Radstock Securities Ltd.*, 622 Phil. 431 (2009).

activities that will benefit the community as a body and are related to the traditional functions of government,[294] but also those designed to promote social justice, general welfare and the common good.[295] This broad understanding of the public purpose requirement, however, does not authorize the use of public funds and property for unmistakably personal and political motives.[296]

Ultimately, the validity of a public expenditure depends on the essential character of its direct object. In *Albon v. Fernando*,[297] the Court explained:

> In *Pascual v. Secretary of Public Works*, the Court laid down the test of validity of a public expenditure: **it is the essential character of the direct object of the expenditure which must determine its validity and not the magnitude of the interests to be affected nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion.** Incidental advantage to the public or to the State resulting from the promotion of private interests and the prosperity of private enterprises or business does not justify their aid by the use of public money.[298] (Citations omitted and emphasis supplied)

Based on the foregoing standard, the validity of public expenditures must be determined based on the nature of the particular expense involved, and the public purpose sought to be accomplished.

As will be explained in further detail, **the proposed burial would promote only the private interest of the Marcos family**. Significantly, respondents have failed to prove that any sort of public purpose would be served by the planned interment; in fact, the event would contravene the public purposes of the

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[294] *Yap v. Commission on Audit*, 633 Phil. 174 (2010).

[295] *Binay v. Domingo*, 278 Phil. 515 (1991).

[296] See *Petitioner-Organizations v. Executive Secretary*, 685 Phil. 295 (2012).

[297] 526 Phil. 630 (2006).

[298] *Id*. at 638.

LMB. Consequently, the intended public expenditure cannot be allowed.

### *A. The burial would contravene the public purpose of the* Libingan ng mga Bayani.

The government in this case proposes to shoulder the expenses for the burial of Marcos in the LMB, a military cemetery maintained on public property and a declared national shrine. The expenses contemplated are comprised of the cost of a plot inside a military cemetery, the maintenance expenses for the gravesite, and the cost of military honors and ceremonies.[299]

Generally, burial expenses are not borne by the government because interments are customarily private affairs. However, as exceptions to the foregoing rule, public expenditure is allowed in the case of cemeteries that serve certain public purposes, for instance: (a) burial grounds set aside for the indigent in the name of social justice;[300] and (b) cemeteries reserved for individuals deemed worthy of honor and reverence, i.e., the nation's war dead, soldiers or dignitaries, of the government.[301] The LMB belongs to this second exception.

Formerly known as the Republic Memorial Cemetery, the LMB was designated by former President Ramon M. Magsaysay as the national cemetery for the nation's war dead in 1954. Through Executive Order No. 77,[302] he ordered that the remains of the war dead interred at the Bataan Memorial Cemetery and other places be transferred to the LMB to accord honor to dead war heroes; improve the accessibility of the burial grounds to

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[299] TSN, 7 September 2016, pp. 220-226.

[300] *See* REPUBLIC ACT NO. 7160, Section 17.

[301] *See* PROCLAMATION NO. 425, *Balantang Memorial Cemetery National Shrine in Jaro, Iloilo City*, 13 July 1994.

[302] EXECUTIVE ORDER NO. 77, *Transferring the remains of war dead interred at Bataan Memorial Cemetery, Bataan Province and at other places in the Philippines to the Republic Memorial Cemetery at Fort WM Mckinley, Rizal Province*, 23 October 1954.

relatives of the deceased; and consolidate the expenses of maintenance and upkeep of military cemeteries. He thereafter issued Proclamation No. 86,[303] which renamed the cemetery to "*Libingan ng mga Bayani,"* because the former name was "not symbolic of the cause for which our soldiers have died, and does not truly express the nation's esteem and reverence for her war dead."

It is therefore evident that the LMB is no ordinary cemetery, but a burial ground established on public property to honor the nation's war dead and fallen soldiers. Further, the designation of the cemetery as a national shrine confirms its sacred character and main purpose, that is, to serve as a symbol for the community and to encourage remembrance of the honor and valor of great Filipinos.[304] Respondents themselves acknowledged this fact when they argued that the LMB implements a public purpose because it is a military shrine and a military memorial.[305]

To allow the LMB to fulfill the foregoing purposes, it has been and continues to be the recipient of public funds and property. Not only was the cemetery established on land owned by the government, public funds are also being utilized for the cost of maintenance and other expenses. The use of these resources is justified because of the public purpose of the site. As a necessary consequence of this principle, an expenditure that does not further this public purpose is invalid.

Applying the foregoing standards, the proposed expenditures for the burial of Marcos in the LMB must be considered invalid. **As earlier discussed, Marcos was an ousted dictator and disgraced president. Consequently, he is clearly not worthy of commendation from the state and no public purpose would be served by his interment therein. In fact, his burial in the**

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[303] PROCLAMATION NO. 86, *Changing the "Republic Memorial Cemetery" at Fort WM McKinley, Rizal Province, to "Libingan ng mga Bayani,"* 27 October 1954.

[304] PRESIDENTIAL DECREE NO. 105, *Declaring National Shrines as Sacred (Hallowed) Places and Prohibiting Desecration Thereof,* (1973).

[305] Consolidated Comment dated 22 August 2016, pp. 43-44.

**LMB would result in a contravention of the public purpose of the site as it would no longer be a sacred symbol of honor and valor.**

***B. Respondents have not explained how the burial would serve the avowed policy of national unity and healing.***

Considering that the public purpose of the LMB would not be served by the interment, we must now examine the other public purpose supposedly fulfilled by the proposal. According to respondents, that purpose pertains to national unity and healing. In their Comment, they contend:

> Undeniably, no cadaver has polarized this nation for the longest time other than that of the former President Marcos. Thus, President Duterte deems that it is but high time to put an end to this issue by burying the mortal remains of a former President, Commander-in-Chief, and soldier.
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> President Duterte's decision to accord respect to the remains of former President Marcos is not simply a matter of political accommodation, or even whims. Viewed from a wider perspective, this decision should be dovetailed to his war against corruption and dangerous drugs, and his recent dealings with the CPP/NPA/NDF. All these are geared towards changing the national psyche and beginning the painful healing of this country.[306]
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> x x x x x x x x x
>
> It should likewise be emphasized that President Duterte's order to allow former President Marcos' interment at the Libingan is based on his determination that it shall promote national healing and forgiveness, and redound to the benefit of the Filipino people. Surely, this is an exercise of his executive prerogative beyond the ambit of judicial review.[307]

It is significant to note, however, that respondents fail to explain how the burial would lead to national unity and healing. Consequently, their statements remain meaningless assertions.

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[306] *Id.* at 5.

[307] *Id.* at 26.

To emphasize, mere reference to an avowed public purpose cannot automatically justify the use of public funds and property. This Court must still review the validity of the declared purpose of public expenditure, as well as the reasonable connection between the objective and the proposed means for its attainment. Our duty to safeguard public funds and property demands no less. To reiterate, "[p]ublic funds are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste."[308]

Furthermore, as previously discussed, it is the essential character of the direct object of public expenditure that determines its validity,[309] and not the incidental advantage derived from it by the community. Hence, assuming for the sake of argument that the burial would bear an incidental benefit of promoting unity and healing, this supposed benefit would not erase the reality that the interment would principally be for the promotion of the personal interest of former President Marcos and his family.

### *C. The burial would promote only the private interest of the Marcos family.*

It is clear from the foregoing discussion that the burial would ultimately benefit only the Marcos family. No general advantage is derived by the public from the interment; as it stands, divisiveness instead of unity has resulted from the plan.

The circumstances surrounding the order of the President to allow the burial likewise reveal the political color behind the decision. In their Comment, respondents admit that the President ordered the burial to fulfill a promise made during his presidential campaign.[310] It must be pointed out, however, that the President made that pledge not at any random location, but while campaigning in Ilocos Norte,[311] a known stronghold of the Marcos

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[308] *Yap v. Commission on Audit*, *supra* note 294, at 188.

[309] See *Albon v. Fernando*, *supra* note 297.

[310] Consolidated Comment dated 22 August 2016, p. 16.

[311] *Id*., footnote 51.

family. During the oral arguments held in this case, it was also revealed that the preparations for the burial were prompted by a letter sent by the Marcos heirs to Secretary Lorenzana, urging him to issue the orders required for the interment at the earliest opportunity.[312]

Needless to state, the private interest of the Marcos family and the personal objective of the President to fulfill a pledge to his political allies will not justify the proposed public expenditure for the burial.

**Indeed, it is completely unseemly for the Marcos family to expect the Filipino people to bear the financial and emotional cost of burying the condemned former President even while this country has yet to recover all the ill-gotten wealth that he, his family, and unrepentant cronies continue to deny them.[313] It is wrong for this Government and the Marcos family to refer human rights victims to the financial reparation provided by Republic Act 10386 as recompense, which moneys will come, not from the private wealth of the Marcos family, but from the money they illegally acquired while in office, and on which the Philippine state spent fortunes to recover. Every Filipino continues to suffer because of the billions of unwarranted public debt incurred by the country under the Marcos leadership;[314] and every Filipino**

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[312] TSN, 7 September 2016, pp. 165, 234.

[313] See *Chavez v. Presidential Commission on Good Government*, 360 Phil. 133 (1998).

[314] In *Presidential Commission on Good Government v. Peña, supra* note 103, at 107, the Court stated:

> The rationale of the exclusivity of such jurisdiction is readily understood. Given the magnitude of the past regime's "organized pillage" and the ingenuity of the plunderers and pillagers with the assistance of the experts and best legal minds available in the market, it is a matter of sheer necessity to restrict access to the lower courts, which would have tied into knots and made impossible the Commission's gigantic task of recovering the plundered wealth of the nation, whom the past regime in the process had saddled and laid prostrate with a huge $27 billion foreign debt that has since ballooned to $28.5 billion.

**will incur more expenses, no matter how modest, for the proposed burial. No situation can be more ironic indeed.**

**EPILOGUE**

Stripped to its core, this case involves an order by the President to bury a dictator – one declared to have perpetrated human rights violations and plundered the wealth of the nation – with all the trappings of a hero's burial. It may not be an express declaration, as respondents themselves concede that the President does not have the power to declare any individual a hero, but it is a pronouncement of heroism nevertheless. It is far from being an empty statement bereft of significance. As respondents themselves recognize, the nature of the office held by the President provides him the opportunity to "profoundly influence the public discourse x x x by the mere expediency of taking a stand on the issues of the day."[315] Clearly, the order of the President to allow the burial is, at the very least, a declaration that Marcos is worthy of a grave at a cemetery reserved for war heroes, despite the objections of countless victims of human rights violations during the Martial Law regime. It is an executive pronouncement that his memory may be preserved and maintained using public funds.

Justice Isagani Cruz once stated: "liberty is not a gift of the government but the rights of the governed."[316] Throughout his regime, Marcos trampled upon this statement by his own acts and those of his subordinates, in a stampede wrought by the fervor to supposedly protect the nation from lawless elements. It pitted Filipino against Filipino, masking each face in shades of black or white and sowing fear and terror whilst reaping a harvest of public treasure. The nation was silenced. But people like petitioners persevered, keeping in their hearts the essence of Justice Cruz's words. They fought, and the people ultimately rose and won back the freedom we all now enjoy. The statement continues:

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[315] Public Respondents' Memorandum, p. 60.

[316] *Ordoñez v. Director of Prisons*, G.R. No. 115576, 4 August 1994, 235 SCRA 152.

Every person is free, save only for the fetters of the law that limit but do not bind him unless he affronts the rights of others or offends the public welfare. Liberty is not derived from the sufferance of the government or its magnanimity or even from the Constitution itself, which merely affirms but does not grant it. Liberty is a right that inheres in every one of us as a member of the human family.[317]

To forget that Marcos took this right away from the citizens of the Philippines would be the peak of intellectual and moral complacency. As a nation of laws, we cannot tolerate anything less than the full remembrance of a dark past from which we derive lessons that we imbue into the legal firmament. We cannot tolerate another instance in which our rights would be run to the ground, in which we would lose sight of the values held in our own Constitution, the symbols we hold dear, the aspirations we cherish. The LMB is revered because of the symbolism it carries. One treatise on geography and public memory explains:

Cemeteries, as one type of memorial space, create a symbolic encounter between the living and the dead in the form of individual gravesites and the ritual activities taking place in the burial space. In contrast to communal cemeteries, national cemeteries are state shrines that belong to the national narrative of the people. The heroes buried there – most prominently national leaders and fallen soldiers – are privileged members of the national pantheon.[318]

A grave in the LMB is a testament to the honor and valor of the person buried therein. The Marcos family has long sought a burial for the dictator at this site for this exact reason.

The Court cannot order that a particular event be remembered in a particular way, but it can negate an act that whimsically ignores legal truths. It can invalidate the arbitrary distillation of the nation's collective memory into politically convenient snippets and moments of alleged glory. The Court is empowered to do justice, and justice in this case means preventing a whitewash of the sins of Marcos against the Filipino people.

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[317] *Id*.

[318] Foote, Kenneth E. and Maoz Azaryahu, *Toward a Geography of Memory: Geographical Dimensions of Public Memory*, Journal of Political and Military Sociology, 2007, Vol. 35, No. 1 (Summer), pp. 125-144.

The burial of Marcos in the earth from whence he came is his right, despite all that he did. However, his burial in the grave of heroes on the impulse of one man would continue the desecration of other citizens' rights, a chilling legacy of the Marcos regime that curiously survives to this very day, long after the death of the dictator.

Respondents may deny the implications of their actions today,[319] but the symbolism of the burial will outlive even their most emphatic refutations. Long after the clarifications made by this administration have been forgotten, the gravesite at the LMB will remain. That is the peculiar power of symbols in the public landscape – they are not only carriers of meaning, but are repositories of public memory and ultimately, history.

For the Court to pretend that the present dispute is a simple question of the entitlement of a soldier to a military burial is to take a regrettably myopic view of the controversy. It would be to disregard historical truths and legal principles that persist after death. As important, it would be to degrade the state's duty to recognize the pain of countless victims of Marcos and Martial Law. Regardless of the promised national unity that the proposed burial will bring, I cannot, in good conscience, support such an expedient and shortsighted view of Philippine history.

**WHEREFORE**, I vote to **GRANT** the Petitions.

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[319] In Public Respondents' Memorandum (p. 99), it was declared:

> Besides, the chapter of Philippine history on Martial Law is not written in ordinary ink. Rather, its every word is written in the blood and tears of recognized and unsung heroes; its every page is a Shroud that has their bloodied but valiant faces on it; and each turn of these pages echoes their cried for freedom.
>
> The point here is simple: the interment of the remains of former President Marcos at the Libingan is not tantamount to a consecretion of his mortal remains or his image for that matter. No amount of heartfelt eulogy, gun salutes, holy anointment, and elaborate procession and rituals can transmogrify the dark pages of history during Martial Law. As it is written now, Philippine history is on the side of petitioners and everybody who fought and died for democracy.

## DISSENTING OPINION

**CARPIO, *J.*:**

The petitions seek to prevent the interment of the remains of the late President Ferdinand E. Marcos (Marcos) at the Libingan ng mga Bayani (LNMB).

The LNMB was formerly known as the Republic Memorial Cemetery. On 27 October 1954, then President Ramon Magsaysay issued Proclamation No. 86, "changing the Republic Memorial Cemetery at Fort WM McKinley, Rizal Province, to Libingan ng mga Bayani." More than a decade later, then President Marcos issued Proclamation No. 208 on 28 May 1967, excluding approximately 1,428,800 square meters from the Fort Bonifacio Military Reservation for the site of the LNMB, and reserving the same for national shrine purposes under the administration of the National Shrines Commission. The National Shrines Commission was subsequently abolished and its functions transferred to the Military Shrines Service of the Philippine Veterans Affairs Office of the Department of National Defense under Presidential Decree No. 1076, issued by then President Marcos on 26 January 1977.

On 11 September 2000, Acting Armed Forces of the Philippines (AFP) Chief of Staff Jose M. Calimlim, by order of the Secretary of National Defense, issued AFP Regulation 161-375 (AFPR G 161-375),[1] on the allocation of cemetery plots at the LNMB.

Under AFPR G 161-375, the deceased persons who are qualified to be interred at the LNMB are:

a. Medal of Valor Awardees;
b. Presidents or Commander-in-Chief, AFP;
c. Secretaries of National Defense;
d. Chiefs of Staff, AFP;

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[1] AFPR G 161-35 superseded AFPR G 161-374 dated 27 March 1998, which in turn superseded AFPR G 161-373 issued on 9 April 1986.

e. Generals/Flag Officers of the AFP;
f. Active and retired military personnel of the AFP to include active draftees and trainees who died in line of duty, active reservists and CAFGU Active Auxiliary (CAA) who died in combat operations or combat related activities;
g. Former members of the AFP who laterally entered or joined the Philippine Coast Guard (PCG) and the Philippine National Police (PNP);
h. Veterans of Philippine Revolution of 1890, WWI, WWII and recognized guerillas;
i. Government Dignitaries, Statesmen, National Artists and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, Congress or the Secretary of National Defense; and
j. Former Presidents, Secretaries of Defense, Dignitaries, Statesmen, National Artists, widows of Former Presidents, Secretaries of National Defense and Chief[s] of Staff.

AFPR G 161-375 also enumerates **those not qualified to be interred at the LNMB**, namely:

a. **Personnel who were dishonorably separated/reverted/ discharged from the service**; and
b. Authorized personnel who were convicted by final judgment of an offense involving moral turpitude. (Emphasis supplied)

In a Memorandum dated 7 August 2016, the Department of National Defense (DND) Secretary Delfin Lorenzana ordered the AFP Chief of Staff Ricardo Visaya to undertake the necessary preparations to facilitate the interment of Marcos at the LNMB, in compliance with the verbal order of President Rodrigo Duterte on 11 July 2016.

The DND Memorandum resulted in the filing of these petitions, which oppose the implementation of the DND Memorandum for the interment of Marcos at the LNMB.

I vote to grant the petitions on the ground that Marcos is not qualified to be interred at the LNMB, and thus the Memorandum dated 7 August 2016 of DND Secretary Lorenzana was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

***Marcos is disqualified from being interred at the LNMB***

Assuming that Marcos was qualified to be interred at the LNMB as a Medal of Valor Awardee, and as a former President of the Philippines and Commander-in-Chief, he ceased to be qualified when he was ousted from the Presidency by the non-violent People Power Revolution on 25 February 1986.

AFPR G 161-375, which respondents rely on to justify the interment of Marcos at the LNMB, specifically provides that **"personnel who were dishonorably separated/reverted/ discharged from the service"** are not qualified to be interred at the LNMB. Marcos, who was forcibly ousted from the Presidency by the sovereign act of the Filipino people, falls under this disqualification.

***Dishonorable discharge from office***

In *Marcos v. Manglapus*,[2] the Court described Marcos as "a dictator **forced out of office and into exile** after causing twenty years of political, economic and social havoc in the country."[3] In short, he was ousted by the Filipino people. Marcos was forcibly removed from the Presidency by what is now referred to as the People Power Revolution. This is the **strongest form of dishonorable discharge** from office since it is meted out by the direct act of the sovereign people.

The fact of Marcos' ouster is beyond judicial review. This Court has no power to review the legitimacy of the People Power Revolution as it was successfully carried out by the sovereign people who installed the revolutionary government of Corazon C. Aquino. The people have spoken by ratifying the 1987 Constitution, which was drafted under the Aquino government installed by the People Power Revolution. The Court has been steadfast in dismissing challenges to the legitimacy of the Aquino government, and has declared that

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[2] 258 Phil. 478 (1989).

[3] *Id*. at 492.

its legitimacy is not a justiciable matter that can be acted upon by the Court.[4]

As the removal of Marcos from the Presidency is no longer within the purview of judicial review, we must accept this as an incontrovertible fact which has become part of the history of the Philippines. This ouster, which was directly carried out by the sovereign act of the Filipino people, constitutes dishonorable removal from service. Marcos was forcibly removed from the position as President and Commander-in-Chief by the Filipino people. In *Estrada v. Desierto*,[5] the Court reiterated the legitimacy of the removal of Marcos and the establishment of the Aquino government:

> No less than the Freedom Constitution declared that **the Aquino government was installed through a direct exercise of the power of the Filipino people** in defiance of the provisions of the 1973 Constitution, as amended. It is familiar learning that the legitimacy of a government sired by **a successful revolution by people power is beyond judicial scrutiny** for that government automatically orbits out of the constitutional loop.[6] (Emphasis supplied)

The removal of Marcos from the Presidency, therefore, was a direct exercise of the sovereign act of the Filipino people that is "**beyond judicial scrutiny**." It cannot be said that this removal was an "honorable" one. Truly, there is nothing more dishonorable for a President than being forcibly removed from office by the direct sovereign act of the people.

Respondents argue that because Marcos was not dishonorably discharged in accordance with the procedures and guidelines prescribed in Administrative Discharge Prior to Expiration of Term of Enlistment (Circular 17, dated 2 October 1987, Series

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[4] *Joint Resolution, Lawyers' League for a Better Philippines v. President Aquino*, G.R. No. 73748; *People's Crusade for the Supremacy of the Constitution v. Aquino*, G.R. No. 73972; *Ganay v. Aquino*, G.R. No. 73990, 22 May 1986 (unsigned Resolution).

[5] 406 Phil. 1 (2001).

[6] *Id.* at 43-44.

of 1987, of the Armed Forces of the Philippines), Marcos was honorably separated from service.

I disagree.

*First*, Marcos was separated from service with finality, having been forcibly ousted by the Filipino people on 25 February 1986. Circular 17, issued **more than one year** after such separation from office, cannot be made to apply retroactively to Marcos. When Circular 17 was issued, Marcos had already been finally discharged, terminated, and ousted – as President and Commander-in-Chief – by the Filipino people. Circular 17 requires certain administrative procedures and guidelines in the discharge of **incumbent or serving** military personnel. There is a physical and legal impossibility to apply to Marcos Circular 17 since it was issued long after Marcos had been separated from office.

*Second*, even assuming that Circular 17 can be given retroactive effect, Marcos was still dishonorably discharged from service since Circular 17 cannot prevail over the sovereign act of the Filipino people. Marcos was ousted by the direct act of the Filipino people. The sovereign people is the ultimate source of all government powers.[7] The Constitution specifically declares that "sovereignty resides in the people and all government authority emanates from them."[8] Thus, the act of the sovereign people in removing Marcos from the Presidency, which is now beyond judicial review, and thus necessarily beyond administrative review, cannot be overturned by a mere administrative circular issued by a department secretary. The reality is, more than one year before Circular 17 was issued, Marcos had already been removed with finality from office by the sovereign people for reasons that are far from honorable.

Circular 17, a mere administrative issuance of a department secretary, cannot be applied retroactively to undo a final act

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[7] See *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panlungsod of Dumaguete*, 239 Phil. 403 (1987).

[8] Article II, Section 1, 1987 Philippine Constitution.

by the sovereign people. The power of all government officials, this Court included, emanates from the people. Thus, any act that runs afoul with the direct exercise of sovereignty by the people, such as the removal of a dictator, plunderer and human rights violator, cannot be countenanced. The sovereign act of the Filipino people obviously prevails over a mere administrative circular issued by a department secretary.

***Equal Protection Clause***

The respondents assert that the disqualifications under AFPR G 161-375 are inapplicable to former presidents as the disqualifications under AFPR G 161-375 apply only to military personnel and not to non-military personnel.

I disagree.

The disqualifications prescribed under AFPR G 161-375 are reasonable *per se* considering that the LNMB is a national shrine.[9] Proclamation No. 86 renamed the Republic Memorial Cemetery to LNMB to make it more "symbolic of the cause for which Filipino soldiers have died" and "to truly express the nation's esteem and reverence for her war dead." The disqualifications are safeguards to ensure that those interred at the LNMB indeed deserve such honor and reverence.

However, to submit to respondents' view that the disqualifications under AFPR G 161-375 apply only to military personnel, and that the President, even as Commander-in-Chief, is not a military personnel subject to such disqualifications,[10] negates the purpose for which the LNMB was originally established, which is to honor Filipino soldiers who fought for freedom and democracy for our country. Indeed, Marcos is the very anti-thesis of freedom and democracy because he was a dictator as declared by this Court.

Respondents' view will discriminate against military personnel who are subject to the disqualifications. Applying only to military

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[9] Proclamation No. 208, issued on 28 May 1967.

[10] Consolidated Comment (of public respondents) in G.R. No. 225973, G.R. No. 225984, and G.R. No. 226097, pp. 54-55.

personnel the disqualifications will unduly favor non-military personnel who will always be eligible, regardless of crimes committed against the State or humanity, to be interred at the LNMB as long as they are included in the list of those qualified. This will lead to the absurd situation where a military officer who was dishonorably discharged would be disqualified, while a deposed President who was dishonorably discharged through an act of the sovereign people for committing plunder, human rights violations, and other atrocious acts would still be qualified to be interred at the LNMB.

The term "personnel" is not defined anywhere in Circular 17 and thus, we must refer to its common usage. Personnel is defined as "the people who work for a particular company or organization."[11] The enumeration of the people qualified to be interred at the LNMB includes both military (such as the Generals, Flag Officers and Active and Retired Military personnel of the AFP) and civilian (such as Presidents, Secretaries of National Defense, Government Dignitaries, Statesmen, National Artists and widows of former Presidents) personnel. Thus, the term "personnel" as used in the provision for disqualifications should refer to both military and civilian personnel. Significantly, paragraph 4 of AFPR G 161-375, the provision which enumerates those not qualified to be interred at the LNMB, does not use the word "military" to define personnel, while for other provisions in the regulation, the term "military" is specifically used to classify "personnel."

If as respondents argue, the disqualifications should apply only to military personnel, then AFPR G 161-375 would be a patent violation of the Equal Protection Clause as it would indiscriminately create unreasonable classifications between civilian and military personnel for purposes of interment at the LNMB. Such classification serves no purpose and is not germane to the purpose of interment at the LNMB. The Equal

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[11] http://www.merriam-webster.com/dictionary/personnel?utm_campaign=sd&utm_medium=serp&utm_source=jsonld (last accessed 14 September 2016).

Protection Clause enshrined in Section 1, Article III of the 1987 Constitution states that: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." The Equal Protection Clause applies not only to statutes or legislative acts but to all official state actions.[12] As explained in *Bureau of Customs Employees Associations (BOCEA) v. Hon. Teves*:[13]

> Equal protection simply provides that all persons or things similarly situated should be treated in a similar manner, both as to rights conferred and responsibilities imposed. The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities. In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.[14]

To be valid, a classification must be reasonable and based on real and substantial distinctions. The Court, in the landmark case of *Victoriano v. Elizalde Rope Workers' Union*,[15] held:

> All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.[16]

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[12] *1-United Transport Koalisyon (1-UTAK) v. Commission on Elections*, G.R. No. 206020, 14 April 2015, 755 SCRA 441; *Biraogo v. The Phil. Truth Commission of 2010*, 651 Phil. 374 (2010).

[13] 677 Phil. 636 (2011).

[14] *Id.* at 660.

[15] 158 Phil. 60 (1974).

[16] *Id.* at 87.

Thus, for a classification to be valid and compliant with the Equal Protection Clause, it must (1) be based on substantial distinctions, (2) be germane to the purpose of the law, (3) not be limited to existing conditions only, and (4) apply equally to all members of the same class.[17]

In this case, however, there is no substantial distinction between the military and civilian personnel, for purposes of interment at the LNMB, that would warrant applying the disqualifications to military personnel and not to civilian personnel.

In *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,[18] the Court found that the rank-and-file employees of the Bangko Sentral ng Pilipinas (BSP) were unduly discriminated against when all the rank-and-file employees of other Government Financial Institutions (GFIs) were exempted from the Salary Standardization Law (SSL) while the SSL continued to be applied to the rank-and-file employees of the BSP. The Court held that while the exemption from the applicability of the SSL is a privilege that is within the prerogative of the legislature to grant, the validity or legality of the exercise is still subject to judicial review, such that if it is exercised capriciously and arbitrarily, the Court is duty bound to correct it. The Court held:

> It bears stressing that the exemption from the SSL is a "*privilege*" fully within the legislative prerogative to give or deny. However, its subsequent grant to the rank-and-file of the seven other GFIs and continued denial to the BSP rank-and-file employees breached the latter's right to equal protection. In other words, while the granting of a privilege *per se* is a matter of policy exclusively within the domain and prerogative of Congress, *the validity or legality of the exercise* of this prerogative is subject to judicial review. So when the distinction made is superficial, and not based on substantial distinctions that make real differences between those included and excluded, it becomes a matter of arbitrariness that this Court has the

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[17] *Tiu v. CA*, 361 Phil. 229 (1999).

[18] 487 Phil. 531 (2004).

duty and the power to correct. As held in the United Kingdom case of *Hooper v. Secretary of State for Work and Pensions*, once the State has chosen to confer benefits, "discrimination" contrary to law may occur where favorable treatment already afforded to one group is refused to another, even though the State is under no obligation to provide that favorable treatment.

The disparity of treatment between BSP rank-and-file and the rank-and-file of the other seven GFIs definitely bears the unmistakable badge of invidious discrimination — no one can, with candor and fairness, deny the discriminatory character of the subsequent blanket and total exemption of the seven other GFIs from the SSL when such was withheld from the BSP. *Alikes are being treated as unalikes without any rational basis.*

Again, it must be emphasized that the equal protection clause does not demand absolute equality *but it requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced.* Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances which, if not identical, are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion; whatever restrictions cast on some in the group is equally binding on the rest.[19] (Italicization in the original)

Therefore, under the Equal Protection Clause, persons who are in like circumstances and conditions must be treated alike both as to the privileges conferred and liabilities imposed. In this case, as those enumerated in the AFPR G 161-375 are granted the privilege of being interred at the LNMB, consequently, the disqualifications must also be made applicable to all of them. There is no substantial or reasonable basis for the disqualifications to be made applicable to military personnel only when civilians alike may be dishonorably dismissed from service for the same offenses.

To sustain respondents' view would give rise to an absurd situation where civilians, eligible to be interred at the LNMB

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[19] *Id.* at 582-583. Citations omitted.

would have the absolute and irrevocable right to be interred there, nothwithstanding that military personnel, likewise eligible to be interred at the LNMB, may be disqualified. There is no real or substantial basis for this distinction. The conditions for disqualification should likewise be applied to civilian personnel as the privileges conferred on them — interment at the LNMB — is the same privilege conferred on military personnel.

***Marcos' interment at the LNMB is contrary to public policy***

Jurisprudence defines public policy as "that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good."[20]

The Constitution grants the Legislative branch the power to enact laws and establish the public policy behind the law. The public policy is prescribed by the Legislature and is implemented by the Executive. The Executive must implement the law by observing the highest standards of promoting the public policy. These standards are embedded in the Constitution, international law and municipal statutes. By these standards, the DND Memorandum ordering the interment of Marcos at the LNMB is contrary to public policy.

Section 11, Article II of the 1987 Constitution provides that the State values the dignity of every human person and guarantees full respect for human rights. The public policy is further established in Section 12 of Article III which prohibits the use of torture, force, violence, threat, intimidation, or any other means which vitiate free will and mandates the rehabilitation of victims of torture or similar practices. Also, following the doctrine of incorporation,[21] the Philippines adheres to the Universal Declaration of Human Rights, International Covenant

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[20] *Gonzalo v. Tarnate, Jr.*, 724 Phil. 198, 207 (2014), citing *Avon Cosmetics, Inc. v. Luna*, 540 Phil. 389, 404 (2006).

[21] Article II, Section 2 states: "The Philippines x x x adopts the generally accepted principles of international law as part of the law of the land x x x."

on Civil and Political Rights, and the Convention Againsts Torture. Through the provisions of the Constitution and international law, the State binds itself to enact legislation recognizing and upholding the rights of human rights victims.

Congress, by enacting Republic Act No. 10368 or "The Human Rights Victims Reparation and Recognition Act of 2013," established as a "**policy of the State**" to recognize the heroism and sacrifices of victims of (a) summary execution; (b) torture; (c) enforced or involuntary disappearance; and (d) other gross human rights violations during the Marcos regime. Section 2 of R.A. No. 10368 states:

> Consistent with the foregoing, it is hereby declared the **policy of the State** to recognize the heroism and sacrifices of all Filipinos who were **victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos** covering the period from September 21, 1972 to February 25, 1986 and restore the victims' honor and dignity. The State hereby acknowledges its **moral and legal obligation to recognize and/or provide reparation to said victims and/or their families** for the deaths, injuries, suffereings, deprivations and damages they suffered under the Marcos regime. (Emphasis supplied)

R.A. No. 10368 mandates that it is the "moral and legal obligation" of the State to recognize the sufferings and deprivations of the human rights victims of Marcos' martial law regime. Interring Marcos on the hallowed grounds of the LNMB, which was established to show "the nation's esteem and reverence" for those who fought for freedom and democracy for our country, extols Marcos and exculpates him from human rights violations. This starkly negates the "moral and legal obligation" of the State to recognize the sufferings and deprivations of the human rights victims under the dictatorship of Marcos.

The legislative declarations must be implemented by the Executive who is shown under the Constitution to "faithfully execute the law." The Executive, in implementing the law,

must observe the standard of recognizing the rights of human rights victims. Marcos' interment at the LNMB will cause undue injury particularly to human rights victims of the Marcos regime, as well as the sovereign people who ousted Marcos during the People Power Revolution. Marcos' interment at the LNMB is thus contrary to public policy.

The sufferings and deprivations of the human rights victims during the martial law era are well documented. The United States District Court of Hawaii in *In Re Estate of Marcos*[22] held Marcos guilty of widespread human rights violations and awarded one billion two hundred million U.S. Dollars ($1,200,000.00) in exemplary damages and seven hundred sixty-six million U.S. Dollars ($766,000,000) in compensatory damages to human rights victims. The judgment of the district court was affirmed by the Ninth Circuit Court of Appeals in *Hilao v. Estate of Marcos*.[23]

Finally, government funds or property shall be spent or used **solely** for public purposes.[24] Since Marcos was ousted by the sovereign act of the Filipino people, he was dishonorably discharged from office. Consequently, Marcos' dishonorable discharge serves to convert his burial into a private affair of the Marcos family. Hence, no public purpose is served by interring his remains at the LNMB.

**ACCORDINGLY,** I vote to **GRANT** the petitions in G.R. Nos. 225973, 225984, 226097, 226116, 226117, 226120, and 226294 and to **DECLARE** the DND Memorandum dated 7 August 2016 **VOID** for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

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[22] 910 F. Supp. 1460 (D. Haw. 1995).

[23] 103 F.3d 767 (9th Cir. 1996).

[24] *Fort Bonifacio Dev't. Corp. v. Commissioner of Internal Revenue*, 694 Phil. 7 (2012).

## DISSENTING OPINION

*". . . They tore my dress and then eventually they let me lay down to sleep but then early in the morning the two soldiers who stayed near me started torturing me again and by today's definition, it is rape because they fondled my breast and they inserted a long object into my vagina and although I screamed and screamed with all my might, no one seemed to hear except that I heard the train pass by. . ."*
*– Ma. Cristina Pargas Bawagan, Petitioner and Human Rights Victim of the Marcos Regime*

*"My mother is still alive but she was also . . . she also undergone . . . she underwent torture and sexual abuse and I hope my sister is not listening right now because she does not know this."*
*– Liwayway Arce, Petitioner and Human Rights Victim of the Marcos Regime*

**LEONEN, *J.*:**

I dissent.

Under our constitutional order, Presidents, unlike kings, earn their honors. As Presidents are public servants, their position in itself should not be the basis to glorify them. Neither should their place in history be determined by a succeeding President. Only the sovereign Filipino People deserve to determine a President's place in history.

Given the present state of our Constitution, our laws, and our jurisprudence, it is illegal for the remains of Ferdinand E. Marcos to be interred at the Libingan ng mga Bayani. The Filipino People do not deserve such a symbolism.

Former President Ferdinand E. Marcos presided over a regime that caused untold sufferings for millions of Filipinos. Gross violations of human rights were suffered by thousands. The public coffers contributed to by impoverished Filipinos were raided. Ferdinand E. Marcos stood by as his family, associates, and cronies engaged in systematic plunder. The national debt ballooned during his regime.

He was eventually ousted by a public uprising. His regime and the abuses he committed during that time led to a complete rethinking of our constitutional order. The 1987 Constitution embeds most of our experiences during Martial Law. It was a reaction to the failures of governance of Ferdinand E. Marcos and his cohorts.

Ferdinand E. Marcos is no hero. He was not even an exemplary public officer. He is not worthy of emulation and inspiration by those who suffer poverty as a result of the opportunity lost during his administration, by those who continue to suffer the trauma of the violations to the human dignity of their persons and of their families. He is certainly not worthy of emulation and inspiration by those in public service, including the lawyers, judges, and justices who simply want to do what is right, protect others, and conscientiously and diligently protect public funds entrusted to them.

If we are true to the text and spirit of our Constitution and our laws as well as our history, Ferdinand E. Marcos cannot be buried at the Libingan ng mga Bayani. The proposal that he be accorded public honor is contrary to law. It is a betrayal of the Filipino spirit.

Rodrigo Roa Duterte's discretion as President is "not unconfined and vagrant" but always "canalized within banks that keep it from overflowing."[1] His alleged verbal orders to cause the interment of the remains of Ferdinand E. Marcos at

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[1] *Almario v. Executive Secretary*, 714 Phil. 127, 163 (2013) *citing* the dissent of *J.* Cardozo in *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935) [Per *J.* Leonardo-de Castro, *En Banc*].

the Libingan ng mga Bayani were whimsical, capricious, a grave abuse of discretion, and issued only to please a single family. Ferdinand E. Marcos invented most of his medals as a soldier. He was one of our worst Presidents.

National healing cannot simply come when the President pronounces it. It can only come through a process that leads to social justice. Justice requires accountability. Justice does not come with just forgetting. Accountability involves the recognition of the place of the perpetrator and the victim.

The victims of Martial Law, who stood by their principles and spoke to power, who were detained, made to disappear, tortured, killed, molested, and raped, were the heroes. They are the "bayani." By law, they are our heroes.

Ferdinand E. Marcos was the perpetrator. He is not the "bayani." The perpetrator cannot be a hero at the same time that his victims are heroes. This is cruel and illogical. This is impunity. This is an assurance that our People will suffer the same gross violations of human rights and plunder.

Our laws are not illogical. If they are, then they will be the cause of injustice. If our laws are unreasonable, then they will violate the "due process of law." Certainly, this Court cannot be party to an illogical and unreasonable interpretation of the law.

Our laws do not allow the burial of the remains of the perpetrator at the Libingan ng mga Bayani for any or all of the following reasons:

First, the President's verbal orders, which were the basis for the issuance of the questioned orders of public respondents, are invalid because they violate Republic Act No. 289. Republic Act No. 289 was never repealed. The law covers the subject of AFP Regulations No. 161-373 (1986),[2] AFP Regulations No. 161-374 (1998),[3] and AFP Regulations No. 161-375 (2000)

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[2] OSG Comment, Annex 5.

[3] OSG Comment, Annex 6.

(collectively, AFP Regulations).[4] Yet, these AFP Regulations ignore the requirements of Republic Act No. 289. Therefore, the basis of the Memorandum[5] of Secretary of National Defense Delfin Lorenzana (Lorenzana Memorandum) and the Directive[6] of Rear Admiral Ernesto Enriquez (Enriquez Orders) are ultra vires and, therefore, are null, void, and inexistent.

Second, assuming without accepting that AFP Regulations were valid when issued, still President's verbal orders, the Lorenzana Memorandum, and the Enriquez Orders all violate the requirement in Section 1 of Republic Act No. 289 that those buried must have led lives worthy of "inspiration and emulation."

Third, assuming without accepting that the AFP Regulations were valid when issued, public respondents gravely abused their discretion when they failed to show that there was an examination of the sufficiency of the facts that would reasonably lead them to believe that the burial of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani would be in accordance with Republic Act No. 289 or the various Proclamations that identified the location of the Libingan, considering the findings of the National Historical Commission of the Philippines (National Historical Commission), the provisions of our laws including Republic Act No. 10368, and this Court's jurisprudence.

The President's verbal orders do not provide for a definite and complete reason for transferring the remains of Former President Ferdinand E. Marcos from its originally intended site as shown in the agreement signed by Former Secretary Rafael Alunan III (Former Secretary Alunan) and Imelda Marcos to the Libingan ng mga Bayani. It was whimsical, capricious, and an abuse of discretion, and could have been done only to accommodate the private interest of the Heirs of Marcos.

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[4] OSG Comment, Annex 7.

[5] OSG Memorandum, p. 20.

[6] *Id.*

Fourth, the President's verbal orders, the Lorenzana Memorandum, and the Enriquez Orders were issued with grave abuse of discretion because they violate Republic Act No. 10368, otherwise known as the Human Rights Victims Reparation and Recognition Act of 2013.

Fifth, the President's verbal orders, the Lorenzana Memorandum, and the Enriquez Orders cannot be justified even under the provisions of the Administrative Code of 1987. Given the established circumstances of the Marcos regime and the participation of Ferdinand E. Marcos, there remains no public purpose to the interment of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani.

Sixth, the actions of public respondents are contrary to the President's oath of office because they encourage impunity. Impunity is the result of rewarding the person who presided over human rights violations and who personally participated in the plunder of the public treasury.

**I**

This case resolves Petitions for certiorari,[7] prohibition,[8] and mandamus:[9] (i) questioning the validity of the verbal orders of President Rodrigo Roa Duterte (President Duterte) to bury Ferdinand E. Marcos at the Libingan ng mga Bayani; (ii) seeking to nullify the Memorandum dated August 7, 2016 issued by Secretary of National Defense Delfin Lorenzana (Secretary Lorenzana) and the Directive dated August 9, 2016 of Rear Admiral Ernesto Enriquez (Rear Admiral Enriquez) implementing President Duterte's verbal orders; and (iii) praying for the issuance of a temporary restraining order and/or preliminary injunction.

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[7] Petition (G.R. No. 225973), Petition (G.R. No. 226117) and Petition (G.R. No. 226120).

[8] Petition (G.R. No. 225973), Petition (G.R. No. 225984), Petition (G.R. No. 226097), Petition (G.R. No. 226116), Petition (G.R. No. 226117) and Petition (G.R. No. 226120).

[9] Petition (G.R. No. 226116).

The facts that frame these consolidated cases are as follows:

After World War II, the Republic Memorial Cemetery was established in Fort William McKinley[10] as a burial place for Filipino soldiers who died during the war.[11] On October 23, 1954, Executive Order No. 77[12] was issued by Former President Ramon Magsaysay (Former President Magsaysay). The Executive Order directed the remains of all Filipino soldiers who died in the war be removed from their places of burial and transferred to the Republic Memorial Cemetery, since "in the national observance of the occasion honoring the memory of those war dead, it is fitting and proper that their remains be interred in one national cemetery."[13]

On October 27, 1954, through Proclamation No. 86, Former President Magsaysay renamed the Republic Memorial Cemetery to Libingan ng mga Bayani as the name "Republic Memorial Cemetery . . . is not symbolic of the cause for which our soldiers have died, and does not truly express the nation's esteem and reverence for her war dead."[14]

On May 28, 1967, Former President Ferdinand E. Marcos issued Proclamation No. 208, reserving a portion of land in the Fort Bonifacio Military Reservation for national shrine purposes.[15]

On January 24, 1973, Ferdinand E. Marcos issued Presidential Decree No. 105, declaring national shrines to be hallowed places and punishing their desecration, which included the acts of "disturbing their peace and serenity by digging, excavating,

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[10] OSG Memorandum, p. 10.

[11] Memorandum (G.R. No. 226097), p. 8.

[12] Transferring the Remains of War Dead Interred at Bataan Memorial Cemetery, Bataan Province and at Other Places in the Philippines to the Republic Memorial Cemetery at Fort WM McKinley, Rizal Province (1954).

[13] Exec. Order No. 77 (1954), 4th whereas clause.

[14] Proc. No. 86 (1954).

[15] Proc. No. 208 (1967).

defacing, causing unnecessary noise and committing unbecoming acts within the premises of said National Shrines[.]"[16]

On April 9, 1986, the Armed Forces of the Philippines issued AFP Regulations No. 161-373,[17] which prescribed the allocation of cemetery plots at the Libingan ng mga Bayani. This was amended on March 27, 1998 by AFP Regulations No. 161-374,[18] and then again on September 11, 2000 by AFP Regulations No. 161-375.[19] Both amendments were issued by the Former Secretaries of National Defense.[20]

In 1989, Ferdinand E. Marcos passed away in Hawaii while in exile.[21] Thereafter, in 1992, Former President Fidel V. Ramos (Former President Ramos), on behalf of government, signed an agreement with the Marcos Family pertaining to the return of Ferdinand E. Marcos' remains.[22] Under this agreement, the Marcos Family was allowed to fly Ferdinand E. Marcos' remains to the Philippines from Hawaii, subject to the following conditions: (1) that Ferdinand E. Marcos' remains would be flown straight from Hawaii to Ilocos Norte; (2) that Ferdinand E. Marcos would only be given honors befitting a major of the Armed Forces of the Philippines; (3) that his remains would not be permitted to be paraded around Metro Manila; and (4) that the burial would be done in Ilocos Norte, and not at the Libingan ng mga Bayani.[23]

However, before signing the agreement, and without informing any representative of government, Imelda R. Marcos crossed out the word "buried" and replaced it with the words "temporarily

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[16] Pres. Decree No. 105 (1973).

[17] OSG Comment, Annex 5.

[18] OSG Comment, Annex 6.

[19] OSG Comment, Annex 7.

[20] Memorandum (G.R. No. 226097), p. 10.

[21] *Id*. at 11.

[22] *Id*.

[23] *Id*. at 11-12.

interred."[24] Former Secretary Alunan, during the Oral Arguments on August 31, 2016, stated that this was viewed by Former President Ramos as a sign of bad faith:

SECRETARY ALUNAN:

The official agreement is what I personally, I officially submitted to the President of the Philippines on August 19 which was altered by Imelda Marcos. The following day, she sent her version of the Memorandum of Agreement that she signed without my signature but which was disregarded by the President. In fact, if I may share, the comment of the President when he saw the words temporarily interred was that, this was a sign of bad faith.[25]

During a press conference in May 2016, then President-elect Duterte stated he would allow the burial of Marcos at the Libingan ng mga Bayani:

Look, there is the courts. Pumunta kayo ng korte kasi 'yung taong hinahabol niyo, cadaver na (Go to the courts because the person you're after is already a cadaver). What do you want more from the guy? Patay nga (He's already dead). . . . Sabi niyo si Marcos, hindi dapat diyan (ilibing) (You said that Marcos should not be buried there). That is (on) the question of his abuses. It is something that is attached to his persona forever. Marcos might not really be a hero, I accept that proposition, maybe. But certainly he was a soldier," Duterte said.

. . . . . .

In addition to being a president, he was a soldier. So 'yung sinabi mo noong dinakip ng martial law, nandiyan ang korte (So those who were arrested during the martial law, the courts are there for you). It's just a matter of distributing the award. So anong problema? Patay na 'yung tao. Anong gusto niyo? (So what is the problem? The guy is already dead. What do you want?) You want the cadaver to be burned? Will that satisfy your hate?" he added.

. . . . . .

Alam mo kapag nagbitaw ako ng salita, 'yun na 'yun. Magpakamatay na ako diyan (If I have already uttered the words, that's it already.

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[24] *Id*. at 12.

[25] *Id*. at 13.

I am willing to stake my life on it). I will do things that I promised to do. I will not die if I do not become President. I will stake my honor, my life, and the presidency itself. Bantayan niyo ang salita ko (Pay attention to my words)," Duterte said.[26]

President Duterte reiterated his position on Ferdinand E. Marcos' burial sometime in August 2016, stating that "[a]s a former soldier and former [P]resident of the Philippines, [he] [saw] nothing wrong in having Marcos buried at the Libingan ng mga Bayani."[27]

On July 11, 2016, President Duterte gave verbal orders to respondent Secretary Lorenzana to carry out the interment of Ferdinand E. Marcos at the Libingan ng mga Bayani.[28]

In response to President Duterte's pronouncements, the National Historical Commission published a study entitled "Why Ferdinand Marcos Should Not Be Buried at the Libingan ng mga Bayani"[29] on July 12, 2016.[30] The National Historical Commission reported that Ferdinand E. Marcos' military records were not deserving of the honors that would be bestowed upon him should he be buried at the Libingan ng mga Bayani as they were "fraught with myths, factual inconsistencies, and lies." In particular, the National Historical Commission found that:

1. Mr. Marcos lied about receiving U.S. medals: Distinguished Service Cross, Silver Star, and Order of the Purple Heart, which he claimed as early as about 1945.

2. His guerilla unit, the Ang Mga Maharlika, was never officially recognized and neither was his leadership of it.

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[26] *Id*. at 13-14.

[27] *Id*. at 14.

[28] OSG Memorandum, p. 20.

[29] National Historical Commission of the Philippines, *Why Ferdinand Marcos Should Not Be Buried at the Libingan ng mga Bayani*, July 12, 2016 <https://drive.google.com/file/d/0B9c6mrxI4zoYS2I0UWFENEp6TkU/view> (visited November 7, 2016).

[30] Memorandum (G.R. No. 226097), p. 14.

3. U.S. officials did not recognize Mr. Marcos's rank promotion from Major in 1944 to Lt. Col. By 1947.

4. Some of Mr. Marcos's actions as a soldier were officially called into question by upper echelons of the U.S. military, such as his command over the Alias Intelligence Unit (described as usurpation), his commissioning of officers (without authority), his abandonment of USAFIP-NL presumably to build an airfield for Gen. Roxas, his collection of money for the airfield (described as "illegal"), and his listing of his name on the roster of different units (called a "malicious criminal act").[31]

Despite the National Historical Commission's report, on August 7, 2016, Secretary Lorenzana issued the Lorenzana Memorandum directing respondent Armed Forces of the Philippines Chief of Staff General Ricardo R. Visaya (General Visaya) "to undertake the necessary planning and preparations to facilitate the coordination of all agencies concerned" and to "coordinate closely with the Marcos family" as to the transfer of Marcos' remains to the Libingan ng mga Bayani.[32] Secretary Lorenzana designated the Philippine Veterans Affairs Office as the office of primary responsibility for the Marcos burial.[33] Reportedly, under this directive, General Visaya gave instructions to Rear Admiral Enriquez, Deputy Chief of Staff for Reservist and Retiree Affairs, pertaining to the Marcos burial.[34]

Thus, on August 12, 2016, the Armed Forces of the Philippines, through its Army Chief of Public Affairs, issued a press release entitled "Army receives interment directive for former Pres. Marcos." The press release stated that the Philippine Army had received a directive from Rear Admiral Enriquez under the command of General Visaya for the Marcos burial at the Libingan ng mga Bayani.[35] It stated that under this directive, the Army

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[31] *Id*. at 15.

[32] Memorandum (G.R. No. 225973), p. 7; OSG Memorandum, p. 20.

[33] OSG Memorandum, p. 20.

[34] Memorandum (G.R. No. 225973), p. 8.

[35] *Id*. at 7.

was required to provide vigil, bugler/drummer, firing party, military host/pallbearers, escort and transportation, as well as arrival and departure honors.[36] It also stated that the Army had designated a protocol officer to coordinate laterally with the Marcos Family regarding the details of the Marcos burial.[37]

President Duterte confirmed in various interviews that he had allowed Ferdinand E. Marcos' interment at the Libingan ng mga Bayani, as this was a promise he had made during his campaign for the presidency.[38]

Thus, petitioners separately filed the present Petitions for certiorari, prohibition, and mandamus, mainly seeking that the execution of the Executive Department's decision to allow the burial of Ferdinand E. Marcos at the Libingan ng mga Bayani be reversed, set aside, and enjoined.[39] After respondents filed their respective Comments, oral arguments were held on August 31 and September 7, 2016. The parties then filed their respective Memoranda.

**II**

The AFP Regulations are *ultra vires*. They violate Republic Act No. 289, which is still an existing law. Therefore, the verbal orders of the President, the Lorenzana Memorandum, and the Enriquez Orders based on the AFP Regulations are null and void.

Republic Act No. 289[40] creates a National Pantheon "to perpetuate the memory of all the Presidents of the Philippines, national heroes and patriots for the inspiration and emulation of this generation and of generations still unborn[.]"[41] The

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[36] *Id.* at 8.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] An Act Providing for the Construction of a National Pantheon for Presidents of the Philippines, National Heroes and Patriots of the Country.

[41] Rep. Act No. 289, Sec. 1.

National Pantheon is, by law, intended to be the "burial place of their mortal remains."[42] Thus:

> SECTION 1. To perpetuate the memory of all the Presidents of the Philippines, national heroes and patriots for the inspiration and emulation of this generation and of generations still unborn, there shall be constructed a National Pantheon which shall be the burial place of their mortal remains.

The clear intention of the legislature in enacting Republic Act No. 289 was to create a burial place to perpetuate the memory of the Presidents of the Philippines, national heroes, and patriots, for the inspiration and emulation of generations of the Filipino People.[43] An examination of the evolution of what is now known as the Libingan ng mga Bayani shows that it is precisely the burial ground covered by Republic Act No. 289.

The Libingan ng mga Bayani, similar to the National Pantheon, is there to hold the remains and "perpetuate the memory of all the Presidents of the Philippines, national heroes and patriots for the inspiration and emulation of this generation and generations still unborn."

Republic Act No. 289 does not specify what the name of the National Pantheon shall be. The Libingan ng mga Bayani may not be called the "National Pantheon," but nothing in Republic Act No. 289 prohibits naming the National Pantheon as the Libingan ng mga Bayani.

Republic Act No. 289 does not specify where the National Pantheon is to be located. Under Republic Act No. 289, the suitable site is yet to be determined by a Board, who has the duty:

> (a) *To determine the location of a suitable site for the construction of the said National Pantheon*, and to have such site acquired, surveyed and fenced for this purpose and to delimit and set aside a portion thereof wherein shall be interred the remains

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[42] Rep. Act No. 289, Sec. 1.

[43] Rep. Act No. 289, Sec. 1.

> of all Presidents of the Philippines and another portion wherein the remains of heroes, patriots and other great men of the country shall likewise be interred[.][44] (Emphasis supplied)

Wherever the mortal remains of Presidents of the Philippines, national heroes, and patriots are buried is, thus, the burial place envisioned by the legislature, subject to the provisions of Republic Act No. 289.

The space where the Libingan ng mga Bayani is now located was once the Republic Memorial Cemetery, which initially served as burial grounds for the war dead.[45]

Prior to the law's enactment, in 1947, the Republic Memorial Cemetery was established as a burial ground for soldiers who died during World War II.

While Republic Act No. 289 was effective and apparently without the action of the Board of National Pantheon, Former President Magsaysay issued Executive Order No. 77, transferring the remains of the war dead to the Republic Memorial Cemetery:

> WHEREAS, the Armed Forces of the Philippines is maintaining the Bataan Memorial Cemetery in the province of Bataan and the Republic Memorial Cemetery in Fort Wm McKinley, Rizal province, thereby splitting the expenses of maintenance and upkeep therefor;
>
> WHEREAS, there are other remains of our war dead interred at other places throughout the Philippines which are not classified as cemeteries;
>
> WHEREAS, the said cemetery in Bataan province and the other places in the Philippines where our dead war heroes are interred are not easily accessible to their widows, parents, children, relatives and friends; and
>
> WHEREAS, in the national observance of the occasion honoring the memory of those war dead, it is fitting and proper that their remains be interred in one national cemetery;
>
> NOW, THEREFORE, I, RAMON MAGSAYSAY, President of the Philippines, by virtue of the powers vested in me by law, do hereby

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[44] Rep. Act No. 289, Sec. 2(a).

[45] OSG Memorandum, p. 10.

order that the remains of the war dead interred at the Bataan Memorial Cemetery, Bataan province, and at other places in the Philippines, be transferred to, and reinterred at, the Republic Memorial Cemetery at Fort Wm McKinley, Rizal Province.

This change—relocating the nation's war dead to one national cemetery—created a burial ground that, by its express purpose, necessarily glorifies and honors those buried as war heroes. This re-interment of all of the dead war heroes to the Republic Memorial Cemetery transformed it the National Pantheon, covered by Republic Act No. 289.

On October 27, 1954, Former President Magsaysay issued Proclamation No. 86, changing the name of the Republic Memorial Cemetery to express the nation's esteem and reverence for those buried in the cemetery, the war dead:

WHEREAS, the name "Republic Memorial Cemetery" at Fort Wm McKinley, Rizal province, is not symbolic of the cause for which our soldiers have died, and does not truly express the nation's esteem and reverence for her war dead;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare that the "Republic Memorial Cemetery" shall henceforth be called "LIBINGAN NG MGA BAYANI".

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Proclamation No. 86 purposefully and expressly altered the nature of the Republic Memorial Cemetery. The name was changed specifically to honor those who died in the war, as "bayani," the heroes of war.

On July 12, 1957, Former President Carlos P. Garcia issued Proclamation No. 423, which reserved for military purposes, under the administration of the Chief of Staff of the Armed Forces of the Philippines, certain parcels of land in Pasig, Taguig, Parañaque, Province of Rizal, and Pasay City.[46] Under this

[46] Proc. No. 423 (1957).

Proclamation, the Armed Forces of the Philippines issued various regulations expanding the scope of the types of individuals who could be buried at the Libingan ng mga Bayani. Thus, the nature of what once was the Republic Memorial Cemetery changed further. The most recent AFP Regulations, AFP Regulations No. 161-375 (2000), invoked by public respondents, reads:

1. General: This regulation prescribes the allocation of cemetery plots and construction of grave markers at the Libingan Ng Mga Bayani (LNMB).

. . . . . .

3. Who are qualified to be interred in the Libingan Ng Mga Bayani: The remains of the following deceased persons are qualified and, therefore, authorized to be interred in the Libingan Ng Mga Bayani:

a. Medal of Valor Awardees
b. Presidents of Commander-in-Chief, AFP
c. Secretaries of National Defense
d. Chiefs of Staff, AFP
e. Generals/Flag Officers of the AFP
f. Active and retired military personnel of the AFP to include active draftees and trainees who died in line of duty, active reservists and CAFGU Active Auxiliary (CAA) who died in combat operations or combat related activities.
g. Former members of the AFP who laterally entered or joined the Philippine Coast Guard (PCG) and the Philippine National Police (PNP)
h. Veterans of Philippine Revolution of 1890, WWI, WWII and recognized guerrillas
i. Government Dignitaries, Statesmen, National Artists and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, Congress or the Secretary of National Defense
j. Former Presidents, Secretaries of Defense, Dignitaries, Statesmen, National Artists, widows of Former Presidents, Secretaries of National Defense and Chief of Staff are authorized to be interred at the LNMB.[47]

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[47] OSG Comment, Annex 7.

Again, the Republic Memorial Cemetery was created specifically as a burial place for the war dead,[48] and then renamed to Libingan ng mga Bayani with the express purpose of revering the nation's war dead.[49] Now, progressing from the renaming, and under AFP Regulations, the cemetery is no longer primarily a cemetery for the nation's war dead. Remains of individuals who have nothing to do with the military—much less any war—have been interred there. This includes, among others, three (3) former Chief Justices of this Court,[50] as well as Former Presidents Elpidio R. Quirino and Diosdado P. Macapagal.[51]

As admitted by the Solicitor General, the Armed Forces of the Philippines has determined that those who have contributed to society, despite not having served as soldiers, may be buried at the Libingan ng mga Bayani:

JUSTICE LEONEN:
If the Libingan ng mga Bayani is a military cemetery, why is it that there is "national artist" also included in the order?

SOLICITOR GENERAL CALIDA:
Because they fall under the classification of probably dignitaries, Your Honors.

JUSTICE LEONEN:
Why single out national artists?

SOLICITOR GENERAL CALIDA:
Because they have contributed something to society, Your Honor.

JUSTICE LEONEN:
Maybe I will tell you because there is a law that actually allows national artists to be interred in the Libingan ng mga Bayani, is that not correct?[52]

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[48] Exec. Order No. 77 (1954).

[49] Proc. No. 86 (1954).

[50] TSN, Oral Arguments, September 7, 2016, p. 142.

[51] *Id*. at 57.

[52] *Id.* at 152.

Unlike for national artists, the expansion of the coverage of the Libingan ng mga Bayani is without cover of law and, in some cases, contrary to Republic Act No. 289. For instance, the inclusion of widows of Former Presidents or widows of Former Secretaries of National Defense at the Libingan ng mga Bayani has no purpose and is contrary to the nature of the Libingan.

The change of its name from Republic Memorial Cemetery to Libingan ng mga Bayani and the scope of individuals that could be buried through subsequent AFP Regulations are operative facts that put the cemetery under the coverage of Republic Act No. 289. What once may have been a military cemetery has been converted, over time, into what is the National Pantheon envisioned by the legislature when it passed Republic Act No. 289.

It is true that in 1953, Proclamation No. 431, entitled Reserving as Site for the National Pantheon a Certain Parcel of Land Situated in Quezon City, reserved a parcel of land in Quezon City for the construction of the National Pantheon. However, this was subsequently revoked by Proclamation No. 42, entitled Revoking Proclamation Nos. 422 and 431, Both Series of 1953, and Reserving the Parcels of Land Embraced Therein Situated in Quezon City for National Park Purposes to be Known as Quezon Memorial Park. There is no National Pantheon in Quezon City.

The revoked attempt to locate the National Pantheon in Quezon City does not amend Republic Act No. 289. Quezon City is not a definitive part of the National Pantheon, and Proclamation No. 431 is wholly irrelevant to the validity of Republic Act No. 289.

The ponencia suggests that the lack of appropriation from Congress for the creation of a National Pantheon shows a "legislative will not to pursue" the establishment of a National Pantheon. It further suggests that "[p]erhaps, the Manila North Cemetery, the Manila South Cemetery, and other equally distinguished private cemeteries already serve the noble purpose but without cost to the limited funds of the government."[53]

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[53] *Ponencia*, p. 19.

The failure to provide appropriation for a law does not repeal the law. Moreover, the failure to provide the appropriate budget for the execution of a law is a violation of the President's duty to faithfully execute all laws. Certainly, the lack of appropriation does not suspend standards laid down by the legislature in a valid and subsisting law.

The legislative policy in Republic Act No. 289 includes delegating the powers related to the National Pantheon to a specially constituted board composed of the Secretary of the Interior, the Secretary of Public Works and Communications, the Secretary of Education, and two (2) private citizens appointed by the President, with the consent of the Commission on Appointments (Board).[54] Under Republic Act No. 289, it is the Board—not the President directly nor the Secretary of National Defense—that has the power to perform all the functions necessary to carry out the purposes of the law.[55]

The Board is statutorily empowered to, among others:

(a) To determine the location of a suitable site. . . .

(b) To order and supervise the construction thereon of uniform monuments, mausoleums, or tombs. . . . [and]

(c) To cause to be interred therein the mortal remains of all Presidents of the Philippines, the national heroes and patriots[.]

However, the Lorenzana Memorandum and the Enriquez Orders to have the remains of Ferdinand E. Marcos transferred to the Libingan ng mga Bayani, today's National Pantheon, were made without the authority of the Board. Consequently, the Lorenzana Memorandum and the Enriquez Orders are void for being *ultra vires*. There is no showing that the Board recommended to the President the burial of the remains of Ferdinand E. Marcos at the Libingan. The issuances of public respondents are ultra vires and have no effect whatsoever. The continued implementation of these issuances would be an act

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[54] Rep. Act No. 289, Sec. 2.

[55] Rep. Act No. 289, Sec. 2.

beyond their jurisdiction, or grave abuse of discretion, because they violate existing law.

In public respondents' opening statement, the Solicitor General argues that the provisions of Republic Act No. 289 do not apply to the Libingan ng mga Bayani because Republic Act No. 289 is a "defunct law," established by the clear expressions of the legislative and executive will to abandon Republic Act No. 289 altogether, namely: (1) the inaction on the part of Congress, (2) the withdrawal of the reservation of land for the Pantheon by President Magsaysay.[56]

This is not a valid legal argument.

A law cannot be repealed by inaction or tradition. Neither can a law be repealed by a President. A President who does not follow a law is a President that violates his or her duties under the Constitution.

Article 7 of the Civil Code provides that laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, custom, or practice to the contrary. This Court has repeatedly held that only a law can repeal another law,[57] and a law subsists when it has not been repealed nor expressly amended by any other law.[58] Likewise, "repeals by implication are not favored and will not be decreed, unless it is manifest that the legislature so intended."[59]

No law has been passed amending or repealing Republic Act No. 289, and no manifest intention on the part of the legislature to repeal Republic Act No. 289 has been shown. It cannot be disputed; therefore, Republic Act No. 289 is a valid and binding law.

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[56] TSN, Oral Arguments, September 7, 2016, p. 14.

[57] *Palanca v. Court of Appeals*, G.R. No. 106685, December 2, 1994, 238 SCRA 593, 600-601 [Per *J.* Quiason, *En Banc*].

[58] See *United States v. Chan*, 37 Phil. 78, 84 (1917) [Per *J.* Torres, *En Banc*].

[59] *National Power Corporation v. Province of Lanao del Sur*, 332 Phil. 303, 323 (1996) [Per *J.* Panganiban, *En Banc*].

Further, the effectivity of a law cannot be made to depend on a future event or act. Otherwise, it would "rob the Legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know." In *Securities and Exchange Commission v. Interport Resources Corporation*:[60]

It is well settled that every law has in its favor the presumption of validity. Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes. The mere absence of implementing rules cannot effectively invalidate provisions of law, where a reasonable construction that will support the law may be given. In *People v. Rosenthal*, this Court ruled that:

> In this connection we cannot pretermit reference to the rule that "legislation should not be held invalid on the ground of uncertainty if susceptible of any reasonable construction that will support and give it effect. An Act will not be declared inoperative and ineffectual on the ground that it furnishes no adequate means to secure the purpose for which it is passed, if men of common sense and reason can devise and provide the means, and all the instrumentalities necessary for its execution are within the reach of those intrusted therewith."

In *Garcia v.* Executive *Secretary*, the Court underlined the importance of the presumption of validity of laws and the careful consideration with which the judiciary strikes down as invalid acts of the legislature:

> The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied and determined to be in accordance with the fundamental law before it was finally enacted.

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[60] 588 Phil. 651 (2008) [Per *J.* Chico-Nazario, *En Banc*].

The necessity for vesting administrative authorities with power to make rules and regulations is based on the impracticability of lawmakers' providing general regulations for various and varying details of management. To rule that the absence of implementing rules can render ineffective an act of Congress, such as the Revised Securities Act, would empower the administrative bodies to defeat the legislative will by delaying the implementing rules. *To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the Legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know. It is well established that administrative authorities have the power to promulgate rules and regulations to implement a given statute and to effectuate its policies, provided such rules and regulations conform to the terms and standards prescribed by the statute as well as purport to carry into effect its general policies.* Nevertheless, it is undisputable that the rules and regulations cannot assert for themselves a more extensive prerogative or deviate from the mandate of the statute. Moreover, where the statute contains sufficient standards and an unmistakable intent, as in the case of Sections 30 and 36 of the Revised Securities Act, there should be no impediment to its implementation.[61] (Emphasis supplied)

The effectivity of Republic Act No. 289 does not depend on a Board being constituted or on the naming of a plot of land as the "National Pantheon." If a government agency creates a burial place that clearly and factually comprises the burial place contemplated in Republic Act No. 289, the legislative policy must still govern.

The majority's position is that Republic Act No. 289 can be simply ignored by the President. The President, however, will gravely abuse his discretion when he does.

The Solicitor General insists that the disparate histories of the site of the Libingan ng mga Bayani and Republic Act No. 289 reveal that the two are unrelated. Hence, the provisions of Republic Act No. 289 do not apply to the Libingan ng mga Bayani.[62]

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[61] *Id*. at 673-675, *citing* 25 R.C.L., pp. 810, 811.

[62] OSG Memorandum, p. 54.

The Solicitor General starts with a narration of the history of the land where the Libingan ng mga Bayani, as nothing but a renamed Republic Memorial Cemetery,[63] intended only to be a national military cemetery for the interment of those who died during the war.[64] He then proceeds to insist that the Libingan ng mga Bayani has been operating as a military shrine and cemetery.[65] In his view, the National Pantheon, on the other hand, was never constructed.[66] Its intended site was in Quezon City under Proclamation No. 431.[67] However, in 1954, this site was later withdrawn under Proclamation No. 42.[68]

The Solicitor General implies that simply because Proclamation No. 431 was later withdrawn by another presidential proclamation, the law has ceased to become effective.

The Solicitor General then argues that the standards laid down in Republic Act No. 289 do not apply to the Libingan ng mga Bayani. Public respondents point out that the standards under Republic Act No. 289 are not stated in any of the issuances pertinent to the Libingan ng mga Bayani, namely: Proclamation No. 208, Presidential Decree No. 1076, or Executive Order No. 292.[69] Thus, as the National Pantheon was never constructed, public respondents claim that "the clear inference is that former President Marcos and President Corazon Aquino did not intend to adopt said standards for those to be interred at the Libingan ng mga Bayani."[70]

The position of the Solicitor General is legally untenable and logically unsound. Presidents who do not follow the law

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[63] *Id*.

[64] *Id*. at 55.

[65] *Id*.

[66] *Id*.

[67] *Id*. at 54.

[68] *Id*.

[69] OSG Memorandum, p. 56.

[70] *Id*.

do not repeal that law. Laws can only be repealed by a subsequent law. Again, that Republic Act No. 289 was ignored in the past does not give legal justification for the present administration to likewise violate the law.

Republic Act No. 289 does not specify the location of the National Pantheon. It could be anywhere. The defining characteristic of the National Pantheon is that it shall be the burial place of the Presidents of the Philippines, national heroes, and patriots.[71]

The AFP Regulations, on the other hand, provide that the remains of the following may be buried at the Libingan ng mga Bayani: (1) Medal of Valor Awardees; (2) Presidents or Commanders-in-Chief of the Armed Forces of the Philippines; (3) Secretaries of National Defense; (4) Chiefs of Staff of the Armed Forces of the Philippines; (5) General flag officers of the Armed Forces of the Philippines; (6) Active and retired military personnel of the Armed Forces of the Philippines; (7) Veterans of the Philippine Revolution of 1896, World War I, World War II, and recognized guerrillas; (8) government dignitaries, statesmen, national artists, and other deceased persons whose interment or re-interment has been approved by the Commander-in-Chief, Congress, or the Secretary of National Defense; and (9) Former Presidents, Secretaries of Defense, CSAFP, generals/flag officers, dignitaries, statesmen, national artists, widows of former Presidents, Secretaries of National Defense, and Chiefs of Staff.[72]

A plain reading of the AFP Regulations reveals that although it does not refer to Republic Act No. 289, it nonetheless provides for the burial of individuals who would properly be covered by Republic Act No. 289. The AFP Regulations define a burial place, which is the burial place provided for under Republic Act No. 289.

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[71] Rep. Act No. 289, Sec. 1.

[72] OSG Comment, Annex 7.

The executive cannot avoid carrying out a valid and subsisting law by passing regulations substantially covering a matter that is already a law and excuse itself from complying with the law on the premise that it—a law that the executive never implemented—is now defunct.

Under Republic Act No. 289, only the Board is authorized to set aside portions of the National Pantheon where the remains of the Presidents of the Philippines, national heroes, and patriots shall be interred,[73] to cause to be interred in the National Pantheon the mortal remains of Presidents of the Philippines, national heroes, and patriots,[74] and to perform such other functions as may be necessary to carry out the purposes of this law.[75]

Having been issued by Secretary Lorenzana, General Visaya, and Rear Admiral Enriquez without the authority of the Board, the General Lorenzana Memorandum and the Enriquez Orders are void for being ultra vires.

**III**

Assuming without accepting that respondents Secretary Lorenzana, General Visaya, and Rear Admiral Enriquez had the authority to determine who may be interred at Libingan ng mga Bayani, the Lorenzana Memorandum and the Enriquez Orders are nonetheless invalid.

Under Section 1 of Republic Act No. 289, those buried at the Libingan ng mga Bayani must have led lives worthy of "inspiration and emulation."

Ferdinand E. Marcos does not meet this standard.

Our jurisprudence clearly shows that Ferdinand E. Marcos does not even come close to being one who will inspire. His example should not be emulated by this generation, or by generations yet to come.

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[73] Rep. Act No. 289, Sec. 2(a).

[74] Rep. Act No. 289, Sec. 2(c).

[75] Rep. Act No. 289, Sec. 2(e).

Ferdinand E. Marcos has been characterized as an ***authoritarian*** by this Court in nine (9) Decisions[76] and 9 Separate Opinions.[77] He was called a ***dictator*** in 19 Decisions[78]

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[76] *Marcos v. Manglapus*, 258 Phil. 479 (1989) [Per *J.* Cortes, *En Banc*]; *Galman v. Sandiganbayan*, 228 Phil. 42 (1986) [Per *J.* Quisumbing, *En Banc*]; *Fortun v. Macapagal-Arroyo*, 684 Phil. 526 (2012) [Per *J.* Abad, *En Banc*]; *People v. Pacificador*, 406 Phil. 774 (2001) [Per *J.* de Leon, Jr., Second Division]; *Buscayno v. Enrile*, 190 Phil. 7 (1981) [Per *C.J.* Fernando, *En Banc*]; *Republic v. Sandiganbayan*, 453 Phil. 1059 (2013) [Per *J.* Puno, *En Banc*]; *Republic v. Villarama*, 344 Phil. 288 (1997) [Per *J.* Davide, Jr., Third Division]; *Salazar v. Achacoso*, 262 Phil. 160 (1990) [Per *J.* Sarmiento, *En Banc*]; *Biraogo v. Philippine Truth Commission*, 651 Phil. 374 (2010) [Per *J.* Mendoza, *En Banc*].

[77] *J.* Gutierrez, Jr., Dissenting Opinion in *Marcos v. Manglapus*, 258 Phil. 479, 513-526 (1989) [Per *J.* Cortes, *En Banc*]; *J.* Francisco, Concurring and Dissenting Opinion in *Dans v. People*, 349 Phil. 434, 477-513 (1998) [Per *J.* Romero, Third Division]; *J.* Puno, Concurring and Dissenting Opinion in *Presidential Ad Hoc Fact-Finding Committee v. Desierto*, 375 Phil. 697, 748-754 (1999) [Per *C.J.* Davide, Jr., *En Banc*]; *J.* Vitug, Dissenting Opinion in *Ang Bagong Bayani v. Commission on Elections*, 412 Phil. 308, 347-356 (2001) [Per *J.* Panganiban, *En Banc*]; *J.* Sarmiento, Dissenting Opinion in *In re Umil v. Ramos*, 279 Phil. 266, 332-344 (1991) [*Per Curiam, En Banc*]; *J.* Davide, Jr., Separate Opinion in *People's Initiative for Reform, Modernization and Action v. Commission on Elections*, G.R. No. 129754, September 23, 1997 [Unsigned Resolution, *En Banc*]; *J.* Puno, Separate Opinion in *Republic v. Sandiganbayan*, 454 Phil. 504, 551-630 (2003) [Per *J.* Carpio, *En Banc*]; *J.* Sarmiento, Dissenting Opinion in *Baylosis v. Chavez*, 279 Phil. 448, 470-483 (1991) [*J.* Narvasa, *En Banc*]; *J.* Teehankee, Concurring Opinion in *Tan v. Commission on Elections*, 226 Phil. 624, 648-651 (1986) [Per *J.* Alampay, *En Banc*].

[78] *Marcos v. Manglapus*, 258 Phil. 479 (1989) [Per *J.* Cortes, *En Banc*]; *Republic v. Sandiganbayan*, 565 Phil. 172 (2007) [Per *J.* Quisumbing, Second Division]; *Republic v. Estate of Hans Merzi*, 512 Phil. 425 (2005) [Per *J.* Tinga, *En Banc*]; *Fortun v. Macapagal Arroyo*, 684 Phil. 526 (2012) [Per *J.* Abad, *En Banc*]; *Frivaldo v. Commission on Elections*, 255 Phil. 934 (1989) [Per *J.* Cruz, *En Banc*]; *First Phil. Holdings Corp. v. Trans Middle East Equities Inc.*, 622 Phil. 623 (2009) [Per *J.* Chico-Nazario, Third Division]; *Associated Bank v. Spouses Montano*, 619 Phil. 128 (2009) [Per *J.* Nachura, Third Division]; *National Development Co. v. Philippine Veteran's Bank*, 270 Phil. 349 (1990) [Per *J.* Cruz, *En Banc*]; *Dizon v. Eduardo*, 242 Phil. 200 (1988) [Per *J.* Teehankee, *En Banc*]; *People v. Pacificador*, 406 Phil. 774 (2001) [Per *J.* de Leon, Jr., Second Division]; *PNCC v. Pabion*, 377 Phil. 1019 (1999) [Per *J.* Panganiban, Third Division]; *Frivaldo v. Commission*

and 16 Separate Opinions.[79] That he was unceremoniously deposed as President or dictator by a direct act of the People was stressed in 16 Decisions[80] and six (6) Separate

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*on Elections,* 327 Phil. 521 (1996) [Per *J.* Panganiban, *En Banc*]; *Carpio Morales v. Court of Appeals,* G.R. No. 217126, November 10, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/217126-27.pdf> [Per *J.* Perlas-Bernabe, *En Banc*]; *Heirs of Licaros v. Sandiganbayan,* 483 Phil. 510 (2004) [Per *J.* Panganiban, Third Division]; *Philippine Free Press Inc. v. Court of Appeals,* 510 Phil. 411 (2005) [Per *J.* Garcia, Third Division]; *Taruc v. Ericta,* 250 Phil. 65 (1988) [Per *J.* Paras, *En Banc*]; *Marcos v. Sandiganbayan,* 357 Phil. 762 (1998) [Per *J.* Purisima, *En Banc*]; *Republic v. Sandiganbayan,* 453 Phil. 1059 (2013) [Per *J.* Puno, *En Banc*]; *Biraogo v. Philippine Truth Commission,* 651 Phil. 374 (2010) [Per *J.* Mendoza, *En Banc*].

[79] *J.* Cruz, Dissenting Opinion in *Marcos v. Manglapus,* 258-A Phil. 547, 555 (1989) [*Per Curiam, En Banc*]; *J.* Padilla, Dissenting Opinion in *Marcos v. Manglapus,* 258-A Phil. 547, 556-558 (1989) [*Per Curiam, En Banc*]; *J.* Sarmiento, Dissenting Opinion in *Marcos v. Manglapus,* 258-A Phil. 547, 559-560 (1989) [*Per Curiam, En Banc*]; *C.J.* Teehankee, Concurring Opinion in *Olaguer v. Military Commission. No. 34,* 234 Phil. 144, 164-179 (1987) [*J.* Gancayco, *En Banc*]; *J.* Davide, Jr., Dissenting Opinion in *Tabuena v. Sandiganbayan,* 335 Phil. 795, 878-886 (1997) [*J.* Francisco, *En Banc*]; *J.* Panganiban, Dissenting Opinion in *Tabuena v. Sandiganbayan,* 335 Phil. 795, 911-913 (1997) [*J.* Francisco, *En Banc*]; *J.* Kapunan, Dissenting Opinion in *Lacson v. Perez,* 410 Phil. 78, 95-107 (2001) [*J.* Melo, *En Banc*]; *J.* Cruz, Separate Opinion in *In Re Umil v. Ramos,* 279 Phil. 266, 306-311 (1991) [*Per Curiam, En Banc*]; *J.* Sarmiento, Dissenting Opinion in *In Re Umil v. Ramos,* 279 Phil. 266, 332-344 (1991) [*Per Curiam, En Banc*]; *J.* Sandoval, Dissenting Opinion in *Sanlakas v. Reyes,* 466 Phil. 482, 534-548 (2004) [Per *J.* Tinga, *En Banc*]; *J.* Sandoval, Concurring Opinion in *Lambino v. Commission on Elections,* 536 Phil. 1, 154-186 (2006) [Per *J.* Carpio, *En Banc*]; *J.* Puno, Separate Opinion in *Republic v. Sandiganbayan,* 454 Phil. 504, 551-630 (2003) [Per *J.* Carpio, *En Banc*]; *J.* Cruz, Dissenting and Concurring Opinion in *In Re Umil v. Ramos,* 265 Phil. 325, 355 (1990) [*Per Curiam, En Banc*] *J.* Sarmiento, Dissenting Opinion in *In Re Umil v. Ramos,* 265 Phil. 325, 355-365 (1990) [*Per Curiam, En Banc*]; *C.J.* Panganiban, Concurring Opinion in *David v. Macapagal-Arroyo,* 522 Phil. 705, 812-813 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*; *J.* Cruz, Dissenting Opinion in *Sarmiento v. Mison,* 240 Phil. 505, 541-546 (1987) [*J.* Padilla, *En Banc*].

[80] *Marcos v. Manglapus,* 258-A Phil. 547 (1989) [*Per Curiam, En Banc*]; *Republic v. Marcos-Manotok,* 681 Phil. 380 (2012) [Per *J.* Sereno, Second Division]; *E. Razon, Inc. v. Philippine Ports Authority,* 235 Phil. 223 (1987)

Opinions.[81] This Court has also declared that the amount of US$658,175,373.60, in Swiss deposits under the name of the Marcoses, was ill-gotten wealth that should be forfeited in favor of the State.[82]

For instance, a powerful portrait of the despotic power exercised by Marcos during Martial Law was presented in *Dizon v. Eduardo*:[83]

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[Per *J.* Fernan, *En Banc*]; *Presidential Commission on Good Government v. Peña,* 243 Phil. 93 (1988) [Per *C.J.* Teehankee, *En Banc*]; *Liwayway Publishing v. Presidential Commission on Good Governance*, 243 Phil. 864 (1988) [Per *C.J.* Teehankee, *En Banc*]; *Quisumbing v. Sandiganbayan,* 591 Phil. 633 (2008) [Per *J.* Carpio-Morales, Second Division]; *Samahang Manggawang Rizal Park v. National Labor Relations Commission* (1991) [Per *J.* Cruz, First Division]; *Republic v. Sandiganbayan,* 499 Phil. 138 (2005) [Per Sandoval-Gutierrez, Third Division]; *Phil. Coconut Producers Federation Inc. v. Presidential Commission on Good Governance*, 258-A Phil. 1 (1989) [Per *J.* Narvasa, *En Banc*]; *Cuenca v. Presidential Commision on Good Government,* 561 Phil. 235 (2007) [Per *J.* Velasco, Jr., Second Division]; *Romualdez v. Regional Trial Court,* G.R. No. 104960, September 14, 1993, 226 SCRA 408 [Per *J.* Vitug, *En Banc*]; *Sison v. People,* 320 Phil. 112 (1995) [Per *J.* Puno, Second Division]; *Phil. Overseas Telecom. Corp. v. Africa* (2013) [Per *J.* Bersamin, First Division]; *Vinzons-Masagana v. Estrella,* 278 Phil. 544 (1991) [Per *J.* Paras, *En Banc*]; *Republic v. Sandiganbayan,* 310 Phil. 402 (1995) [Per *C.J.* Narvasa, *En Banc*]; *Secretary of Finance v. Ilarde*, 497 Phil. 544 (2005) [Per *J.* Chico-Nazario, *En Banc*].

[81] *C.J.* Teehankee, Concurring Opinion in *Bataan Shipyard v. Presidential Commission on Good Government,* 234 Phil. 180, 238-249 (1987) [Per *J.* Narvasa, *En Banc*]; *J.* Bersamin, Concurring Opinion in *Republic v. Cojuanco*, 689 Phil. 149, 173-179 (2012) [Per *J.* Abad, *En Banc*]; *C.J.* Teehankee, Concurring Opinion in *Tuason v. Register of Deeds*, 241 Phil. 650, 663-665 (1988) [Per *J.* Narvasa, *En Banc*]; *J.* Kapunan, Dissenting Opinion in *Lacson v. Perez,* 410 Phil. 78, 95-107 (2001) [Per *J.* Melo, *En Banc*]; *J.* Teehankee, Concurring Opinion in *In re Agcaoili v. Enrile*, 226 Phil. 611, 622-624 (1986) [Per *J.* Narvasa, *En Banc*]; *J.* Cruz, Dissenting Opinion in *DBP v. Judge Pundogar*, G.R. No. 96921, January 29, 1993, 218 SCRA 118 [Per *J.* Romero, *En Banc*].

[82] Memorandum (G.R. No. 225973), p. 98, citing *Republic v. Sandiganbayan,* 454 Phil. 504 (2003) [Per *J.* Carpio, *En Banc*].

[83] 242 Phil. 200 (1988) [Per *J.* Teehankee, *En Banc*].

Senator Diokno passed away a year ago last February 27th. He, together with the martyred Senator Benigno "Ninoy" Aquino Jr. were the first victims of martial law imposed in September 1972 by then President Ferdinand E. Marcos, destroying in one fell swoop the Philippines' 75 years of stable democratic traditions and established reputation as the showcase of democracy in Asia. They were the first to be arrested in the dark of the night of September 22, 1972, as the military authorities spread out through the metropolis upon orders of the President-turned-dictator to lock up the opposition together with newspaper editors, journalists and columnists and detain them at various army camps. What was the martial law government's justification for the arrest and detention of Diokno and Aquino? The government's return to their petitions for *habeas corpus* claimed that they were "regarded as participants or as having given aid and comfort 'in the conspiracy to seize political and state power and to take over the government by force.'" The fact is that they just happened to be the foremost contenders for the Presidency of the Republic in the scheduled November 1973 presidential elections, at which time Mr. Marcos would have finished his second 4-year term and barred under the prevailing 1935 Constitution from running for a third term. . . .

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Senator Ninoy Aquino underwent an even more tortuous ordeal. He was charged on August 11, 1973 with murder, subversion and illegal possession of firearms and found guilty and sentenced to death by a military commission, notwithstanding his being a civilian and the fact that said general offenses were allegedly committed before the imposition of martial law, and could not fall within the jurisdiction of military commissions, which are not courts but mere adjuncts of the Commander-in-Chief to enforce military discipline. Mr. Marcos had publicly pronounced the evidence against Ninoy as "not only strong but overwhelming" in a nation-wide press conference on August 24, 1971 following the Plaza Miranda bombing three days earlier of the LP proclamation meeting, yet had not charged him before the civil courts. Ninoy had contended correctly but in vain that he had been publicly indicted and his guilt prejudged by Mr. Marcos, and he could not possibly get due process and a fair trial before a group of Mr. Marcos' military subordinates[.][84]

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[84] *Id*. at 202-204.

In *Mijares v. Ranada*,[85] despite the passing of years, this Court acknowledged the continuing difficulties caused by the dark years of the Marcos regime:

> Our martial law experience bore strange unwanted fruits, and we have yet to finish weeding out its bitter crop. While the restoration of freedom and the fundamental structures and processes of democracy have been much lauded, according to a significant number, the changes, however, have not sufficiently healed the colossal damage wrought under the oppressive conditions of the martial law period. The cries of justice for the tortured, the murdered, and the *desaparecidos* arouse outrage and sympathy in the hearts of the fairminded, yet the dispensation of the appropriate relief due them cannot be extended through the same caprice or whim that characterized the ill-wind of martial rule. The damage done was not merely personal but institutional, and the proper rebuke to the iniquitous past has to involve the award of reparations due within the confines of the restored rule of law.
>
> The petitioners in this case are prominent victims of human rights violations who, deprived of the opportunity to directly confront the man who once held absolute rule over this country, have chosen to do battle instead with the earthly representative, his estate[.][86]

In *Presidential Commission on Good Governance v. Peña*,[87] this Court recognized the gargantuan task of the Philippine Commission on Good Governance in recovering the ill-gotten wealth of the Marcoses and the "organized pillage" of his regime:

> Having been charged with the herculean task of bailing the country out of the financial bankruptcy and morass of the previous regime and returning to the people what is rightfully theirs, the Commission could ill-afford to be impeded or restrained in the performance of its functions by writs or injunctions emanating from tribunals co-equal to it and inferior to this Court. Public policy dictates that the Commission be not embroiled in and swamped by legal suits before inferior courts all over the land, since the loss of time and energy required to defend against such suits would defeat the very purpose of its creation.

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[85] 495 Phil. 372 (2005) [Per *J.* Tinga, Second Division].

[86] *Id.* at 375.

[87] 243 Phil. 93 (1988) [Per *C.J.* Teehankee, *En Banc*].

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The rationale of the exclusivity of such jurisdiction is readily understood. Given the magnitude of the past regime's 'organized pillage' and the ingenuity of the plunderers and pillagers with the assistance of the experts and best legal minds available in the market, it is a matter of sheer necessity to restrict access to the lower courts, which would have tied into knots and made impossible the Commission's gigantic task of recovering the plundered wealth of the nation, whom the past regime in the process had saddled and laid prostrate with a huge $27 billion foreign debt that has since ballooned to $28.5 billion.[88]

The many martyrs produced by Martial Law were recognized in *Bisig ng Manggagawa sa Concrete Aggregates, Inc. v. National Labor Relations Commission*:[89]

Hence, on June 17, 1953, Congress gave statutory recognition to the right to strike when it enacted RA 875, otherwise known as the Industrial Peace Act. For nearly two (2) decades, labor enjoyed the right to strike until it was prohibited on September 12, 1972 upon the declaration of martial law in the country. The 14-year battle to end martial rule produced many martyrs and foremost among them were the radicals of the labor movement. It was not a mere happenstance, therefore, that after the final battle against martial rule was fought at EDSA in 1986, the new government treated labor with a favored eye. Among those chosen by then President Corazon C. Aquino to draft the 1987 Constitution were recognized labor leaders like Eulogio Lerum, Jose D. Calderon, Blas D. Ople and Jaime S. L. Tadeo. These delegates helped craft into the 1987 Constitution its Article XIII entitled Social Justice and Human Rights. For the first time in our constitutional history, the fundamental law of our land mandated the State to ". . . guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law." This Constitutional imprimatur given to the right to strike constitutes signal victory for labor. Our Constitutions of 1935 and 1973 did not accord constitutional status to the right to strike. Even

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[88] *Id.* at 106-107.

[89] G.R. No. 105090, September 16, 1993, 226 SCRA 499 [Per J. Puno, Second Division].

the liberal US Federal Constitution did not elevate the right to strike to a constitutional level[.][90]

Widespread "acts of torture, summary execution, disappearance, arbitrary detention, and numerous other atrocities" were also recognized in other jurisdictions. In a class action suit that served as a serious precedent for other jurisdictions, the United States District Court of Hawaii in *In Re Estate of Marcos Human Rights Litigation*[91] pronounced:

"Proclamation 1081 not only declared martial law, but also set the stage for what plaintiffs alleged, and the jury found, to be acts of torture, summary execution, disappearance, arbitrary detention, and numerous other atrocities for which the jury found MARCOS personally responsible.

MARCOS gradually increased his own power to such an extent that there were no limits to his orders of the human rights violations suffered by plaintiffs in this action. MARCOS promulgated General Order No. 1 which stated he was the Commander in Chief of the Armed Forces of the Philippines. The order also stated that MARCOS was to govern the nation and direct the operation of the entire Government, including all its agencies and instrumentalities. By General Orders 2 and 2-A, signed by MARCOS immediately after proclaiming martial law, MARCOS authorized the arrest, by the military, of a long list of dissidents. By General Order 3, MARCOS maintained, as captive, the executive and judicial branches of all political entities in the Philippines until otherwise ordered by himself personally.

. . . . . .

Immediately after the declaration of martial law the issuance of General Orders 1, 2, 2A, 3 and 3A caused arrests of persons accused of subversion, apparently because of their real or apparent opposition to the MARCOS government. These arrests were made pursuant to orders issued by the Secretary of defense Juan Ponce Enrile ('ENRILE') or MARCOS himself.

The arrest orders were means for detention of each of the representatives of the plaintiff class as well as each of the individual

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[90] *Id*. at 511-512.

[91] 910 F. Supp. 1460 (D. Haw. 1995).

plaintiffs. During those detentions the plaintiffs experienced human rights violations including, but not limited to the following:

1. Beatings while blindfolded by punching, kicking and hitting with the butts of rifles;
2. The 'telephone' where a detainee's ears were clapped simultaneously, producing a ringing sound in the head;
3. Insertion of bullets between the fingers of a detainee and squeezing the hand;
4. The 'wet submarine', where a detainee's head was submerged in a toilet bowl full of excrement;
5. The 'water cure' where a cloth was placed over the detainee's mouth and nose, and water poured over it producing a drowning sensation;
6. The 'dry submarine', where a plastic bag was placed over the detainee's head producing suffocation;
7. Use of a detainee's hands for putting out lighted cigarettes;
8. Use of flat-irons on the soles of a detainee's feet;
9. Forcing a detainee while wet and naked to sit before an air conditioner often while sitting on a block of ice;
10. Injection of a clear substance into the body of a detainee believed to be truth serum;
11. Stripping, sexually molesting and raping female detainees; one male plaintiff testified he was threatened with rape;
12. Electric shock where one electrode is attached to the genitals of males or the breast of females and another electrode to some other part of the body, usually a finger, and electrical energy produced from a military field telephone is sent through the body;
13. Russian roulette; and
14. Solitary confinement while handcuffed or tied to a bed.

All these forms of torture were used during 'tactical interrogation', attempting to elicit information from detainees concerning opposition to the MARCOS government. The more the detainees resisted, whether purposefully or out of lack of knowledge, the more serious the torture used.[92]

US$1.2 billion in exemplary damages, as well as US$770 million in compensatory damages, was awarded to the victims

[92] *Id.* at 4-5.

of the Marcos regime.[93] The federal appeals court upheld the Decision of the Honolulu court and held the estate of Marcos liable for the gross and massive human rights abuses committed. In *Hilao v. Marcos*,[94] the United States 9th Circuit Court of Appeals used the principle of "command responsibility" for the violations committed by the agents of a political leader, thus:

> "The district court had jurisdiction over Hilao's cause of action. Hilao's claims were neither barred by the statute of limitations nor abated by Marcos' death. The district court did not abuse its discretion in certifying the class. The challenged evidentiary rulings of the district court were not in error. The district court properly held Marcos liable for human rights abuses which occurred and which he knew about and failed to use his power to prevent. The jury instructions on the Torture Victim Protection Act and on proximate cause were not erroneous. The award of exemplary damages against the Estate was allowed under Philippine law and the Estate's due process rights were not violated in either the determination of those damages or of compensatory damages."[95]

The Federal Supreme Court of Switzerland, through the Decision dated December 10, 1997,[96] affirmed the ruling of the District Attorney of Zurich granting the Philippine government's request for transfer of funds held in multiple accounts by various foreign foundations in Swiss banks. This was transferred to an escrow account.

Then, in *Republic v. Sandiganbayan*,[97] this Court declared that the funds were proven to belong to the Marcos Family and were consequently ill-gotten wealth:

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[93] Rosales Memorandum, p. 104.

[94] 103 F. 3d 762 (9th Cir. 1996).

[95] *Id*. as cited in Memorandum (G.R. No. 225973), p. 105.

[96] *Federal Office for Police Matters v. Aguamina Corp*., 1A.87/1994/ err (Swiss Federal Court, 10 December 1997), cited in Memorandum (G.R. No. 225973), p. 106.

[97] 453 Phil. 1059 (2003) [Per *J.* Corona, *En Banc*].

We agree with petitioner that respondent Marcoses made judicial admissions of their ownership of the subject Swiss bank deposits in their answer, the General/Supplemental Agreements, Mrs. Marcos' Manifestation and Constancia dated May 5, 1999, and the Undertaking dated February 10, 1999. We take note of the fact that the Associate Justices of the Sandiganbayan were unanimous in holding that respondents had made judicial admissions of their ownership of the Swiss funds.

In their answer, aside from admitting the existence of the subject funds, respondent likewise admitted ownership thereof. Paragraph 22 of respondents' answer stated:

> 22. Respondents specifically DENY PARAGRAPH 23 insofar as it alleges that respondents clandestinely stashed the country's wealth in Switzerland and hid the same under layers and layers of foundations and corporate entities for being false, the truth being that *respondents' aforesaid properties were lawfully acquired*."

By qualifying their acquisition of the Swiss bank deposits as lawful, respondents unwittingly admitted their ownership thereof.

. . . . . .

Petitioner Republic presented not only a schedule indicating the lawful income of the Marcos spouses during their incumbency but also evidence that they had huge deposits beyond such lawful income in Swiss banks under the names of five different foundations. We believe petitioner was able to establish the *prima facie* presumption that the assets and properties acquired by the Marcoses were manifestly and patently disproportionate to their aggregate salaries as public officials. Otherwise stated, petitioner presented enough evidence to convince us that the Marcoses had dollar deposits amounting to US $356 million representing the balance of the Swiss accounts of the five foundations, an amount way, way beyond their aggregate legitimate income of only $304,372.43 during their incumbency as government officials.

Considering, therefore, that the total amount of the Swiss deposits was considerably out of proportion to the known lawful income of the Marcoses, the presumption that said dollar deposits were unlawfully acquired was duly established.[98] (Emphasis supplied)

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[98] *Id*. at 1131-1143.

This cursory review of our jurisprudence relating to the consequences of the Marcos regime establishes a climate of gross human rights violations and unabated pillage of the public coffers. It also reveals his direct participation, leadership, and complicity.

**IV**

In Republic Act No. 10368, a legislative determination was made regarding the gross human rights violations committed during the Marcos regime:

> Section 2. *Declaration of Policy.* - . . .
>
> Consistent with the foregoing, it is hereby declared the policy of the State to recognize the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986 and restore the victims' honor and dignity. The State hereby acknowledges its moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime.
>
> Similarly, it is the obligation of the State to acknowledge the sufferings and damages inflicted upon persons whose properties or businesses were forcibly taken over, sequestered or used, or those whose professions were damaged and/or impaired, or those whose freedom of movement was restricted, and/or such other victims of the violations of the Bill of Rights.

Section 17 even declares a conclusive presumption as to particular victims and, at the same time, recognizes the complicity of Ferdinand E. Marcos:

> Sec. 17. *Conclusive Presumption That One is an HRVV Under This Act.* — The claimants in the class suit and direct action plaintiffs in the Human Rights Litigation Against the Estate of Ferdinand E. Marcos (MDL No. 840, CA No. 88-0390) in the US Federal District Court of Honolulu, Hawaii wherein a favorable judgment has been rendered, shall be extended the conclusive presumption that they are [victims of human rights violations]: *Provided,* That the [victims of human rights violations] recognized by the Bantayog Ng Mga

Bayani Foundation shall also be accorded the same conclusive presumption[.]

Conclusive presumptions are "inferences which the law makes so peremptory that it will not allow them to be overturned by any contrary proof however strong."[99] Thus, the existence of human rights violations committed during the Marcos regime and the recognition of victims explicitly stated in the provision cannot be denied.

The human rights victims and the violations under the Marcos regime are so numerous that the legislature created a Human Rights Victims' Claims Board, dedicated to effectively attain the objectives of Republic Act No. 10368. The Board is now adjudicating 75,730 claims of human rights victims for reparation and/or recognition under Republic Act No. 10368.[100]

**V**

Petitioner Algamar A. Latiph points out that among the many gross human rights violations perpetrated under the Marcos regime were those inflicted on the Moro civilian population. These atrocities were committed by government forces, as well as by state-affiliated armed groups. The more infamous of these are: (1) the Jabidah Massacre, where government forces allegedly executed at least 23 Muslim recruits;[101] (2) the Burning of Jolo, where the massive aerial and naval bombardments and a ground offensive against the MNLF forces resulted in the destruction of two-thirds of Jolo and, thus, thousands of refugees;[102] (3) the Malisbong Massacre, where paramilitary forces were responsible for killing about 1,500 Moro men and boys who were held in a local mosque and killed, an unknown number of women and

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[99] *Mercado v. Santos*, 66 Phil. 215, 222 (1938) [Per J. Laurel, *En Banc*].

[100] TSN, Oral Arguments, August 31, 2016, p. 206, Statement of Chairperson Lina Castillo Sarmiento of the Human Rights Victims' Claims Board.

[101] *Report of the Transitional Justice and Reconciliation Commission*, 31 <http://www.tjrc.ph/skin/vii_tjrc/pdfs/report.pdf> (visited November 7, 2016).

[102] *Id*.

girls were raped offshore on a naval vessel, and around 300 houses were burned.[103]

Lesser known but equally deplorable atrocities alleged to have been committed by government forces during the Marcos regime included the Tran Incident and the Tong Umapuy Massacre. These were reported by the Transitional Justice and Reconciliation Commission:[104]

> The "Tran Incident" refers to a large-scale military campaign against the MNLF in central Mindanao in June-August 1973. In the Listening Process session, participants spoke of the massacre of Moro civilians from the Barangay Populacion in the town of Kalamansig, Sultan Kudarat province by military forces during that campaign. The soldiers separated the men and women; the men were confined in a military camp, interrogated, and tortured, while the women with their children were taken aboard naval vessels and raped. In the end, the men as well as the women and children were killed. At a Listening Process session in Tawi-Tawi, participants shared their memory of what they called the "Tong Umapuy massacre." In 1983, a Philippine Navy ship allegedly opened fire on a passenger boat and killed 57 persons on board. The passengers were reportedly on their way to an athletic event in Bongao.[105]

As regards the atrocities committed by groups that maintained ties with the government under Marcos, the Transitional Justice and Reconciliation Commission reports:

> The campaign of the Ilaga in Mindanao in 1970-1971 involved indiscriminate killings and burning of houses with the intention of terrorizing and expelling the Moro and indigenous population from their homes and ancestral territories. Violent incidents took place chronologically in a progressive fashion over a widespread area,

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[103] *Id*.

[104] *Id.* The Transitional Justice and Reconciliaton Commission was created through the GPH-MILF negotiation process. It was mandated to undertake a study and, among others, propose appropriate mechanism to address legitimate grievances of the Bangsamoro People, as well as address human rights violations.

[105] *Id*. at 32.

occurring among other places in Upi, Maguindanao (March and September 1970); Polomok, South Cotabato (August 1970); Alamada, Midsayap, and Datu Piang, Cotabato (December 1970); Bagumbayan and Alamada, Cotabato (January 1971); Wao, Lanao del Sur (July and August 1971); Ampatuan, Cotabato (August 1971); Kisolan, Bukidnon (October 1971); Siay, Zamboanga del Sur (November 1971); Ipil, Zamboanga del Sur (December 1971); and Palembang, South Cotabato (January 1972).

The armed bands of Christian paramilitaries, primarily Ilongga settlers, that comprised the Ilaga, maintained ties with state authorities, including local and national politicians, the Philippine Constabulary, and the military. In most cases, the paramilitaries acted on their own initiative; on other occasions, however, it is believed that their attacks were conducted in close coordination with government authorities. This was allegedly the circumstance in the case of the mass killings of Moro villagers that took place in a mosque and outlying houses in a rural Barangay of Carmen, (North) Cotabato on June 19, 1971. Known as the "Manili massacre," this event spurred the Moro armed resistance and was one of the few incidents that received attention in international media.

. . . . . .

. . . During the height of Ilaga atrocities, women's bodies were mutilated by cutting off their nipples and breasts, ripping babies out of pregnant women's wombs, and disfiguring their reproductive organs. . . .

. . . [D]uring the TJRC Listening Process, there were accounts of women being raped by Ilaga and soldiers in front of their families or of women forced to have sex with their husbands in front of and for the amusement of soldiers. Many Moro women and young girls who were abducted and raped were never seen again; others were allowed to return home. According to the TJRC Listening Process report, incidents of sexual violence took place during the period of Martial Law that amount to military sexual slavery:

. . . [B]etween 1972 and 1974, Ilaga and soldiers alike made Bangsamoro women in Labangan and Ipil, Sibugay become "sex slaves" of navy men, whose boat was docked at Labangan and Ipil ports. For more than a week, soldiers rounded up a group of at least ten women from Labangan and forced them to the naval boats to serve the "sexual needs" of the navy men. The following day, they

were released; only to be replaced with another group of women, and so on. . . . More than 200 women were [believed to be] enslaved in this way.[106]

Petitioners also gave this Court their first-hand accounts of the human rights violations they suffered under the Marcos regime. Petitioner Loretta Ann P. Rosales recounted that she was raped and tortured with the Russian roulette and a modified water cure, among others:

MRS. ROSALES:

My name is Loretta Ann P. Rosales. I am a torture victim under the Marcos regime. I was sexually molested and according to the latest Rape Act, I was actually raped, that is the definition. I had electric shock; I suffered from Russian roulette, modified water cure and several other ways of harassing me. So I'm a torture victim and so I applied before the Claims Board compensation for the violations committed by the Marcos regime during my time.

CHIEF JUSTICE SERENO:

By Russian roulette, what is it, Ms. Rosales?

MRS. ROSALES:

They had a gun and they threatened me to answer the questions otherwise they would shoot. So that was a psywar. So I said if I would give in to them, they'll shoot me then they won't . . . then they won't be able to get confession from me 'cause I'll be dead by then. So that was all psywar so I just kept on with my position and they finally gave up. So they went into other methods of torture in order to try to draw confession, exact confession from me. And the worst part, of course, was that sexual molestation and electric shock and the modified water cure.

CHIEF JUSTICE SERENO:

How long did these incidents transpire, the entire duration? You don't have to count the number of days . . . (interrupted)

MRS. ROSALES:

No, no, in fact, I don't know. I mean it was just a continuing thing like twenty-four (24) hours continuing torture. There was no sleeping, there was no eating. It just went on and on because until

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[106] *Id.* at 31-37.

. . . such time, it was after the electric shock I suffered . . . I was traumatized, physically traumatized so I couldn't control the tremor in my body and they finally stop[ped]. I pretended I was dying but they knew I wasn't dying. So that's all psywar throughout. Anyway, after the electric part, which was the worst part, that was the last part, they finally pushed me and put me somewhere and I don't know how long that took.[107]

Her sister, petitioner Ma. Cristina Pargas Bawagan, testified that she was beaten, raped, and sexually abused:

MS. BAWAGAN:

I am Ma. Cristina Pargas Bawagan. I am the sister of Etta. I was arrested May 27, 1981 in Munoz, Nueva Ecija on charges of possession of subversive documents. There was no arrest order; I was simply arrested, handcuffed and blindfolded, my mouth gagged then they brought me to a safe house. And in the safe house they started interrogating and torturing me and they hit on my thighs until my thighs turned black and blue; and they also threatened me with so many things, *pinompyang ako*, that's what they call sa ears and then they put a sharp object over my breast, etcetera. They tore my dress and then eventually they let me lay down to sleep but then early in the morning the two soldiers who stayed near me started torturing me again and by today's definition, it is rape because they fondled my breast and they inserted a long object into my vagina and although I screamed and screamed with all my might, no one seemed to hear except that I heard the train pass by . . .[108]

Petitioner Hilda Narciso testified that she was raped and sexually abused:

MS. NARCISO:

I am Hilda Narciso. I was incarcerated in Davao City in 1983. It was a rape, multiple rape that I have undergone through my captures. I was placed in a safe house where the militaries are safe and I was actually being sexually abused for about two days. It's quite difficult to me in the hands of the militaries because I was handcuffed, blindfolded and actually they have mashed all my body. And . . .

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[107] TSN, Oral Arguments, August 31, 2016, pp. 200-201.

[108] *Id.* at 203-204.

(At this juncture, Ms. Narciso is already in tears) they handcuffed me and then a lot of hands were all over my body and they also put their penises one at a time on my mouth, finger your vagina and all that for several hours without . . . you have been even taken your food. Actually it was quite a long period of time under the safe house for about two days with all those kinds of process that I have gone through . . .[109]

Petitioner Liwayway Arce testified that during the Marcos regime, her father was killed, and her mother was tortured and sexually abused:

MS. ARCE:

I'm Liwayway Arce, Your Honors. I'm the daughter of Merardo Tuazon-Arce; he was a UP student and he founded *Panday Sining*, which was a cultural group. Later on he fought for his beliefs and on February 5, 1985, he was gunned down in Mabolo Street in Cebu City. In 2005, he was heralded as one of the martyrs at the *Bantayog ng mga Bayani* Foundation and his name is inscribed also together with two hundred sixty plus martyrs and heroes in *Bantayog ng mga Bayani*. I am a claimant-beneficiary under the Republic Act 10368. And my mother is also a claimant; she was incarcerated also in a camp in Fort Bonifacio. I don't really know much details about my parents because I was not raised by them and there are many other beneficiaries like me who were orphaned. My mother is still alive but she was also . . . she also undergone . . . she underwent torture and sexual abuse and I hope my sister is not listening right now because she does not know this. Thank you.[110]

Petitioner Atty. Neri Colmenares recounted having lost four (4) years of his life as a young student leader to imprisonment, during which various forms of torture were used on him:

ATTY. COLMENARES:

And for the record, Your Honor, I'm also conclusively presumed under the law as a human rights victim being in the Hawaii case for my torture of seven days and four years of imprisonment when I was eighteen years old, Your Honor. Thank You.

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[109] *Id.* at 203.

[110] *Id.*

CHIEF JUSTICE SERENO:

You were eighteen years old. You were a student leader at that time, Congressman . . . ?

ATTY. COLMENARES:

Yes, I was the chairman of the student catholic action and we were demanding the return of student council and student papers when I was arrested. And I was tortured, Your Honor, the usual, they . . . cigarette butts, the electric shocks, the M16 bullets in between your fingers, the Russian roulette and so on, Your Honor. So under the law, human rights victims who are in Hawaii, the Hawaii case are conclusively presumed to be human rights violation victims, Your Honor.[111]

Petitioner Trinidad Herrera Repuno testified that she was a member of the informal settlers' sector and was also a victim of torture:

*Magandang hapon po sa inyong lahat mga* Justices. *Ako po si* Trinidad Herrera Repuno. *Ako ay isang biktima ng kapanahunan ng* martial law. *Ako po ay isang* leader *ng organisasyon ng mga mahirap sa* Tondo. *Ang pinaglalaban po namin ay merong batas para doon sa magkaroon kami ng lupa at yung iba pang mga karapatan namin. Subalit noong nagdeklara si* Marcos *ng martial law, nawala ho lahat ng saysay iyon. . . . Ako po'y isa sa mga* judges *na pupunta sana sa* international competition *para* architectural competition *sa* Vancouver *para doon sa pabahayan na gagawin dito sa Pilipinas. Subalit hindi po ako binigyan nang pagkakataon na makaalis. Sa halip na ako'y makaalis, ako po ay hinuli noong April 27, 1977 at ako'y dinala dooon sa . . . ang humuli ho sa akin* intelligence *ng* Manila Police. *At ako'y kinahapunan tinurn-over sa* Crame *sa pangunguna po ni* Eduardo Matillano. *Nang ako'y napasok doon sa maliit na kuwarto, ako'y tinanong kung ano ang pangalan ko, sinabi ko ang pangalan ko at ako'y . . . pinaalis ang aking sapatos, pinaalis lahat iyong aking* bag *at sinabi sa akin na tumayo ako. Merong parang telepono doon sa may lamesa na meroong kuryente. Iyon po ang inilagay dito sa aking dalawang daliri at inumpisahan ho nila akong tinatanong kung sinu-sino ang nalalaman ko. Ang alam ko lang ho ang pinaglalaban namin, na karapatan namin para sa aming mga maralita. Subalit hindi naniniwala si* Matillano *at sinasabi*

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[111] *Id*. at 208-209.

*nya na meron akong kinalaman sa mga kumunista na wala naman akong kinalaman. Iyon ang pinipilit po nila hanggang dumudugo na po ang dalawang daliri ko dito sa . . . iyong mga malalaking daliri ko, tumutulo na po ang dugo, hindi pa ho nila tinatantanan. Mamaya-maya nang hindi na po nila naanuhan, pinaalis ho ang aking blusa at iyong* wire *po inilagay po dito sa aking dalawang suso at muli inulit-ulit pagtuturn po nang parang telepono pumapasok po ang kuryente sa katawan ko na hindi ko na ho nakakayanan hanggang sa ako'y sumigaw nang sumigaw subalit wala naman hong nakakarinig sapagkat maliit na kwarto, nilagyan pa ho ng tubig iyong sahig para iyong kuryente lalong pumasok sa aking katawan. . . . Nairelease po ako subalit naghina po ako hanggang sa ngayon. Nang ako'y medyo may edad na nararamdaman ko na ho iyong mga pampahirap, iyong pukpok dito sa likod ko habang ako'y inaano, lagi po nilang . . . pagkatapos nang pagpaikot ng kuryente, pukpukin ho ako dito sa likod. Sabi nya pampalakas daw iyon. Pero masakit na masakit po talaga hanggang sa ngayon nararamdaman po namin ngayon ang ano. Kaya ako, sumama ako sa U.S. para ako'y tumestigo laban kay Marcos*[.][112]

Petitioner Carmencita Florentino, also from the informal settlers' sector, testified as to her forcible abduction, torture, and detention:

*Magandang hapon po sa inyo. Ako po si* Carmencita Florentino. *Isa po akong leader ng* urban poor. *Ipinaglalaban naming iyong karapatan namin sa paninirahan doon na* expropriation law. April 1977 *po dumating po iyong mga* Metrocom *may mga kasamang pulis ng* Quezon City *may mga armalite po sila, sapilitan po nila . . . marami po sila, siguro hindi lang isang daan. Pinasok po nang sapilitan iyong bahay naming, kasalukuyan po alas syete ng gabi. . . . Niransack po iyong bahay naming pagkatapos kinaladkad po iyong asawa ko. Iyong anak ko po na siyam na taong babae na nag iisa. Ako po, halos nahubaran na ako dahil pinipilit po akong arestuhin, kaming mag-asawa . . . At sinasabing ako'y* leader *ng komunista na hindi ko naman po naiintindihan iyon. Ang alam ko po pinaglalaban lang namin karapatan namin sa paninirahan sa* Barangay Tatalon. *Sapilitan po halos napunit na po iyong damit ko. Ibinalibag ako doon sa . . . palabas po ng pinto dahil hinahabol ko*

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[112] *Id.* at 209-211.

*iyong asawa ko na hinampas po ng armalite nung mga* Metrocom *na iyon. Tumama po ang likod ko sa pintuan namin, iyong kanto namin na halos mapilay na po ako. Pagkatapos po dinala kami sa* Camp Crame, *iyong asawa ko hindi ko na po nakita. Iyong anak ko nasa* custody *daw ng mga sundalo. Ako pinaglipat-lipat kung saan-saan doon 'di ko na matandaan e, may* ESV, JAGO, *na iniiterrogate ako, tinatanong sino iyong pinuno, sino iyong pinuno namin. Hindi ko po alam, wala akong maisagot. Kaya po sa pagkakataon na iyon, tumutulo na po iyong, akala ko po sipon lang, dugo na pala ang lumalabas sa bibig ko saka sa ilong ko po dahil, hindi ko alam kung anong nangyari doon sa siyam na taong anak ko na babae, nahiwalay sa akin. Masyado po ang pahirap na ginawa nila doon, na kulang na lang na ma-rape ako. Inaasa ko na lang po ang aking sarili sa Panginoong Diyos kung anuman ang mangyari sa akin, tatanggapin ko na. Pero iyong anak ko, iyong babae, hindi ko siya makita, dahil ako nakabukod, bukod-bukod kami. Natawanan ko iyong aking mga* officer, *buntis ho, ikinulong din pala. Kaya sobra ho ang hirap na inabot naming noong panahon ng* martial law, *na masyado na kaming . . . hanggang ngayon taglay ko pa rin po . . . sa baga ko may pilat, hindi nawawala, sinusumpong po paminsan-minsan lalo pa nga pag naalala ko ang ganito na iniinterview kami kung maaari ayaw ko nang magpainterview dahil ano po e mahirap, napakasakit pong tanggapin. Pinalaya po kami pansamantala ng anak ko, nagkita kami ng anak ko. Isang buwan po kami sa* Camp Crame, *pansamantala pinalaya kaming mag-ina dahil sa* humanitarian *daw po pero binabantayan pa rin kami sa bahay namin, hindi kami makalayong mag-ina. At tuwing Sabado nagrereport po kami dyan sa* Camp Crame. *Ang asawa ko po nakakulong sa* Bicutan *kasama po nila* Ka Trining. *Hanggang ngayon po trauma na rin po iyong anak ko kahit nga po may pamilya na ayaw nang tumira dito sa Pilipinas dahil baka po makulong uli kami. Iyon lang po.*[113]

Petitioner Felix Dalisay testified as to the lifelong trauma of the Martial Law years:

*Magandang hapon po sa ating lahat.* Felix Dalisay *po,* 64 years old. *Sapilitan po akong hinuli, kinulong ng mga panahon ng* Martial Law sometime '73, '74. Almost, *kung tututalin po lahat nang pagkakakulong ko hindi naman tuloy-tuloy,* almost three years *po.*

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[113] *Id.* at 208-212.

*. . . Sa Kampo Crame po sa panahon ng* interrogation*, nakaranas po ako nang ibat-ibang klase nang pagmaltrato. Nandyan po iyong pagka hindi maganda ang sagot mo sa mga tanong nila, nakakatanggap po ako ng* karate chop*, mga suntok po sa tagiliran na alam nyo naman ang katawan ko maliit lang noong araw, ang pakiramdam ko e bale na ata iyong tadyang ko rito e. Andyan rin po iyong ipitan nang bala ng* 45 *ang kamay mo, didiinan ng ganyan po. Meron din pong mga suntok sa iba't ibang parte ng katawan. May pagkakataon po na minsan natadyakan po ako, tinadyakan po ako, bumagsak sa isang parting mabato kaya hanggang ngayon po may pilat po ako dito. Ang pinakamabigat po kasi na nangyari sa akin sa panahon nang* interrogation*, kung minsan kasi kami pag ka iniinterrogate hindi na ho naming matiis ang mga sakit so nakakapagsalita kami nang mga taong nakasama namin.* So*, noong panahon po na iyon, gabi noon,* so *may mga nabanggit ako* during interrogation *ng mga tao na mga nakasama ko* so *niraid po namin iyon, sinamahan ko sila. E marahil siguro iyong mga dati kong kasama e nabalitaang nahuli na ako, nagtakbuhan na po siguro so wala kaming inabot. Ang mabigat na parte po noon galit nag alit ang mga sundalo ng* FIFSEC *po iyon. Ang* FIFSEC *po* Fifth Constabulary Security *iyon e pinaka notorious na* torturer *noong panahon ng* Martial Law*, marami po iyan.* So *ang pinakamabigat po roon kasi sa totoo po ngayon mabuti pa iyong* LALU victim *may mga* counseling *pero kami po ang mga biktima* (crying) *hanggang ngayon po wala pa ho kaming natatanggap* (sniffling) *maski hustisya, mga counseling na yan. At ang masakit sa akin ako po nagiging* emotional *po ako hindi lang po sa sarili ko. . . . Marami pa pong mga biktima dyan* ma'am *na talagang maaawa ka. Grabe po. Iyong sa akin po ang pinaka matindi po akala ko isasalvage na po ako. Dinala po ako sa isang madilim na lugar dyan sa* Libis, Quezon City *sa* Eastwood*, noong panahon pong iyun medyo gubatan po iyun pinaihi kami sabi naiihi ako nakarinig na lang po ako ng putok sa kaliwang bahagi ng tenga ko. Akala ko patay na ako. Tapos mga pompyang, pompyang po na iyan pag sinabi pong pompyang na mga ganyan. Hanggang ngayon po sa totoo po humina po ang aking pandinig. Hindi naman ako tuluyang nabingi, mahina po kaya pagka may tumatawag sa akin sa* cellphone *sabi ko pakitext mo na lang, naulinigan ko ang boses nyo pero ahhh hindi ko maintindihan. So pakiusap lang sana sa totoo lang po* Ma'am *dito maaring nagsasabi ang iba* forget about the past *ilibing na natin yan dyan. Sa amin pong mga naging biktima. Hindi po ganun kadali iyon. Ang* trauma *po hanggang ngayon dala-dala namin. Tuwing*

*maaalala naming ang sinapit namin, naiiyak kami, naaawa kami sa sarili namin. Tapos ngayon sasabihin nila* forget about the past. *Paano kaming mga naging biktima. Hanggang ngayon nga wala pa kaming katarungan e. Andyan nga may* Ten Billion, *ang* human rights . . . *mga nauna naman yan e. Hindi ba nirecover natin yan. Tapos ngayon ang sasabihin nila* Marcos is a hero. No, *hindi po. Hindi po matatapos yan.* So *hanggang doon na lang po, sana. Sana po pagbigyan nyo kami. Dahil kami sa parte ng mga biktima payagan man ng* Supreme Court *na ilibing yan diyan, di po kami titigil sa pakikipaglaban namin sapagkat kami nagkaranas nang lupit ng* Martial Law *hanggang, habang buhay po naming dala yan. Salamat po.*[114]

All these accounts occurred during the Marcos regime. By no stretch of the imagination, then, can Ferdinand E. Marcos' memory serve as an inspiration, to be emulated by generations of Filipinos.

**VI**

Contemporarily, even the National Historical Commission took a clear position against the interment of Ferdinand E. Marcos at the Libingan ng mga Bayani.

The National Historical Commission was established by law as "the primary government agency responsible for history"[115] given the mandate "to determine all factual matters relating to official Philippine history."[116]

Among others, it is given the task to:

(a) conduct and support all kinds of research relating to Philippine national and local history;

(b) develop educational materials in various media, implement historical educational activities for the popularization of Philippine history, and disseminate information regarding Philippine historical events, dates, places and personages;

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[114] *Id.* at 214-215.

[115] Rep. Act No. 10386, Sec. 5.

[116] Rep. Act No. 10386, Sec. 5.

(c) undertake and prescribe the manner of restoration, conservation and protection of the country's historical movable and immovable objects;

(d) manage, maintain and administer national shrines, monuments, historical sites, edifices and landmarks of significant historico-cultural value; and

(e) actively engage in the settlement or resolution of controversies or issues relative to historical personages, places, dates and events.[117]

The National Historical Commission's Board is given the power to "discuss and resolve, with finality, issues or conflicts on Philippine History."[118] The Chair of the National Historical Commission is mandated to "advise the President and Congress on matters relating to Philippine history."[119]

In these statutory capacities, the National Historical Commission published its study entitled "Why Ferdinand Marcos Should not be Buried at the Libingan ng mga Bayani" on July 12, 2016.[120]

The study was based on the declassified documents in the Philippine Archives Collection of the United States National Archives/National Archives and Records Administration and the websites of pertinent United States government agencies and some officially sanctioned biographies of Ferdinand E. Marcos. It concluded that:

"With regard to Mr. Marcos' war medals, we have established that Mr. Marcos did not receive, as the wartime history of the Ang Mga Maharlika and Marcos' authorized biography claim, the Distinguished Service Cross, the Silver Medal, and the Order of the Purple Heart. In the hierarchy of primary sources, official biographies and memoirs

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[117] Rep. Act No. 10386, Sec. 5.

[118] Rep. Act No. 10386, Sec. 7(h).

[119] Rep. Act No. 10386, Sec. 13.

[120] National Historical Commission of the Philippines, *Why Ferdinand Marcos Should Not Be Buried at the Libingan ng mga Bayani*, July 12, 2016 <https://drive.google.com/file/d/0B9c6mrxI4zoYS2I0UWFENEp6TkU/view> (visited November 7, 2016).

do not rank at the top and are never taken at face value because of their self serving orientation, as it is abundantly palpable in Mr. Marcos' sanctioned biographies. In a leader's earnestness to project himself to present and succeeding generations as strong and heroic, personally authorized accounts tend to suffer from a shortage of facts and a bounty of embellishment."

"With respect to Mr. Marcos' guerilla unit, the Ang Mga Maharlika was never recognized during the war and neither was Mr. Marcos' leadership of it. Note that other guerilla units in northern Luzon were recognized, such as:

103rd Regiment, East Central Luzon

Pangasinan Anti-Crime Service, Pangasinan Military Area, LGAF

100th Bn/100th Inf. Regiment LGAFA

Southern Pangasinan Guerilla Forces (Gonzalo C. Mendoza Commander).

"Furthermore, grave doubts expressed in the military records about Mr. Marcos' actions and character as a soldier do not provide sound, unassailable basis for the recognition of a soldier who deserves to be buried at the LNMB.

"On these grounds, coupled with Mr. Marcos' lies about his medals, the NATIONAL HISTORICAL COMMISSION OF THE PHILIPPINES opposes the plan to bury Mr. Marcos at the Libingan ng mga Bayani."[121]

The Court's findings in a catena of cases in its jurisprudence, a legislative determination in Republic Act No. 10368, the findings of the National Historical Commission, and the actual testimony of petitioners during the Oral Arguments clearly show that the life of Ferdinand E. Marcos either as President or as a soldier is bereft of inspiration. Ferdinand E. Marcos should not be the subject of emulation of this generation, or of generations yet to come.

**VII**

Assuming without accepting that Republic Act No. 289 authorized public respondents to determine who has led a life

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[121] *Id*. at 24.

worthy of "inspiration and emulation," and assuming further that it was under this authority that they directed Ferdinand E. Marcos' interment, the President's verbal orders, the Lorenzana Memorandum, and the Enriquez Orders were still issued with grave abuse of discretion because they were whimsical and capricious.

Considering the state of existing law and jurisprudence as well as the findings of the National Historical Commission, there was no showing that respondents conducted any evaluation process to determine whether Ferdinand E. Marcos deserved to be buried at the Libingan ng mga Bayani.

Respondents' actions were based upon the President's verbal orders, devoid of any assessment of fact that would overcome what had already been established by law and jurisprudence.

The Solicitor General can only state that:

41. During the campaign period leading to the May 2016 elections, President Duterte, then only a candidate to the highest executive post in the land, openly expressed his desire to have the remains of former President Marcos interred at the Libingan.

42. On 9 May 2016, more than 16 million voters elected President Duterte to the position.

43. True to his campaign promise of unifying the nation, President Duterte gave verbal orders on 11 July 2016 to Defense Secretary Lorenzana to effect the interment of the remains of former President Marcos at the Libingan.

44. On 7 August 2016, and pursuant to the verbal orders of the President, Defense Secretary Lorenzana issued a Memorandum addressed to AFP Chief of Staff General Ricardo R. Visaya informing him of the verbal orders of the President, and for this purpose, to "undertake the necessary planning and preparations to facilitate the coordination of all agencies concerned specially the provisions for ceremonial and security requirements."

45. In the same Memorandum, Defense Secretary Lorenzana tasked the PVAO as the "OPR" (Office of Primary Responsibility) for the interment of the remains of former President Marcos, as the Libingan is under the PVAO's supervision and administration. Defense

Secretary Lorenzana likewise directed the Administrator of the PVAO to designate the focal person for and overseer of the event.

46. On 9 August 2016, Rear Admiral Ernesto Enriquez, by command of General Visaya, issued a Directive to the Commanding General of the Philippine Army to prepare a grave for former President Marcos at the Libingan.[122]

President Duterte himself publicly admitted that Ferdinand E. Marcos was no hero.[123] This much was also admitted by the Solicitor General:[124]

SOLICITOR GENERAL CALIDA:

Honorable Chief Justice and Associate Justices: At this moment in our history, I recall a scene from Julius Caesar where Marc Anthony spoke to his countrymen: "I come to bury Caesar, not to praise him, The evil that men do lives after them, the good is oft interred in their bones." Inspired by these lines, I now come to your honors to allow the State to bury the remains of former President Ferdinand Marcos at the Libingan ng Mga Bayani, not to honor him as a hero even if by military standards he is. But to accord him the simple mortuary rites befitting a former president, commander-in-chief, war veteran and soldier.[125]

The capriciousness of the decision to have him buried at the Libingan ng mga Bayani is obvious, considering how abhorrent the atrocities during Martial Law had been. Likewise, the effects of the Marcos regime on modern Philippine history are likewise too pervasive to be overlooked.

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[122] OSG Memorandum, pp. 19-20.

[123] Aries Joseph Hegina, *Duterte won't change mind on hero's burial for Marcos*, Inquirer.Net, May 26, 2016 <http://newsinfo.inquirer.net/787590/duterte-wont-change-mind-on-heros-burialfor-marcos#ixzz4IQcNtc8X> (visited November 7, 2016).

Fiona Nicolas, *Duterte defends hero's burial for Marcos: A matter of enforcing the law*, CNN Philippines, August 18, 2016 <http://cnnphilippines.com/news/2016/08/18/duterte-defends-marcos-heros-burial-libingan-ng-mga-bayani-enforcing-law.html> (visited November 7, 2016).

[124] TSN, Oral Arguments, September 7, 2016, pp. 8 and 93.

[125] *Id*. at 8.

The Filipino People themselves deemed Marcos an unfit President and discharged him from office through a direct exercise of their sovereign power. This has been repeatedly recognized by this Court.

In *Lawyers League for a Better Philippines v. Aquino*:[126]

> The three petitions obviously are not impressed with merit. Petitioners have no personality to sue and their petitions state no cause of action. For the legitimacy of the Aquino government is not a justiciable matter. It belongs to the realm of politics where only the people of the Philippines are the judge. And the people have made the judgment; they have accepted the government of President Corazon C. Aquino which is in effective control of the entire country so that it is not merely a de facto government but is in fact and law a de jure government. Moreover, the community of nations has recognized the legitimacy of the present government. All the eleven members of this Court, as reorganized, have sworn to uphold the fundamental law of the Republic under her government.

Moreover, the sentiment of the sovereign People, reacting to the blight that was the Marcos dictatorship, was enunciated in Proclamation No. 3:

> WHEREAS, the new government was installed through a direct exercise of the power of the Filipino people assisted by units of the New Armed Forces of the Philippines;
>
> WHEREAS, the heroic action of the people was done in defiance of the provisions of the 1973 Constitution, as amended;
>
> WHEREAS, the direct mandate of the people as manifested by their extraordinary action demands the complete reorganization of the government, restoration of democracy, protection of basic rights, rebuilding of confidence in the entire governmental system, eradication of graft and corruption, restoration of peace and order, maintenance of the supremacy of civilian authority over the military, and the

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[126] G.R. No. 73748, May 22, 1986 <http://elibrary.judiciary.gov.ph/dtSearch/dtisapi6.dll?cmd=getdoc&DocId=142363&Index=%2aaa1de0751c9cff7439815a4b27e3ab58&HitCount=5&hits=4+d+38+71+e1+&SearchForm=C%3a%5celibrev%5celibsearch%5cdtform>, as cited in *Saturnino v. Bermudez*, 229 Phil. 185, 188 (1986) [*Per Curiam, En Banc*].

transition to a government under a New Constitution in the shortest time possible;

Further, in articulating the mandate of the People, Article 2, Section 1 of Proclamation No. 3 enumerated the many evils perpetuated during the Marcos regime, which the new government would be charged to dismantle:

> Article II
> *The President, the Vice-President, and the Cabinet*
>
> SECTION 1. Until a legislature is elected and convened under a new Constitution, the President shall continue to exercise legislative power.
>
> The President shall give priority to measures to achieve the mandate of the people to:
>
> a) Completely reorganize the government and eradicate unjust and oppressive structures, and all iniquitous vestiges of the previous regime;
> b) Make effective the guarantees of civil, political, human, social, economic and cultural rights and freedoms of the Filipino people, and provide remedies against violations thereof;
> c) Rehabilitate the economy and promote the nationalist aspirations of the people;
> d) Recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets of accounts;
> e) Eradicate graft and corruption in government and punish those guilty thereof; and,
> f) Restore peace and order, settle the problem of insurgency, and pursue national reconciliation based on justice.

Public respondents neglect to examine the entirety of Ferdinand E. Marcos' life, despite the notoriety of his latter years. The willful ignorance of the pronouncements from all three branches of government and of the judgment of the People themselves can only be characterized as so arbitrary and whimsical as to constitute grave abuse of discretion.

**VIII**

Republic Act No. 10368, otherwise known as the Human Rights Victims Reparation and Recognition Act of 2013, contains a legislative finding that gross human rights violations were committed during the Marcos regime. It provides for both the recognition of the sufferings of human rights victims as well as the provision for effective remedies.

Recognition of human rights and of the goal of achieving social justice is a primordial shift in our constitutional order. This shift was occasioned by the experiences of our society during Martial Law. This is evident in some discussions in the Constitutional Convention.

Commissioner Edmundo Garcia, speaking on the necessity of a Commission on Human Rights, emphasized:

> Precisely, one of the reasons why it is important for this body to be constitutionalized is the fact that regardless of who is the President or who holds the executive power, the human rights issue is of such importance that it should be safeguarded and it should be independent of political parties or power that are actually holding the reins of government. Our experience during the martial law period made us realize how precious those rights are and, therefore, these must be safeguarded at all times.
>
> Hence, Section 11, Article II of the 1987 Constitution thus reads, "(t)he State values the dignity of every human person and guarantees full respect for human rights." To breathe life into this State policy, the Commission on Human Rights was created and was envisioned as an independent office, free from political interference.[127]

Commissioner Jose Nolledo, sponsoring the provision that declares an independent foreign policy for the Philippines, also stated:

> The Marcos regime has wrought great havoc to our country. It has intensified insurgency and is guilty of rampant violations of human rights and and injustices it has committed. It has brought about economic turmoil. It has institutionalized widespread graft and

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[127] Rosales, *et al.*, Memorandum (G.R. No. 225973), p. 109.

corruption in all levels of government and it has bled the National treasury, resulting in great financial hemorrhage of our country.[128]

Former Associate Justice Cecilia Muñoz Palma, the 1986 Constitutional Commission President, in her closing speech, alluded to the experience during Martial Law as a motivating force operating in the background of the crafting of the new Constitution:

> A beautiful irony which cannot be overlooked is the fact that this new Constitution was discussed, debated, and finally written within the walls of this hall which saw the emergence of what was called by its author a "constitutional authoritarianism", but which, in effect, was a dictatorship, pure and simple. This hall was the seat of a combined executive and legislative power skillfully placed in the hands of one man for more than a decade. However, the miracle of prayer and of a people's faith and determined struggle to break the shackles of dictatorship toppled down the structure of despotism and converted this hall into hallowed grounds where the seeds of a newly found freedom have been sown and have borne fruit.
>
> My countrymen, we open the new Charter with a Preamble which is the beacon light that shines and brightens the path in building a new structure of government for our people. In that Preamble is expounded in positive terms our goals and aspirations. Thus, imploring the aid of Almighty God, we shall establish a just and humane society, a social order that upholds the dignity of man, for as a Christian nation, we adhere to the principle that, and I quote: "the dignity of man and the common good of society demand that society must be based on justice." We uphold our independence and a democratic way of life and, abhorring despotism and tyranny, we bind ourselves to live under the rule of law where no man is above the law, and where truth, justice, freedom, equality, love and peace will prevail.
>
> For the first time in the history of constitution making in this country, the word "love" is enshrined in the fundamental law. This is most significant at this period in our national life when the nation is bleeding under the forces of hatred and violence. Love which begets understanding is necessary if reconciliation is to be achieved among the warring factions and conflicting ideologies now gripping the country. Love is imperative if peace is to be restored in our nativeland, for without love there can be no peace.

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[128] *Id*.

We have established a republican democratic form of government where sovereignty resides in the people and civilian supremacy over the military is upheld.

For the first time, the Charter contains an all-embracing expanded Bill of Rights which constitutes the cornerstone of the structure of government. Traditional rights and freedoms which are hallmarks of our democratic way of life are reaffirmed. The right to life, liberty and property, due process, equal protection of the laws, freedom of religion, speech, the press, peaceful assembly, among others, are reasserted and guaranteed. The Marcos provision that search warrants or warrants of arrest may [be] issued not only by a judge but by any responsible officer authorized by law is discarded. Never again will the Filipino people be victims of the much-condemned presidential detention action or PDA or presidential commitment orders, the PCOs, which desecrate the rights to life and liberty, for under the new provision a search warrant or warrant of arrest may be issued only by a judge. Mention must be made of some new features in the Bill of Rights, such as: the privilege of the writ of habeas corpus can be suspended only in cases of invasion or rebellion, and the right to bail is not impaired during such suspension, thereby discarding jurisprudence laid down by the Supreme Court under the Marcos dispensation that the suspension of the privilege of the writ carried with it the suspension of the right to bail. The death penalty is abolished, and physical, psychological or degrading punishment against prisoners or detainees, substandard and subhuman conditions in penitentiaries are condemned.

For the first time, the Constitution provides for the creation of a Commission on Human Rights entrusted with the grave responsibility of investigating violations of civil and political rights by any party or groups and recommending remedies therefor.

From the Bill of Rights we proceed to the structure of government established in the new Charter.

We have established the presidential system of government with three branches—the legislative, executive, and judicial—each separate and independent of each other, but affording an effective check and balance of one over the other.

All legislative power is returned and exclusively vested in a bicameral legislature where the Members are elected by the people for a definite term, subject to limitations for reelection, disqualification to hold any other office or employment in the government including

government-owned or controlled corporations and, among others, they may not even appear as counsel before any court of justice.

For the first time in our Constitution, 20 percent of Members the Lower House are to be elected through a party list system and, for three consecutive terms after the ratification of the Constitution, 25 of the seats shall be allocated to sectoral representatives from labor, peasant, urban poor, indigenous cultural communities, women, youth and other sectors as may be provided by law. This innovation is a product of the signs of the times when there is an intensive clamor for expanding the horizons of participatory democracy among the people.

The executive power is vested in the President of the Philippines elected by the people for a six-year term with no reelection for the duration of his/her life. While traditional powers inherent in the office of the President are granted, nonetheless for the first time, there are specific provisions which curtail the extent of such powers. Most significant is the power of the Chief Executive to suspend the privilege of the writ of habeas corpus or proclaim martial law.

The flagrant abuse of that power of the Commander-in-Chief by Mr. Marcos caused the imposition of martial law for more than eight years and the suspension of the privilege of the writ even after the lifting of martial law in 1981. The new Constitution now provides that those powers can be exercised only in two cases, invasion or rebellion when public safety demands it, only for a period not exceeding 60 days, and reserving to Congress the power to revoke such suspension or proclamation of martial law which congressional action may not be revoked by the President. More importantly, the action of the President is made subject to judicial review thereby again discarding jurisprudence which render the executive action a political question and beyond the jurisdiction of the courts to adjudicate.

For the first time, there is a provision that the state of martial law does not suspend the operation of the Constitution nor abolish civil courts or legislative assemblies, or vest jurisdiction to military tribunals over civilians, or suspend the privilege of the writ. Please forgive me if, at this point, I state that this constitutional provision vindicates the dissenting opinions I have written during my tenure in the Supreme Court in the martial law cases.[129]

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[129] *Id.*, citing *Closing remarks of the President of the Constitutional Commission at the final session,* Official Gazette, October 15, 1986 <http://www.gov.ph/1986/10/15/closing-remarks-of-the-president-of-the-constitutional-commission-at-the-final-session-october-15-1986> (visited November 7, 2016).

**IX**

In part, to implement these safeguards for human rights, Republic Act No. 10368 was passed. Its statement of policy is found in Section 2:

> Section 2. *Declaration of Policy*. – Section 11 of Article II of the 1987 Constitution of the Republic of the Philippines declares that the State values the dignity of every human person and guarantees full respect for human rights. Pursuant to this declared policy, Section 12 of Article III of the Constitution prohibits the use of torture, force, violence, threat, intimidation or any other means which vitiate the free will and mandates the compensation and rehabilitation of victims of torture or similar practices and their families.
>
> By virtue of Section 2 of Article II of the Constitution adopting generally accepted principles of international law as part of the law of the land, the Philippines adheres to international human rights laws and conventions, the Universal Declaration of Human Rights, including the International Convenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) and Other Cruel Inhuman or Degrading Treatment or Punishment which imposes on each State party the obligation to enact domestic legislation to give effect to the rights recognized therein and to ensure that any person whose rights or freedoms have been violated shall have an effective remedy, and even if the violation is committed by persons acting in an official capacity. In fact, the right to a remedy is itself guaranteed under existing human rights treaties and/or customary international law, being peremptory in character (*jus cogens*) and as such has been recognized as non-derogable.
>
> Consistent with the foregoing, it is hereby declared the policy of the State to recognize the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986 and restore the victims' honor and dignity. The State hereby acknowledges its moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime.
>
> Similarly, it is the obligation of the State to acknowledge the sufferings and damages inflicted upon persons whose properties or

businesses were forcibly taken over, sequestered or used, or those whose professions were damaged and/or impaired, or those whose freedom of movement was restricted and/or impaired, and/or such other victims of the violations of the Bill of Rights.

Thus, Section 2 of Republic Act No. 10368 states (2) two state policies: (i) "to acknowledge "the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations" committed from September 21, 1972 to February 25, 1986 during the Marcos regime; and (ii) to restore their honor and dignity.[130]

Section 2 of Republic Act No. 10368 likewise acknowledges the State's moral and legal obligation to recognize and provide reparation to the victims and/or their families for the deaths, injuries, sufferings, deprivations, and damages they suffered under the Marcos regime. The State also expressly acknowledged the sufferings and damages inflicted upon: (i) persons whose properties or businesses were forcibly taken over, sequestered or used; (ii) those whose professions were damaged and/or impaired; (iii) those whose freedom of movement was restricted; and/or (iv) such other victims of the violations of the Bill of Rights.[131]

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[130] *See also* Implementing Rules and Regulations of Rep. Act No. 10368, Sec. 3(a):

SECTION 3. Declaration of Policy. — Consistent with Sections 2 and 11 of Article II, and Section 12 of Article III of the 1987 Constitution of the Republic of the Philippines, and adhering to international human rights law and conventions, it is the declared policy of the State to:

a) Recognize the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986 and restore the victims' honor and dignity[.]

[131] *See also* Implementing Rules and Regulations of Rep. Act No. 10368, Sec. 3(b) and (c):

SECTION 3. Declaration of Policy. — Consistent with Sections 2 and 11 of Article II, and Section 12 of Article III of the 1987 Constitution of the Republic of the Philippines, and adhering to international human rights law and conventions, it is the declared policy of the State to:

. . . . . .

The bases of these policies[132] are found in the Constitution. Section 11 of Article II of the 1987 Constitution provides:

ARTICLE II

. . . . . .

State Policies

. . . . . .

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

Related to Article II, Section 11 is Section 9, which provides:

SECTION 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

Article II, Section 10 goes further:

SECTION 10. The State shall promote social justice in all phases of national development.

These enhance the rights that are already enshrined in the Bill of Rights.[133]

Under the Bill of Rights, Article III, Section 12 (2) and (4) of the Constitution provides:[134]

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b) Acknowledge its moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime;
c) Acknowledge the sufferings and damages inflicted upon persons whose properties or businesses were forcibly taken over, sequestered or used, or those whose professions were damaged and/or impaired, or those whose freedom of movement was restricted, and/or such other victims of the violations of the Bill of Rights.

[132] Rep. Act No. 10368, Sec. 2.

[133] Article III of the 1987 Constitution provides for the Bill of Rights. The Bill of Rights was also found in Article 4 of the 1973 Constitution, Article III of the 1935 Constitution; also the Title IV, Political Constitution of the Malolos Constitution and the President McKinley's Instructions of April 7, 1900.

[134] Rep. Act No. 10368, Sec. 2.

ARTICLE III
Bill of Rights

. . . . . .

SECTION 12. . . .

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

. . . . . .

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

Republic Act No. 10368 provides for both government policy in relation to the treatment of Martial Law victims as well as these victims' reparation and recognition. It creates a Human Rights Victims' Claims Board[135] and provides for

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[135] Rep. Act No. 10368, Secs. 8 to 14 provide:

SECTION 8. Creation and Composition of the Human Rights Victims' Claims Board. — There is hereby created an independent and quasi-judicial body to be known as the Human Rights Victims' Claims Board, hereinafter referred to as the Board. It shall be composed of nine (9) members, who shall possess the following qualifications:

(a) Must be of known probity, competence and integrity;
(b) Must have a deep and thorough understanding and knowledge of human rights and involvement in efforts against human rights violations committed during the regime of former President Ferdinand E. Marcos;
(c) At least three (3) of them must be members of the Philippine Bar who have been engaged in the practice of law for at least ten (10) years; and
(d) Must have a clear and adequate understanding and commitment to human rights protection, promotion and advocacy.

The Human Rights Victims' Claims Board shall be attached to but shall not be under the Commission on Human Rights (CHR).

The Board shall organize itself within thirty (30) days from the completion of appointment of all nine (9) members and shall thereafter organize its Secretariat.

SECTION 9. Appointment to the Board. — The President shall appoint the Chairperson and the other eight (8) members of the Board: Provided, That human rights organizations such as, but not limited to, the Task Force Detainees of the Philippines (TFDP), the Free Legal Assistance Group (FLAG), the Movement of Attorneys for Brotherhood, Integrity and Nationalism (MABINI),

its powers.[136] Among the powers of the Board is to "approve

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the Families of Victims of Involuntary Disappearance (FIND) and the Samahan ng mga Ex-Detainees Laban sa Detensyon at Aresto (SELDA) may submit nominations to the President.

. . . . . .

SECTION 11. Resolution of Claims. — The Board shall be composed of three (3) divisions which shall function simultaneously and independently of each other in the resolution of claims for reparation. Each division shall be composed of one (1) Chairperson, who shall be a member of the Philippine Bar and two (2) members to be appointed by the Board *en banc.*

SECTION 12. Emoluments. — The Chairperson and members of the Board shall have the rank, salary, emoluments and allowances equivalent to a Presiding Justice and Associate Justice of the Court of Appeals, respectively.

SECTION 13. Secretariat of the Board. — The Board shall be assisted by a Secretariat which may come from the existing personnel of the CHR, without prejudice to the hiring of additional personnel as determined by the Board to accommodate the volume of required work. The following shall be the functions of the Secretariat:

(a) Receive, evaluate, process and investigate applications for claims under this Act;

(b) Recommend to the Board the approval of applications for claims;

(c) Assist the Board in technical functions; and

(d) Perform other duties that may be assigned by the Board.

The Chairperson of the Board shall appoint a Board Secretary who shall head the Secretariat for the duration of the existence of the Board. There shall be a Technical Staff Head assisted by five (5) Legal Officers and three (3) Paralegal Officers; and an Administrative Staff Head assisted by three (3) Administrative Support Staff.

When necessary, the Board may hire additional contractual employees or contract a service provider to provide services of counselors, psychologists, social workers and public education specialists, among others, to augment the services of the Secretariat: Provided, That the maximum contract amount per year shall not exceed more than fifteen percent (15%) of the total annual operating budget of the Board.

SECTION 14. Operating Budget of the Board. — The operating budget of the Board shall be funded from the Ten billion peso (₱10,000,000,000.00) fund, with Ten million pesos (₱10,000,000.00) as its initial operating budget: Provided, That it shall not exceed Fifty million pesos (₱50,000,000.00) a year.

[136] Rep. Act No. 10368, Sec. 10 provides:

SECTION 10. Powers and Functions of the Board. — The Board shall have the following powers and functions:

(a) Receive, evaluate, process and investigate applications for claims under this Act;

(b) Issue subpoena/s *ad testificandum* and subpoena/s *duces tecum*;

with finality all eligible claims"[137] under the law.

This law provides for the process of recognition of Martial Law victims.[138] There are victims who are allowed to initiate

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(c) Conduct independent administrative proceedings and resolve disputes over claims;
(d) Approve with finality all eligible claims under this Act;
(e) Deputize appropriate government agencies to assist it in order to effectively perform its functions;
(f) Promulgate such rules as may be necessary to carry out the purposes of this Act, including rules of procedure in the conduct of its proceedings, with the Revised Rules of Court of the Philippines having suppletory application;
(g) Exercise administrative control and supervision over its Secretariat;
(h) The Board, at its discretion, may consult the human rights organizations mentioned in Section 9 herein; and
(i) Perform such other duties, functions and responsibilities as may be necessary to effectively attain the objectives of this Act.

[137] Rep. Act No. 10368, Sec. 10(d) provides:

SECTION 10. *Powers and Functions of the Board.* — The Board shall have the following powers and functions:

. . . . . .

(d) Approve with finality all eligible claims under this Act[.]

[138] Rep. Act No. 10368, Secs. 16, 17, 18. A point system is provided in Section 19. Section 21 provides for the filing of sworn statements "narrating the circumstances of the pertinent human rights violation/s committed." Section 23 provides for a period to file claims. Section 24 provides for a system of appeal. Section 25 provides penalties for fraudulent claims, and various misuse of the funds dedicated for the implementation of the law.
SECTION 16. Claimants. — Any person who is an HRVV may file a claim with the Board for reparation and/or recognition in accordance with the provisions of this Act.
SECTION 17. Conclusive Presumption That One is an HRVV Under This Act. — The claimants in the class suit and direct action plaintiffs in the Human Rights Litigation Against the Estate of Ferdinand E. Marcos (MDL No. 840, CA No. 86-0390) in the US Federal District Court of Honolulu, Hawaii wherein a favorable judgment has been rendered, shall be extended the conclusive presumption that they are HRVVs: Provided, That the HRVVs recognized by the Bantayog ng mga Bayani Foundation shall also be accorded the same conclusive presumption: Provided, further, That nothing herein shall be construed to deprive the Board of its original jurisdiction and its inherent power to determine the extent of the human rights violations and the corresponding reparation and/or recognition that may be granted.

SECTION 18. *Motu Proprio* Recognition. — The Board may take judicial notice *motu proprio* of individual persons who suffered human rights violations as defined herein and grant such persons recognition as HRVVs and included in the Roll of Victims as provided for in Section 26 hereof.

. . . . . .

SECTION 19. Determination of Award. — (a) The Board shall follow the point system in the determination of the award. The range shall be one (1) to ten (10) points, as follows:

(1) Victims who died or who disappeared and are still missing shall be given ten (10) points;
(2) Victims who were tortured and/or raped or sexually abused shall be given six (6) to nine (9) points;
(3) Victims who were detained shall be given three (3) to five (5) points; and
(4) Victims whose rights were violated under Section 3, paragraph (b), nos. (4), (5) and (6) under this Act shall be given one (1) to two (2) points.

. . . . . .

SECTION 21. Documentation of Human Rights Violations Committed by the Marcos Regime. — In the implementation of this Act and without prejudice to any other documentary or other evidence that may be required for the award of any reparation, any HRVV seeking reparation shall execute a detailed sworn statement narrating the circumstances of the pertinent human rights violation/s committed.

. . . . . .

SECTION 23. Period for Filing of Claims; Waiver. — An HRVV shall file an application for reparation with the Board within six (6) months from the effectivity of the implementing rules and regulations (IRR) of this Act: Provided, That failure to file an application within said period is deemed a waiver of the right to file the same: Provided, further, That for HRVVs who are deceased, incapacitated, or missing due to enforced disappearance, their legal heir/s or representatives, shall be entitled to file an application for reparation on their behalf.

Any opposition to the new application/s pursuant to Section 16 hereof shall only be entertained if such is filed within fifteen (15) days from the date of the last publication of the official list of eligible claimants as may be determined by the Board. The Board shall cause the publication of the official list of eligible claimants once a week for three (3) consecutive weeks in at least two (2) national newspapers of general circulation.

SECTION 24. Appeal. — Any aggrieved claimant or oppositor may file an appeal within ten (10) calendar days from the receipt of the Resolution of the Division, to the Board *en banc*, whose decision shall then become final and executory.

SECTION 25. Penalties; Applicability of the Revised Penal Code. — Any claimant who is found by the Board, after due hearing, to have filed a fraudulent claim, shall be referred to the appropriate office for prosecution. If convicted, he shall suffer the imprisonment of eight (8) to ten (10) years, shall be disqualified from public office and employment and shall be deprived of the right to

their petitions,[139] those who are conclusively presumed,[140] and those who may be motu proprio be recognized by the Board[141] even without an initiatory petition.

Republic Act No. 10368 codifies four (4) obligations of the State in relation to the Martial Law regime of Ferdinand E. Marcos:

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vote and be voted for in any national or local election, even after the service of sentence unless granted absolute pardon.

Any member of the Board and its Secretariat, public officer, employee of an agency or any private individual mandated to implement this Act, who shall misuse, embezzle or misappropriate the funds for the reparation of HRVVs or who shall commit fraud in the processing of documents and claims of HRVVs, or shall conspire with any individual to commit the same, shall also be prosecuted.

Any member of the Board and its Secretariat, public officer, employee of an agency or any private individual mandated to implement this Act, who may have been found guilty of committing any or all of the prohibited acts stated in the preceding paragraph, or those acts punishable under the Revised Penal Code, shall be penalized under the pertinent provisions in the Code and relevant special penal laws.

[139] Rep. Act No. 10368, Sec. 16, in relation to the definition of victim in Sec. 3 (b), provides:

SECTION 16. Claimants. — Any person who is an HRVV may file a claim with the Board for reparation and/or recognition in accordance with the provisions of this Act.

[140] Rep. Act No. 10368, Sec. 17 provides:

SECTION 17. Conclusive Presumption That One is an HRVV Under This Act. — The claimants in the class suit and direct action plaintiffs in the Human Rights Litigation Against the Estate of Ferdinand E. Marcos (MDL No. 840, CA No. 86-0390) in the US Federal District Court of Honolulu, Hawaii wherein a favorable judgment has been rendered, shall be extended the conclusive presumption that they are HRVVs: Provided, That the HRVVs recognized by the Bantayog ng mga Bayani Foundation shall also be accorded the same conclusive presumption: Provided, further, That nothing herein shall be construed to deprive the Board of its original jurisdiction and its inherent power to determine the extent of the human rights violations and the corresponding reparation and/or recognition that may be granted.

[141] Rep. Act No. 10368, Sec. 18 provides:

SECTION 18. *Motu Proprio* Recognition. — The Board may take judicial notice *motu proprio* of individual persons who suffered human rights violations as defined herein and grant such persons recognition as HRVVs and included in the Roll of Victims as provided for in Section 26 hereof.

First, to recognize the heroism and sacrifices of victims of summary execution, torture, enforced or involuntary disappearance, and other gross violations of human rights;

Second, to restore the honor and dignity of human rights victims;

Third, to provide reparation to human rights victims and their families; and

Fourth, to ensure that there are effective remedies to these human rights violations.

Based on the text of this law, human rights violations during the "regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986" are recognized. Despite his claim of having won the snap elections for President in 1985, Ferdinand E. Marcos was unceremoniously spirited away from Malacanang to Hawaii as a result of the People's uprising now known as "People Power." The legitimacy of his ouster from power was subsequently acknowledged by this Court in *Lawyers' League for a Better Philippines* and in *In re Saturnino Bernardez*, which were both decided in 1986.

This recognition of human rights violations is even clearer in the law's definition of terms in Republic Act No. 10368, Section 3(b):

(b) Human rights violation refers to any act or omission committed during the period from September 21, 1972 to February 25, 1986 by persons acting in an official capacity and/or agents of the State, but shall not be limited to the following:

(1) Any search, arrest and/or detention without a valid search warrant or warrant of arrest issued by a civilian court of law, including any warrantless arrest or detention carried out pursuant to the declaration of Martial Law by former President Ferdinand E. Marcos as well as any arrest, detention or deprivation of liberty carried out during the covered period on the basis of an Arrest, Search and Seizure Order (ASSO), a Presidential Commitment Order (PCO), or a Preventive Detention Action (PDA) and such other similar executive issuances as defined by decrees of former President Ferdinand E. Marcos, or in ay

manner that the arrest, detention or deprivation of liberty was effected;

(2) The infliction by a person acting in an official capacity and or an agent of the State of physical injury, torture, killing, or violation of other human rights, of any person exercising civil or political rights, including but not limited to the freedom of speech, assembly or organization; and/or the right to petition the government for redress of grievances, even if such violation took place during or in the course of what the authorities at the time deemed an illegal assembly or demonstration: Provided, That torture in any form or under any circumstance shall be considered a human rights violation;

(3) Any enforced or involuntary disappearance caused upon a person who was arrested, detained or abducted against one's will or otherwise deprived of one's liberty, as defined in Republic Act No. 10350, otherwise known as the 'Anti-Enforced or Involuntary Disappearance Act of 2012.';

(4) Any force or intimidation causing the involuntary exile of a person from the Philippines;

(5) Any act of force, intimidation or deceit causing unjust or illegal takeover of a business, confiscation of property, detention of owner/s and or their families, deprivation of livelihood of a person by agents of the State, including those caused by Ferdinand E. Marcos, his spouse Imelda R. Marcos, their immediate relatives by consanguinity or affinity, as well as those persons considered as among their close relatives, associates, cronies and subordinates under Executive Order No. 1, issued on February 28, 1986 by then President Corazon C. Aquino in the exercise of her legislative powers under the Freedom Constitution;'

(6) Any act or series of acts causing, committing and/or conducting the following:

"(i) Kidnapping or otherwise exploiting children of persons suspected of committing acts against the Marcos regime;

"(ii) Committing sexual offenses against human rights victims who are detained and/or in the course of conducting military and/or police operations; and

> "(iii) Other violations and/or abuses similar or analogous to the above, including those recognized by international law."[142]

Human rights violations during Martial Law were state-sponsored. Thus, Republic Act No. 10368, Section 3(c) defines Human Rights Victims as:

(c) Human Rights Violations Victim (HRVV) refers to a person whose human rights were violated by persons acting in an official capacity and/or agents of the State as defined herein. In order to qualify for reparation under this Act, the human rights violation must have been committed during the period from September 21, 1972 to February 25, 1986: Provided however, That victims of human rights violations that were committed one (1) month before September 21, 1972 and one (1) month after February 25, 1986 shall be entitled to reparation under this Act if they can establish that the violation was committed:

> (1) By agents of the State and/or persons acting in an official capacity as defined hereunder;
>
> (2) For the purpose of preserving, maintaining, supporting or promoting the said regime; or
>
> (3) To conceal abuses during the Marcos regime and/or the effects of Martial Law.[143]

Section 3(d) of this law defines the violators to include persons acting in an official capacity and/or agents of the State:

(d) Persons Acting in an Official Capacity and/or Agents of the State. – The following persons shall be deemed persons acting in an official capacity and/or agents of the State under this Act:

> (1) Any member of the former Philippine Constabulary (PC), the former Integrated National Policy (INP), the Armed Forces of the Philippines (AFP) and the Civilian Home Defense Force (CHDF) from September 21, 1972 to February 25, 1986 as well as any civilian agent attached thereto: and any member of a paramilitary group even if one is not organically part of the

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[142] Rep. Act No. 10368, Sec. 3(b).

[143] Rep. Act No. 10368, Sec. 3(c).

> PC, the INP, the AFP or the CHDF so long as it is shown that the group was organized, funded, supplied with equipment, facilities and/or resources, and/or indoctrinated, controlled and/or supervised by any person acting in an official capacity and/or agent of the State as herein defined;
>
> (2) Any member of the civil service, including persons who held elective or appointive public office at any time from September 21, 1972 to February 25, 1986;
>
> (3) Persons referred to in Section 2 (a) of Executive Order No. 1, creating the Presidential Commission on Good Government (PCGG), issued on February 28, 1986 and related laws by then President Corazon C. Aquino in the exercise of her legislative powers under the Freedom Constitution, including former President Ferdinand E. Marcos, spouse Imelda R. Marcos, their immediate relatives by consanguinity or affinity, as well as their close relatives, associates, cronies and subordinates; and
>
> (4) Any person or group/s of persons acting with the authorization, support or acquiescence of the State during the Marcos regime.[144]

In clear and unmistakable terms, the law recognizes the culpability of Ferdinand E. Marcos for acts of summary execution, torture, enforced or involuntary disappearances, and other gross violations of human rights. The law likewise implies that not only was he the President that presided over those violations, but that he and his spouse, relatives, associates, cronies, and subordinates were active participants.

Burying the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani violates Republic Act No. 10368 as the act may be considered as an effort "to conceal abuses during the Marcos regime" or to "conceal . . . the effects of Martial Law."[145] Its symbolism is unmistakable. It undermines the recognition of his complicity. Clearly, it is illegal.

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[144] Rep. Act No. 10368, Sec 3(d).

[145] Rep. Act No. 10368, Sec. 3(c).

**X**

"Libingan ng mga Bayani" is a label created by a presidential proclamation. The Libingan ng mga Bayani was formerly known as the Republic Memorial Cemetery. In 1954, under Proclamation No. 86, the Republic Memorial Cemetery was renamed to Libingan ng mga Bayani for symbolic purposes, to express esteem and reverence for those buried there:

> WHEREAS, the name "Republic Memorial Cemetery" at Fort Wm McKinley, Rizal province, is not symbolic of the cause for which our soldiers have died, and does not truly express the nation's esteem and reverence for her war dead;
>
> NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare that the "Republic Memorial Cemetery" shall henceforth be called "LIBINGAN NG MGA BAYANI".

Thus, Proclamation No. 86 is a recognition of the nation's intent to honor, esteem, and revere its war dead. To further this intention, it changed the name of the cemetery to the Libingan ng mga Bayani. From this act alone, it is clear that the name of the cemetery conveys meaning. The Libingan ng mga Bayani was named as such to honor and esteem those who are and will be buried there.

If there was no intention to bestow any recognition upon Ferdinand E. Marcos as a hero, then he should not be buried at the Libingan ng mga Bayani. If the President wanted to allot a portion of public property to bury Ferdinand E. Marcos without according him the title of a hero, the President had other options. The President had the power to select a different cemetery where Marcos was to be buried.

Likewise, before ordering the interment, the President did not amend the name through his own presidential proclamation. Therefore, the intent to bury him with honors is clearly legible, totally unequivocal, and dangerously palpable.

Having the remains of Ferdinand E. Marcos in a national shrine called the Libingan ng mga Bayani undeniably elevates

his status. It produces an indelible remark on our history. It commingles his name and his notorious legacy with the distinctively heroic and exemplary actions of all those privileged to be buried there.

The transfer of Ferdinand E. Marcos' remains violates the policy of full and public disclosure of the truth. It produces an inaccurate account of the violations committed. It will fail to educate all sectors of society and all generations of the human rights violations committed under his watch. It is a violation of the fundamental statutory policy of recognition of the human rights violations committed during the Marcos regime.

As pointed out by the Commission on Human Rights:

> 17. Crucial to the Satisfaction component of effective reparation is the official acknowledgement of the truth of the abuses and violations that the victim suffered, including an acknowledgement of the responsibility of the perpetrator as well as a public apology.
>
> 18. Burying the remains of Ferdinand Marcos at the LNMB with the pomp and pageantry accorded to a hero is the complete antithesis of any such apology, and would constitute a denial or reversal of any previous acknowledgement of his many sins against the victims of human rights violations under his government. It is an act that, for all of the discussion as to what "bayani" means, will inevitably extol him and his actions in government for all future generations. . . .
>
> 19. Moreover, the burial of Mr. Marcos' remains at the LNMB sends a very dangerous message to Philippine society and even to the world by treating him as a hero, and violates the Guarantee of Non-Repetition component of effective reparations. . . .
>
> 20. To bury a legally confirmed human rights violator as hero would fly in the face of any effort to educate the Filipino people on the importance of human rights, and would, rather than promote reform in favor of respect for human rights, tend to promote impunity by honoring a man known all over the world for having perpetrated human rights violations for nearly two decades in order to perpetuate his hold on power;
>
> 21. Worse still, this would even send a message to other leaders that adopting a similar path of abuse and violations that characterized the Marcos dictatorship would ultimately result not in condemnation

but instead acknowledgment and accolades of heroism, constituting thereby a set of circumstance not contemplated by the holistic notion of reparation, in particular violating both the standard of Satisfaction and the Guarantee of Non-Repetition. Therefore, this will not only deprive the victims of human rights violations of their right to effective reparations but will place future generations in genuine peril of the real prospect of coming face-to-face once more with authoritarian rule characterized by rampant human rights violations.[146]

The interment of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani necessarily implies two (2) things: the honoring of Ferdinand E. Marcos; and the allotting of a portion of public property for this act.

The act of burying in itself has always been more than an act of disposing of dead bodies. A burial is a manner of memorializing and paying respects to a deceased person. Implicit in these ceremonies is the preservation of the memory of the person for his good or valiant deeds.

This cultural practice is not limited to private persons. The same practice applies when it is the State burying the deceased person. The act of burying a body under the sanction of the State means that it is the State itself paying its respects to the dead person and memorializing him or her for his or her good and valiant deeds. It is never done to remember past transgressions. Thus, burials are acts of honoring. And when the burial is state-sanctioned, it is the State that honors the deceased person.

This is more emphasized when the place of interment is the Libingan ng mga Bayani. Again, whether or not one subscribes to the idea that the Libingan nga mga Bayani is a cemetery for the country's heroes, from the public's perspective, those buried at the Libingan ng mga Bayani are respected, revered, admired, and seen with high regard. To say otherwise is ridiculous. Although not all who are buried at the Libingan ng mga Bayani are recognized by the public, the public recognizes the distinction of being buried there. Those who are and will be buried there

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[146] Commission on Human Rights Memorandum, pp. 9-16.

are accorded honors not only by their own families, but by the State itself.

It is impossible for the State to bury Ferdinand E. Marcos at the Libingan ng mga Bayani without according him, or his memory, any honor.

Given these considerations, the transfer of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani violates Republic Act No. 10368. It is inconsistent with the State's public policies as stated in Republic Act No. 10368.

In *Avon Cosmetics, Inc. v. Luna*,[147] this Court discussed the meaning and relevance of public policy:

> And what is public policy? In the words of the eminent Spanish jurist, Don Jose Maria Manresa, in his commentaries of the Codigo Civil, public policy (*orden público*):
>
> > [R]epresents in the law of persons the public, social and legal interest, that which is permanent and essential of the institutions, that which, even if favoring an individual in whom the right lies, cannot be left to his own will. It is an idea which, in cases of the waiver of any right, is manifested with clearness and force.
>
> As applied to agreements, Quintus Mucius Scaevola, another distinguished civilist gives the term "public policy" a more defined meaning:
>
> > Agreements in violation of *orden públic* must be considered as those which conflict with law, whether properly, strictly and wholly a public law (*derecho*) or whether a law of the person, but law which in certain respects affects the interest of society.
>
> Plainly put, public policy is that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good. As applied to contracts, in the absence of express legislation or constitutional prohibition, a court, in order to declare a contract void as against public policy, must find that the contract as to the consideration or thing to be done, has a tendency to injure the public, is against the

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[147] 540 Phil. 389 (2006) [Per *J.* Chico-Nazario, First Division].

public good, or contravenes some established interests of society, or is inconsistent with sound policy and good morals, or tends clearly to undermine the security of individual rights, whether of personal liability or of private property.[148] (Emphasis supplied, citations omitted)

The State's fundamental policies are laid out in the Constitution. The rest are embodied in statutes enacted by the legislature. The determination of policies is a legislative function, consistent with the Congress' power to make, alter, and repeal laws.[149]

It is not the President alone who determines the State's policies. The President is always bound by the Constitution and the State's statutes and is constitutionally mandated to "ensure that the laws be faithfully executed."[150] To execute laws, the President must faithfully comply with all of them. He cannot ignore the laws for a particular group of people or for private interests. The President cannot ignore the laws to execute a policy that he determined on his own. He cannot ignore the laws to fulfill a campaign promise that may or may not have been the reason why he won the People's votes. Thus, the President is bound to comply with and execute Republic Act No. 10368.

Republic Act No. 10368's state policies are again as follows:

First, to recognize the heroism and sacrifices of all Filipinos who had been victims of summary execution, torture, enforced or involuntary disappearance, and other gross human rights violations committed during the regime of Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986; and

Second, to restore the victims' honor and dignity.

The nature of Ferdinand E. Marcos' burial at the Libingan ng mga Bayani contravenes these public policies. The State's act of according any honor to Ferdinand E. Marcos grossly

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[148] *Id.* at 404-405.

[149] *Government of the Philippine Islands v. Springer*, 50 Phil. 259, 276 (1927) [Per J. Malcolm, Second Division] citing *Cooley's Constitutional Limitations*, 7th ed., pp. 126-131, 157-162.

[150] Const., Art. VII, Sec. 17.

contradicts, and is highly irreconcilable with, its own public policies to recognize the heroism and sacrifices of the Martial Law victims and restore these victims' honor and dignity.

To allow Ferdinand E. Marcos' burial is inconsistent with honoring the memory of the Martial Law victims. It conflicts with their recognized heroism and sacrifice, and as most of them testified, it opens an avenue for their re-traumatization. These victims' honor, which the State avowed to restore, is suddenly questionable because the State is also according honor and allotting public property to the person responsible for their victimization. The victims' state recognition is put into doubt when the President decided to act favorably towards the person who victimized them.

**XI**

Public respondents' contention that Ferdinand E. Marcos will not be buried as a hero, but only as a President, soldier, and Medal of Valor Awardee, fails to convince:

JUSTICE LEONEN:

I am not challenging whether the action of the President was regular or not, that's not the point. The point is, you know for a fact that it was a proclamation creating the Libingan ng mga Bayani, and now without changing the name, they are now, the President, according to you, verbally ordered the interment of the remains of the former President. Yet now, you take the position that the intention of government is not to honor the body of Ferdinand Marcos as the body of a hero. Although the Libingan's name is Libingan ng mga Bayani. So, can you explain that?

SOLICITOR GENERAL CALIDA:

But, as I said, Your Honor, in my opening statement, that is not the purpose to bury him as a hero. But, by military standards, Your Honor, former President Marcos fits in to the definition of a hero. As defined by the Lagman's Petition, Your Honor.

JUSTICE LEONEN:

Excuse me, Counsel, a while ago, this morning, before we took lunch, you said that there was no intention to honor. In fact, you read from your Comment, that there was no intention to bury the President as a hero.

SOLICITOR GENERAL CALIDA:
Yes, we stand by that, Your Honor.

JUSTICE LEONEN:
Okay.

SOLICITOR GENERAL CALIDA:
However, based on the military standards given to a Medal of Valor awardee, he fits in to the definition which was proposed by Petitioner Lagman, Your Honor.

JUSTICE LEONEN:
A Medal of Valor awardee, is he or she a hero?

SOLICITOR GENERAL CALIDA:
May I read into the records, Your Honor.

JUSTICE LEONEN:
A Medal of Valor, please do not ignore my question.

SOLICITOR GENERAL CALIDA:
Yes.

JUSTICE LEONEN:
A Medal of Valor awardee, is he a hero or not a hero? Is he or she a hero or not a hero?

SOLICITOR GENERAL CALIDA:
Based on the wordings of Presidential Decree 1687, Your Honor, it says here, "The Medal of Valor is the highest award that may be given to a Filipino soldier in recognition of conspicuous acts of gallantry above and beyond a call of duty and in total disregard of personal safety; Whereas, an awardee of the Medal of Valor for his supreme self-sacrifice and distinctive act of gallantry, performed more than ordinarily hazardous service and deserved due recognition from a grateful government and people." . . .

JUSTICE LEONEN:
Is this a Presidential Decree, Counsel?

SOLICITOR GENERAL CALIDA:
. . . the definition, Your Honor, in the Lagman Petition . . .

JUSTICE LEONEN:
Is this a Presidential Decree?

SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

JUSTICE LEONEN:
Who issued the Presidential Decree?

. . . . . .

SOLICITOR GENERAL CALIDA:
Well, a judicial notice can be taken that it was during the term of President Marcos, Your Honor.

JUSTICE LEONEN:
Ferdinand Marcos, who is a Medal of Valor awardee, issued this Presidential Decree.

SOLICITOR GENERAL CALIDA:
However, Your Honor, the Medal of Valor . . .

JUSTICE LEONEN:
No, no, no, however, he had the power to issue the Presidential Decree, I'm not questioning that. Okay, my question here, which you ignored, is, is a Medal of Valor awardee a hero?

SOLICITOR GENERAL CALIDA:
By the definition, Your Honor, he is a hero.

JUSTICE LEONEN:
So, therefore, you are going back against what you said in the Comment . . .

SOLICITOR GENERAL CALIDA:
But we will set aside that, Your Honor.

JUSTICE LEONEN:
How can you set that aside?

SOLICITOR GENERAL CALIDA:
We will set it aside because . . .

JUSTICE LEONEN:
Which part of Marcos will you not bury as a Medal of Valor awardee and which part will you bury?

SOLICITOR GENERAL CALIDA:
Because, Your Honor . . .

JUSTICE LEONEN:
It's the same person.

SOLICITOR GENERAL CALIDA:
. . . President Duterte's announcement is that he will allow the

burial not as a hero, but as a former president, a former veteran and a soldier, that's all, Your Honor.[151]

The claim that he is being buried only as a President, soldier, and Medal of Valor awardee is a fallacy. When a person is buried, the whole person is buried, not just parts of him or her. Thus, if government buries and honors Ferdinand E. Marcos' body as the body of a former soldier, it will, at the same time, be burying and honoring the body of a human rights violator, dictator, and plunderer. It is impossible to isolate the President, soldier, and Medal of Valor awardee from the human rights violator, dictator, and plunderer.

**XII**

Apart from recognizing the normative framework and the acknowledgment of human rights violations during the Marcos regime, the law likewise acknowledges the State's obligation that "any person whose rights or freedoms have been violated shall have an effective remedy."[152] This right to an "effective remedy" is available even if "the violation is committed by persons acting in an official capacity."[153]

With the recognition of human rights victims of Martial Law, the Board created by Republic Act No. 10368 may provide "awards."[154] Although this award has a monetary value,[155] other duties for government are likewise provided by law. There can be nonmonetary reparation:

Section 5. *Nonmonetary Reparation*. – The Department of Social Welfare and Development (DSWD), the Department of Education (DepED), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA), and such

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[151] TSN, Oral Arguments, September 7, 2016, pp. 156-159.

[152] Rep. Act No. 10368, Sec. 2, par. 2.

[153] Rep. Act No. 10368, Sec. 2, par. 2.

[154] Rep. Act No. 10368, Sec. 19.

[155] Rep. Act No. 10368, Sec. 19(c). The monetary value shall be dependent on a point system.

other government agencies shall render the necessary services as nonmonetary reparation for HRVVs and/or their families, as may be determined by the Board pursuant to the provisions of this Act[.][156]

The phrase "other government agencies" includes public respondents in these consolidated cases.

The law also requires the documentation of the human rights violations committed during the Marcos regime:

Section 21. *Documentation of Human Rights Violations Committed by the Marcos Regime*. – In the implementation of this Act and without prejudice to any other documentary or other evidence that may be required for the award of any reparation, any HRVV seeking reparation shall execute a detailed sworn statement narrating the circumstances of the pertinent human rights violation/s committed.[157]

Further, memorialization is required under the law:

Section 26. *Roll of Victims*. – Persons who are HRVVs, regardless of whether they opt to seek reparation or not, shall be given recognition by enshrining their names in a Roll of Human Rights Victims to be prepared by the Board.

A Memorial/Museum/Library shall be established in honor and in memory of the victims of human rights violations whose names shall be inscribed in the Roll. A compendium of their sacrifices shall be prepared and may be readily viewed and accessed in the internet. The Memorial/Museum/Library/Compendium shall have an appropriation of at least Five hundred million pesos (₱500,000,000.00) from the accrued interest of Ten billion pesos (₱10,000,000,000.00) fund.

The Roll may also be displayed in government agencies as may be designated by the HRVV Memorial Commission as created hereunder.

The Human Rights Violations Victims' Memorial Commission is given the task of making such memory permanent. It is tasked

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[156] Rep. Act No. 10368, Sec. 5.

[157] Rep. Act No. 10368, Sec. 21.

to ensure that the atrocities that happened during the Marcos regime are included in the educational curricula of schools:

> Section 27. *Human Rights Violations Victims' Memorial Commission*. – There is hereby created a Commission to be known as the Human Rights Violations Victims' Memorial Commission, hereinafter referred to as the Commission, primarily for the establishment, restoration, preservation and conservation of the Memorial / Museum / Library / Compendium in honor of the HRVVs during the Marcos regime.
>
> . . . . . .
>
> The Commission shall be attached to the CHR solely for budgetary and administrative purposes. The operating budget of the Commission shall be appropriated from the General Appropriations Act.
>
> The Commission shall also coordinate and collaborate with the DepEd and the CHED to ensure that the teaching of Martial Law atrocities, the lives and sacrifices of HRVVs in our history are included in the basic, secondary and tertiary education curricula.

The concept of an effective remedy can be read from the law.

The requirements of effective remedies beyond monetary compensation are also supported by jurisprudence. In *Department of Environment and Natural Resources v. United Planners Consultants, Inc.*:[158]

> [E]very statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. In *Atienza v Villarosa*, the doctrine was explained, thus:
>
> > No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation. What is thought, at the time of enactment, to be an all-embracing legislation may be inadequate to provide for the unfolding events of the future. So-called gaps in the law develop as the law is enforced. One of the rules of

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[158] G.R. No. 212081, February 23, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/212081.pdf> [Per J. Perlas-Bernabe, First Division].

> statutory construction used to fill in the gap is the doctrine of necessary implication. The doctrine states that what is implied in a statute is as much a part thereof as that which is expressed. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. Ex necessitate legis. And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. This is so because the greater includes the lesser, expressed in the maxim, in eo plus sit, simper inest et minus.[159]

Persuasive, as it dovetails with the requirements of our Constitution and our statutes, are international laws and treaties providing for the right to a remedy for victims of international human rights law. This has been recognized in Article 8[160] of the Universal Declaration of Human Rights; Article 2[161] of the

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[159] *Id*. at 10-11, citing *Atienza v. Villarosa*, 497 Phil. 689 (2005) [Per *J.* Callejo, Sr., *En Banc*].

[160] Universal Declaration of Human Rights, Art. 8 provides:

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

[161] International Covenant of Civil and Political Rights, Art. 2 provides:

Article 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.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:

International Covenant on Civil and Political Rights; Article 6[162] of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 14[163] of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and Article 39[164] of the

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(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
(c) To ensure that the competent authorities shall enforce such remedies when granted.

[162] International Convention on the Elimination of All Forms of Racial Discrimination, Art. 6 provides:

Article 6. States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

[163] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 14 provides:

Article 14.

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

[164] Convention on the Rights of the Child, Art. 39 provides:

Article 39. States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Convention on the Rights of the Child. The right to a remedy is also an obligation in Article 3[165] of the Hague Convention Respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV); Article 91[166] 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) of 8 June 1977; and Article 68[167] and

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[165] Hague Convention Respecting the Laws and Customs of War on Land, Art. 3 provides:

Article 3. A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

[166] Protocol Additional to the Geneva Conventions, Art. 91 provides:

Article 91. Responsibility — A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

[167] Rome Statute of the International Criminal Court, Art. 68 provides:

Article 68. Protection of the victims and witnesses and their participation in the proceedings

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in Article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
2. As an exception to the principle of public hearings provided for in Article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.
3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages

Article 75[168] of the Rome Statute of the International Criminal Court. Additionally, the Rome Statute of the International Criminal Court requires that the "principles relating to reparations

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of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in Article 43, paragraph 6.
5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

[168] Rome Statute of the International Criminal Court, Art. 75 provides:

Article 75. Reparations to victims

1. The Court shall establish principles relating to reparations to, or in respect of victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.
2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in Article 79.
3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.
4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under Article 93, paragraph 1.

A State Party shall give effect to a decision under this article as if the provisions of Article 109 were applicable to this article.

to, or in respect of, victims, including restitution, compensation and rehabilitation"[169] be established by state parties.

Except for the Hague Convention of 1907, the Philippines has ratified all of these international conventions.[170] The contents of the Hague Convention of 1907 already form part of customary international law embodying much of the foundation of international humanitarian law. All the obligations in these treaties are already part of our laws.

We take a closer look at the International Convention on Civil and Political Rights (ICCPR). Part II, Article 2, Section 3 provides:

**PART II**
***Article 2***

. . . . . .

3. Each State Party to the present Covenant undertakes:

(a) *To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

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[169] Rome Statute of the International Criminal Court, Art. 75.

[170] The Philippines signed and approved the Universal Declaration on Human Rights on December 10, 1948 as part of the United Nations General Assembly that adopted it; ratified the International Convention on Civil and Political Rights on October 23, 1986; the International Convention on the Elimination of All Forms of Racial Discrimination on September 15, 1967; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on June 26, 1987; Convention on the Rights of the Child on August 21, 1990; the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of June 8, 1977 on March 30, 2012; the Rome Statute of the International Criminal Court on August 30, 2011.

(c) *To ensure that the competent authorities shall enforce such remedies when granted.* (Emphasis supplied)

The United Nations General Assembly later adopted Resolution No. 60/147, which embodied the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles).[171] The Basic Principles was adopted to affirm and expound on the right of victims to a remedy as provided for in the ICCPR and other international laws and treaties. It is persuasive in the ICCPR's interpretation and contributes to achieving the full guarantee for respect of human rights required by the Constitution.

The Basic Principles does not entail new international obligations. The document only identifies "mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary through different as to their norms."[172]

Under the Basic Principles, the dignity of victims must be respected, and their well-being ensured. The State must take measures to safeguard that its laws protect the victims from re-traumatization:

VI. Treatment of victims

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken

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[171] UN G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (16 December 2005). The Basic Principles and Guidelines were recommended by the UN Commission on Human Rights in its resolution 2005/35 dated April 19, 2005 and by the Economic and Social Council also in its resolution dated 2005/30 dated July 25, 2005.

[172] Basic Principles, 7th whereas clause provides:
Emphasizing that the Basic Principles and Guidelines contained herein do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms[.]

to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

The victims' right to a remedy under the Basic Principles includes adequate, *effective*, and prompt reparation for harm suffered:

VII. Victims' right to remedies

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

(a) Equal and effective access to justice;

(b) Adequate, effective and prompt reparation for harm suffered;

(c) Access to relevant information concerning violations and reparation mechanisms.

The Basic Principles further elucidates the reparation to which the victims are entitled. It provides that the reparation must be proportional to the harm suffered. The general concept of reparation and effective remedies is found in Principles 15 and 18 of the Basic Principles:

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparations should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

. . . . . .

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Full and effective reparation includes Restitution, Compensation, Rehabilitation, Satisfaction, and Guarantees of Non-repetition. These are provided for under Principles 19 to 23:

19. Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, and return to one's place of residence, restoration of employment and return of property.

20. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law such as:

(a) Physical or mental harm;
(b) Lost opportunities, including employment, education and social benefits;
(c) Material damages and loss of earnings, including loss of earning potential;
(d) Moral damage;
(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. Rehabilitation should include medical and psychological care as well as legal and social services.

22. Satisfaction should include, where applicable, any or all of the following:

(a) Effective measures aimed at the cessation of continuing violations;
(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
(c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and of the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;
(f) Judicial and administrative sanctions against persons liable for the violations;
(g) Commemorations and tributes to the victims;
(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(a) Ensuring effective civilian control of military and security forces;
(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
(c) Strengthening the independence of the judiciary;
(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

The Basic Principles requires separate obligations that are complete in themselves, and all these components are necessary for achieving an "effective remedy"[173] against human rights violations.

Thus, Compensation for violations committed is not enough without the victim's satisfaction. Satisfying and compensating the victim is not enough unless there is a guarantee against non-repetition. This requires a legal order that can address these violations, as well as a cultural and educational system that allows remembrance of its occurrences.[174] It also requires a state that does what it can to guarantee non-repetition of these offenses.

These are essential to "guarantee full respect for human rights."[175] Article 2, Section 11 of the Constitution provides that "[t]he State values the dignity of every human person. It guarantees full respect of human rights."[176]

This provision is not a mere guide or suggestion. It requires the positive act of the State to *guarantee* full respect of human rights. Moreover, the State, with all its branches and instrumentalities including this Court, must provide this guarantee. When this state policy is invoked, the State cannot

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[173] Rep. Act No. 10368, Sec. 2

[174] *See* Memoradum (G.R. No. 225973), p. 47; Memorandum Commission on Human Rights Memorandum, p. 7.

[175] CONST., Art II, Sec. 11.

[176] CONST., Art. II, Sec. 11.

shy away from recognizing it as a source of right that may be affected by government actions.

The reparation due to the victims should not be solely monetary. In addition to the compensation provided under Republic Act No. 10368, the State must restitute, rehabilitate, satisfy, and guarantee non-repetition to victims.

Pertinent to issues raised by the victims of the Marcos regime is the reparation in the form of Satisfaction and Guarantee of Non-Repetition. The Basic Principles is clear that Satisfaction must include a "public apology, including acknowledgement of the facts and acceptance of responsibility," "judicial and administrative sanctions against persons liable for the violations," and an "inclusion of an accurate account of the violations that occurred . . . in educational material at all levels."

The Guarantee of Non-Repetition requires the State to "provide, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society," and "review and reform laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law."

The transfer of the remains of Ferdinand E. Marcos negates all these aspects of Satisfaction and Guarantee of Non-Repetition. There has been no sufficient public apology, full acknowledgement of facts, or any clear acceptance of responsibility on the part of Ferdinand E. Marcos or his Heirs. Neither was Ferdinand E. Marcos sanctioned specifically for human rights violations. Now that he is dead, the victims can no longer avail themselves of this recourse. To add insult to this injury, the President decided to acknowledge the heroic acts and other favorable aspects of Ferdinand E. Marcos, the person primarily responsible for these human rights violations. This affects the accuracy of the accounts of the violations committed on the victims. It reneges on the State's obligation to provide human rights education and humanitarian law education to the Filipino People. It contributes to allowing violations of international human rights law and encourages impunity. If the State chooses to revere the person responsible for human rights violations, the perception of its

People and the rest of the world on the gravity and weight of the violations is necessarily compromised.

Allowing Ferdinand E. Marcos' burial under the pretense of the President's policy of promotion of national healing and forgiveness lowers the victims' dignity and takes away from them their right to heal in their own time. Allowing the Marcos burial on the premise of national healing and forgiveness is a compulsion from the State for the victims and the Filipino People to forgive their transgressor without requiring anything to be done by the transgressor or his successors, and without even allowing the victims to be provided first the reparations granted to them by law.

Despite the conclusive presumption accorded to some of these human rights victims, they have still been unable to claim the reparations explicitly granted to them by Republic Act No. 10368. Meanwhile, Ferdinand E. Marcos is awarded forgiveness and accorded state funds and public property to honor him as a Former President and a military man. This is not the effective remedy contemplated by law.

**XIII**

To allow the Marcos burial is diametrically opposed to Republic Act No. 10368. The stated policies are clear. These must be applied, and applied in its entirety—in accordance with its spirit and intent:

> Thus, the literal interpretation of a statute may render it meaningless; and lead to absurdity, injustice, or contradiction. When this happens, and following the rule that the intent or the spirit of the law is the law itself, resort should be had to the principle that the spirit of the law controls its letter. Not to the letter that killeth, but to the spirit that vivifieth. ***Hindi ang letra na pumapatay, kung hindi ang diwa na nagbibigay buhay.***[177] (Emphasis supplied)

Likewise, a law is always superior to an administrative regulation, including those issued by the Armed Forces of the

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[177] *League of Cities of the Phils. v. Commission on Elections*, 592 Phil. 1, 62 (2008) [Per *J.* Carpio, *En Banc*].

Philippines.[178] The latter cannot prevail over the former. In *Vide Conte, et al. v. Commission on Audit*:[179]

It is doctrinal that in case of conflict between a statute and an administrative order, the former must prevail. A rule or regulation must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid. The rule-making power of a public administrative body is a delegated legislative power, which it may not use either to abridge the authority given it by the Congress or the Constitution or to enlarge its power beyond the scope intended. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it. *It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute*, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute.[180] (Emphasis supplied)

This is especially true when the regulation does not stem from any enabling statute. Administrative regulations stem from the President's administrative power. In *Ople v. Torres*:[181]

Corollary to the power of control, the President also has the duty of supervising the enforcement of laws for the maintenance of general peace and public order. Thus, he is granted *administrative power* over bureaus and offices under his control to enable him to discharge his duties effectively.[182]

*Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs. It enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents. To this end, he can issue administrative orders, rules and regulations.* (Emphasis supplied, citations omitted)

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[178] *China Banking Corp. v. Court of Appeals*, 333 Phil. 158, 173 (1996) [Per *J.* Francisco, Third Division].

[179] 332 Phil. 20 (1996) [Per *J.* Panganiban, *En Banc*].

[180] *Id.* at 36.

[181] 354 Phil. 948 (1998) [Per *J.* Puno, *En Banc*].

[182] *Id.* at 967-968.

Because regulations are issued under the administrative powers of the President, its function is mostly to properly apply policies and enforce orders. Thus, regulations must be in harmony with the law. The AFP Regulations cannot be given priority by the President over Republic Act No. 10368.

Nonetheless, assuming the AFP Regulations are valid, Republic Act No. 10368 has amended them such that they disallow any governmental act that conflicts with the victims' right to recognition and reparation. Section 31 of Republic Act No. 10368 provides:

> Section 31. *Repealing Clause.* — All laws, decrees, executive orders, rules and regulations or parts thereof inconsistent with any of the provisions of this Act, including Section 63(b) of Republic Act No. 6657, as amended, otherwise known as the Comprehensive Agrarian Reform Law of 1988 and Section 40(a) of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, are hereby repealed, amended or modified accordingly.

Since Republic Act No. 10368 should be read into or deemed to have amended the AFP Regulations, the transfer of the remains of Ferdinand E. Marcos is illegal.

**XIV**

Assuming the AFP Regulations remain the governing regulation over the Libingan ng mga Bayani, Ferdinand E. Marcos is still disqualified from being interred there. It can be inferred from the list of disqualifications that those who have committed serious crimes, something inherently immoral, despite having served the country in some way, are not "bayani" deserving to be interred at the Libingan ng mga Bayani.

Associate Justice Diosdado M. Peralta contends that Ferdinand E. Marcos is not disqualified from being interred at the Libingan ng mga Bayani under the AFP Regulations as he was neither convicted of an offense involving moral turpitude nor dishonorably discharged from active military service. This argument is hinged on the constitutional provision that a person shall not be held to answer for a criminal offense without due

process of law and the presumption of innocence in all criminal prosecutions.[183]

It is true that the presumption of innocence applies in criminal prosecutions. Nonetheless, relying on the presumption of innocence to allow Ferdinand E. Marcos to escape the consequence of his crimes is flimsy.

First, this is not a criminal prosecution, and the rights of the accused do not apply. Second, Ferdinand E. Marcos' innocence is not in issue here. Even public respondents do not insult petitioners by arguing that Ferdinand E. Marcos is not complicit and responsible for the atrocities committed during his dictatorship. Third, an invocation of the presumption of Ferdinand E. Marcos' innocence is a rejection of the legislative findings of Republic Act No. 10368 and of this Court's own pronouncements in numerous cases.

The issue at hand is whether Ferdinand E. Marcos is someone who should be honored and emulated.

There is no presumption of innocence when it comes to determining one's fitness to be buried at the Libingan ng mga Bayani. Moreover, as Ferdinand E. Marcos is a public officer, the standards are high. Article XI of the Constitution provides the basic rules that must be followed by all public officers:

> ARTICLE XI
> Accountability of Public Officers
>
> SECTION 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

Not only is Ferdinand E. Marcos responsible for gross human rights violations and, thus, crimes of moral turpitude; he also failed to meet any of the standards imposed on a public officer under the Constitution. On this alone, he is not worthy of being emulated and does not belong at the Libingan ng mga Bayani.

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[183] *Ponencia*, pp. 51-52.

**XV**

The Solicitor General claims that the provision in the Administrative Code of 1987 is the government's legal basis for the instructions to bury the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani:

> Section 14. Power to Reserve Lands of the Public and Private Domain of the Government. – (1) The President shall have the power to reserve for settlement or *public use*, and for specific public purposes, any of the lands of the public domain, the use of which is *not otherwise directed by law*. The reserved land shall thereafter remain subject to the specific public purpose indicated until otherwise provided by law or proclamation. (Emphasis supplied)

This provision requires two (2) substantive requirements. First, the segregation of land is "for public use and a specific public purpose." Second, the use of public land "is not otherwise directed by law."

The Solicitor General cites *Manosca v. Court of Appeals*[184] and *City of Manila v. Chinese Community of Manila*.[185] These cases provide little assistance to their case.

The Solicitor General claims that "recognizing a person's contribution to Philippine history and culture is consistent with the requirement of public use."[186] Yet, he acknowledges on behalf of government that Martial Law was part of the "dark pages" of our history. Thus, in his Consolidated Comment:

> No amount of heartfelt eulogy, gun salutes, holy anointment, and elaborate procession and rituals can transmogrify the dark pages of history during Martial Law. As it is written now, Philippine history is on the side of Petitioners and everybody who fought and died for democracy.[187]

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[184] G.R. No. 106440, January 29, 1996, 252 SCRA 412 [Per *J.* Vitug, First Division].

[185] 40 Phil. 349 (1919) [Per *J.* Johnson, *En Banc*].

[186] Solicitor General Consolidated Comment, p. 43.

[187] *Id.* at 60-61.

Ferdinand E. Marcos was ousted from the highest office by the direct sovereign act of the People. His regime was marked by brutality and by the "organized pillaging" that came to pass.

In *Marcos v. Manglapus*,[188] which was decided in 1989, this Court acknowledged that Ferdinand E. Marcos was "a dictator"[189] who was "forced out of office and into exile after causing twenty years of political, economic and social havoc in the country."[190] This Court recognized the immediate effects of the Marcos regime:

> We cannot also lose sight of the fact that the country is only now beginning to recover from the hardships brought about by the plunder of the economy attributed to the Marcoses and their close associates and relatives, many of whom are still here in the Philippines in a position to destabilize the country, while the Government has barely scratched the surface, so to speak, in its efforts to recover the enormous wealth stashed away by the Marcoses in foreign jurisdictions. Then, we cannot ignore the continually increasing burden imposed on the economy by the excessive foreign borrowing during the Marcos regime, which stifles and stagnates development and is one of the root causes of widespread poverty and all its attendant ills. The resulting precarious state of our economy is of common knowledge and is easily within the ambit of judicial notice.[191]

In 2006, in *Yuchengco v. Sandiganbayan*:[192]

> In *PCGG v Peña*, this Court, describing the rule of Marcos as a "well-entrenched plundering regime of twenty years" noted the "magnitude of the past regime's 'organized pillage' and the ingenuity of the plunderers and pillagers with the assistance of the experts and best legal minds available in the market." The evidence presented in this case reveals one more instance of this grand scheme. This Court—guardian of the high standards and noble traditions of the legal profession—has thus before it an opportunity to undo, even if

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[188] 258 Phil. 479 (1989) [Per *J*. Cortes, *En Banc*].

[189] *Id*. at 492.

[190] *Id*.

[191] *Id*. at 509.

[192] 515 Phil. 1 (2006) [Per *J*. Carpio Morales, *En Banc*].

only to a certain extent, the damage that has been done.[193] (Citations omitted)

In the 2001 case of *Estrada v. Desierto*,[194] this Court characterized once again the 1986 EDSA Revolution and, in so doing, described the rejection of the Marcos regime:

> [T]he government of former President Aquino was the result of a successful revolution by the sovereign people, albeit a peaceful one. No less than the Freedom Constitution declared that the Aquino government was installed through a direct exercise of the power of the Filipino people in defiance of the provisions of the 1973 Constitution, as amended.[195]

The other possible purpose stated by the Solicitor General is to achieve the ambiguous goal of "national healing."[196] During the Oral Arguments, the Solicitor General argues that the aim of the burial is to achieve "changing the national psyche and beginning the painful healing of this country." In doing so, however, respondents rewrite our history to erase the remembrance of Ferdinand E. Marcos as a symbol of the atrocities committed to many of our People. It is an attempt to forget that he was a human rights violator, a dictator, and a plunderer, in the name of "national healing" and at the cost of repetition of the same acts in this or future generations.

Considering Ferdinand E. Marcos' disreputable role in Philippine history, there can be no recognition that serves the public interest for him. There is no legitimate public purpose for setting aside public land at the Libingan ng mga Bayani—definitely a national shrine—for him.

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[193] *Id*. at 48-49.

[194] 406 Phil. 1 (2001) [Per *J*. Puno, *En Banc*].

[195] *Id*. at 43-44. See also *Lawyers' League for a Better Philippines v. Aquino*, G.R. No. 73748, May 22, 1986 <http://elibrary.judiciary.gov.ph//dtSearch/dtisapi6.dll?cmd=getdoc&DocId=142363&Index=%2aaa1de0751c9cff7439815a4b27e3ab58&HitCount=5&hits=4+d+38+71+e1+&SearchForm=C%3a%5celibrev%5celibsearch%5cdtform>, as cited in *Saturnino v. Bermudez*, 229 Phil. 185, 188 (1986) [*Per Curiam, En Banc*].

[196] Solicitor General, Consolidated Comment, page 5.

*Manosca* states the standard that governmental action to favor an individual or his or her memory will only be allowed if it is to recognize the person's laudable and distinctive contribution to Philippine history or culture. Ferdinand E. Marcos' leadership has been discredited both by statutory provisions and jurisprudence. He has contribution that stands out and that should be validly recognized.

It is disturbing that what appears to be the underlying cause for the interment of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani is the fulfillment of a campaign promise by President Duterte to the Heirs of Marcos. This dovetails with petitioners' manifestation that campaign contributions were made by the Heirs of Marcos. Promised acts of a political candidate to a family to further personal political ambition at the cost of the public's welfare cannot be considered as the public purpose required by the Administrative Code of 1987.

**XVI**

The exercise of the President's powers may not be justified by invoking the executive's residual powers.

An exercise of the President's residual powers is appropriate only if there is no law delegating the power to another body, and if there is an exigency that should be addressed immediately or that threatens the existence of government. These involve contingencies that cannot await consideration by the appropriate branches of government.

In *Gonzales v. Marcos*,[197] this Court recognized the residual power of the President to administer donations specifically in the absence of legislative guidelines. This Court stressed that it was necessary that the executive act promptly, as time was of the essence:

> There is impressive juridical support for the stand taken by the lower court. Justice Malcolm in *Government of the Philippine Islands v. Springer* took pains to emphasize: "Just as surely as the duty of caring for governmental property is neither judicial nor legislative

[197] 160 Phil. 637 (1975) [Per *J.* Fernando, *En Banc*].

in character is it as surely executive." It would be an unduly narrow or restrictive view of such a principle if the public funds that accrued by way of donation from the United States and financial contributions for the Cultural Center project could not be legally considered as "governmental property." They may be acquired under the concept of *dominium,* the state as a *persona* in law not being deprived of such an attribute, thereafter to be administered by virtue of its prerogative of *imperium*. What is a more appropriate agency for assuring that they be not wasted or frittered away than the Executive, the department precisely entrusted with management functions? It would thus appear that for the President to refrain from taking positive steps and await the action of the then Congress could be tantamount to dereliction of duty. *He had to act; time was of the essence. Delay was far from conducive to public interest.* It was as simple as that. Certainly then, it could be only under the most strained construction of executive power to conclude that in taking the step he took, he transgressed on terrain constitutionally reserved for Congress.[198] (Emphasis supplied, citations omitted)

In *Marcos v. Manglapus*,[199] the government was unstable and was threatened by various forces, such as elements within the military, who were among the rabid followers of Ferdinand E. Marcos. Thus, the residual power of the President to bar the return of Ferdinand E. Marcos' body was recognized by this Court as borne by the duty to preserve and defend the Constitution and ensure the faithful execution of laws:

The power involved is the President's residual power to protect the general welfare of the people. It is founded on the duty of the President, as steward of the people. To paraphrase Theodore Roosevelt, it is not only the power of the President but also his duty to do anything not forbidden by the Constitution or the laws that the needs of the nation demand. It is a power borne by the President's duty to preserve and defend the Constitution. It also may be viewed as a power implicit in the President's duty to take care that the laws are faithfully executed.[200]

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[198] *Id*. at 644.

[199] 258 Phil. 479 (1989) [Per *J*. Cortes, *En Banc*].

[200] *Id*. at 504, *citing* Hyman, *The American President*, where the author advances the view that an allowance of discretionary power is unavoidable in any government and is best lodged in the President.

Further, this Court recognized the President's residual powers for the purpose of, and necessary for, ***maintaining peace***:

> More particularly, this case calls for the exercise of the President's powers as protector of the peace. The power of the President to keep the peace is not limited merely to exercising the commander-in-chief powers in times of emergency or to leading the State against external and internal threats to its existence. The President is not only clothed with extraordinary powers in times of emergency, but is also tasked with attending to the day-to-day problems of maintaining peace and order and ensuring domestic tranquillity in times when no foreign foe appears on the horizon. Wide discretion, within the bounds of law, in fulfilling presidential duties in times of peace is not in any way diminished by the relative want of an emergency specified in the commander-in-chief provision. For in making the President commander-in-chief the enumeration of powers that follow cannot be said to exclude the President's exercising as Commander-in-Chief powers short of the calling of the armed forces, or suspending the privilege of the writ of *habeas corpus* or declaring martial law, in order to keep the peace, and maintain public order and security.[201]

In *Sanlakas v. Reyes*,[202] where several hundred members of the Armed Forces of the Philippines stormed the Oakwood Premiere apartments in Makati City and demanded Former President Gloria Macapagal-Arroyo's resignation, the use of the President's residual power to declare a state of rebellion was allowed. This Court held that although the declaration is a superfluity, her power to declare a state of rebellion arises from her powers as Chief Executive and Commander-in-Chief.[203] This Court examined the history of such powers:

> The lesson to be learned from the U.S. constitutional history is that the Commander-in-Chief powers are broad enough as it is and become more so when taken together with the provision on executive power and the presidential oath of office. Thus, the plenitude of the powers of the presidency equips the occupant with the means to address

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[201] *Id*. at 504-505, *citing* Rossiter, *The American Presidency*.

[202] 466 Phil. 482 (2004) [Per *J*. Tinga, *En Banc*].

[203] *Id*. at 522.

exigencies or threats which undermine the very existence of government or the integrity of the State.[204]

In these cases, the residual powers recognized by this Court were directly related to the President's duty to attend to a present contingency or an urgent need to act in order to preserve domestic tranquility. In all cases of the exercise of residual power, there must be a clear lack of legislative policy to guide executive power.

This is not the situation in these consolidated cases. As discussed, there are laws violated. At the very least, there was no urgency. There was no disturbance to the public peace.

**XVII**

I disagree with Associate Justice Jose P. Perez's view that the issue relating to the transfer of the remains of Ferdinand E. Marcos was already resolved through the political process of the election of the President of the Philippines.[205] In his view, the issue had already been presented to the public during the campaign season, and President Duterte was elected despite petitioners' opposition. Thus, he concludes that the sovereign has subscribed to the policy promised by President Duterte.[206] In other words, he is of the opinion that the People decided that Ferdinand E. Marcos should be buried at the Libingan ng mga Bayani because President Duterte did not lose.[207]

Associate Justice Perez suggests that the President-elect's acts to effectuate his campaign promises may no longer be questioned by any party, regardless of whether it is contrary to the Constitution, laws, and public policy, regardless of whether he obtained the votes of the majority, and regardless of whether he acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[208] He takes the position that any act of

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[204] *Id.* at 518.

[205] *J.* Perez, Concurring Opinion, p. 9.

[206] *Id.* at 10.

[207] *Id.* at 12.

[208] *Id.*

the President to fulfill his electoral promise will be deemed legitimate because the People have supposedly chosen him as their President.[209]

I cannot agree to this dangerous proposition. We are a constitutional democracy: a State under the rule of law.

The number of votes obtained by the President does not determine whether the Constitution or the laws will or will not apply. The Constitution is not suspended on account of the election of a President who promised a particular policy. We elect a President whom we expect to implement political platforms given the existing state of the law. The process of election is not a means to create new law. The process of creating law is provided in Article VIII of the Constitution. Neither should the elections for President be the process for amending the Constitution. The process for amending the Constitution is provided in Article XVII of the same Constitution.

Furthermore, the President is tasked to execute the law—not create it. It is the legislative branch that determines state policies through its power to enact, amend, and repeal laws. Thus, it is dangerous to assume that the sovereign voted for the President to "ratify" policies he promised during his campaign.

In other words, under our constitutional order, we elect a President subject to the Constitution and the current state of the law. We do not, through the process of elections, anoint a king.

Moreover, the theory that a campaign promise becomes policy is an abdication of the judiciary's duty to uphold the Constitution and its laws.

Article VIII, Section 1 of the Constitution provides:

ARTICLE VIII
Judicial Department

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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[209] *Id*.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess jurisdiction on the part of any branch or instrumentality of the Government.

This provision defines this Court's duty to ensure that all branches or instrumentalities of Government act only within the scope of their powers as defined by the Constitution and by law. Nothing in the provision allows campaign promises to trump the rule of law.

Associate Justice Perez's Concurring Opinion is founded upon the premise that the transfer of the remains of Ferdinand E. Marcos is a question of policy to be determined by the People, outside the scope of this Court's power of judicial review. He claims that the matter is a political question. Unfortunately, the allegations of an infringement upon a fundamental individual or collective right and grave abuse of discretion on the part of another branch of government, which were properly pleaded by petitioners, were not addressed.

Recently, in *Diocese of Bacolod v. Commission on Elections*:[210]

The political question doctrine is used as a defense when the petition asks this court to nullify certain acts that are exclusively within the domain of their respective competencies, as provided by the Constitution or the law. In such situation, presumptively, this court should act with deference. It will decline to void an act unless the exercise of that power was so capricious and arbitrary so as to amount to grave abuse of discretion.

The concept of a political question, however, never precludes judicial review when the act of a constitutional organ infringes upon a fundamental individual or collective right. . . .

*Marcos v. Manglapus* limited the use of the political question doctrine:

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[210] G.R. No. 205728, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf> [Per *J.* Leonen, *En Banc*].

> When political questions are involved, the Constitution limits the determination to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned. If grave abuse is not established, the Court will not substitute its judgment for that of the official concerned and decide a matter which by its nature or by law is for the latter alone to decide.

How this court has chosen to address the political question doctrine has undergone an evolution since the time that it had been first invoked in *Marcos vs. Manglapus.* Increasingly, this court has taken the historical and social context of the case and the relevance of pronouncements of carefully and narrowly tailored constitutional doctrines. . . .

Many constitutional cases arise from political crises. The actors in such crises may use the resolution of constitutional issues as leverage. But the expanded jurisdiction of this court now mandates a duty for it to exercise its power of judicial review expanding on principles that may avert catastrophe or resolve social conflict.

This court's understanding of the political question has not been static or unbending. In *Llamas v. Executive Secretary Oscar Orbos*, this court held:

> While it is true that courts cannot inquire into the manner in which the President's discretionary powers are exercised or into the wisdom for its exercise, ***it is also a settled rule that when the issue involved concerns the validity of such discretionary powers or whether said powers are within the limits prescribed by the Constitution, We will not decline to exercise our power of judicial review.*** And such review does not constitute a modification or correction of the act of the President, nor does it constitute interference with the functions of the President.

The concept of judicial power in relation to the concept of the political question was discussed most extensively in *Francisco v. HRET.* In this case, the House of Representatives argued that the question of the validity of the second impeachment complaint that was filed against former Chief Justice Hilario Davide was a political question beyond the ambit of this court. . . .

As stated in *Francisco*, a political question will not be considered justiciable if there are no constitutionally imposed limits on powers

or functions conferred upon political bodies. Hence, ***the existence of constitutionally imposed limits justifies subjecting the official actions of the body to the scrutiny and review of this court.***[211] (Emphasis supplied, citations omitted)

**XVIII**

Similarly, I cannot agree with the conclusions of Associate Justice Arturo D. Brion with respect to the interpretation of Article VIII, Section 1 of the Constitution.

Associate Justice Brion opines that this Court's expanded jurisdiction under the Constitution does not empower this Court to review allegations involving violations and misapplication of statutes.[212] He claims that the remedies available to petitioners are those found in the Rules of Court, which address errors of law.[213] He claims that this Court can only check whether there is grave abuse of discretion on the part of another branch or instrumentality of government when there is a violation of the Constitution.[214] Necessarily, petitioners must have shown that there is prima facie evidence that the President violated the Constitution in allowing the Marcos burial.[215] He insists that the Court's authority, under its expanded jurisdiction, is limited to determining the constitutionality of a governmental act. Grave abuse of discretion from violations of statutes cannot be made a matter of judicial review under this Court's expanded jurisdiction.

Associate Justice Brion's interpretation proceeds from the theory that there is a hierarchy of breach of the normative legal order and that only a breach of the Constitution will be considered grave abuse of discretion.

In my view, this reading is not supported by the text of the provision or by its history.

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[211] *Id*. at 20-23.

[212] *J*. Brion, Concurring Opinion, p. 2.

[213] *Id*.

[214] *Id*. at 3.

[215] *Id*.

Article VIII, Section 1 of the Constitution is clear. This Court is possessed of the duty to exercise its judicial power to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of government. This provision does not state that this Court may exercise its power of judicial review exclusively in cases of violations of the Constitution.

An illegal act is an illegal act, no matter whether it is illegal as a result of the violation of a constitutional provision or a violation of a valid and existing law. It is the exercise of *discretion* that must be subjected to review, and it is the discretion of *any* branch or instrumentality of government. Nothing in the Constitution can lead to the conclusion that a violation of a statute by the President is not a grave abuse of discretion.

This jurisdiction to determine whether there is grave abuse of discretion amounting to lack or excess jurisdiction of any branch of government is a new provision under the 1987 Constitution. It was added as a safeguard from abuses of other branches of government, which were justified under the doctrine of political question. In *Francisco, Jr. v. House of Representatives*:[216]

> In our own jurisdiction, as early as 1902, decades before its express grant in the 1935 Constitution, the power of judicial review was exercised by our courts to invalidate constitutionally infirm acts. And as pointed out by noted political law professor and former Supreme Court Justice Vicente V. Mendoza, the executive and legislative branches of our government in fact effectively acknowledged this power of judicial review in Article 7 of the Civil Code, to wit:
>
> > Article 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.
> >
> > *When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.*
> >
> > *Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.*

[216] 460 Phil. 830 (2003) [Per *J.* Carpio-Morales, *En Banc*].

. . . . . .

In the scholarly estimation of former Supreme Court Justice Florentino Feliciano, "*. . . judicial review is essential for the maintenance and enforcement of the separation of powers and the balancing of powers among the three great departments of government* through the definition and maintenance of the boundaries of authority and control between them." To him, "[j]udicial review is the chief, indeed the only, medium of participation — or instrument of intervention — of the judiciary in that balancing operation."

To ensure the potency of the power of judicial review to curb grave abuse of discretion by "*any branch or instrumentalities of government,*" the afore-quoted ***Section 1, Article VIII of the Constitution egraves, for the first time into its history, into block letter law the so-called "expanded certiorari jurisdiction" of this Court***, the nature of and rationale for which are mirrored in the following excerpt from the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion:

. . . . . .

*The first section starts with a sentence copied from former Constitution*. It says:

> The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

I suppose nobody can question it.

*The next provision is new in our constitutional law*. I will read it first and explain.

> Judicial power includes the duty of courts of justice to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part or instrumentality of the government.
>
> Fellow Members of this Commission, ***this is actually a product of our experience during martial law.*** As a matter of fact, it has some antecedents in the past, but *the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor*

> *general set up the defense of political questions and got away with it*. As a consequence, certain principles concerning particularly the writ of *habeas corpus*, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." *The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime. . . .*
>
> . . . . . .
>
> *Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.*
>
> This is the background of paragraph 2 of Section 1, which means that *the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question*.[217] (Emphasis supplied)

It is not about violations that may or may not be constitutional or statutory in character. It is about discretion gravely abused.

Regretfully, Associate Justice Brion's position ignores the legal issues presented by petitioners, which involve a question of the proper exercise of constitutional powers: whether the President may use his executive power to order the transfer of the remains of Ferdinand E. Marcos' to the Libingan ng mga Bayani burial despite the rights invoked by petitioners and other particular provisions in the Constitution, statutes, and public policy.

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[217] *Id*. at 881-884.

Definitely, there is an actual case or controversy ripe for judicial review. Recalling a position in *Spouses Imbong v. Ochoa, Jr.*:[218]

> The requirement for a "case" or "controversy" locates the judiciary in the scheme of our constitutional order. It defines our role and distinguishes this institution from the other constitutional organs.
>
> . . . . . .
>
> An actual case or controversy is "one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice." To be justiciable, the issues presented must be "'definite and concrete, touching the legal relations of parties having adverse legal interest;' a real and substantial controversy admitting of specific relief." The term justiciability refers to the dual limitation of only considering in an adversarial context the questions presented before courts, and in the process, the courts' duty to respect its co-equal branches of government's powers and prerogatives under the doctrine of separation of powers.
>
> There is a case or controversy when there is a real conflict of rights or duties ***arising from actual facts.*** These facts, properly established in court through evidence or judicial notice, provide the natural limitations upon judicial interpretation of the statute. When it is claimed that a statute is inconsistent with a provision of the Constitution, the meaning of a constitutional provision will be narrowly drawn.
>
> Without the necessary findings of facts, this court is left to speculate leaving justices to grapple within the limitations of their own life experiences. This provides too much leeway for the imposition of political standpoints or personal predilections of the majority of this court. This is not what the Constitution contemplates. Rigor in determining whether controversies brought before us are justiciable avoids the counter majoritarian difficulties attributed to the judiciary.
>
> Without the existence and proper proof of actual facts, any review of the statute or its implementing rules will be theoretical and abstract.

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[218] *J.* Leonen, Dissenting Opinion in *Spouses Imbong v. Ochoa, Jr.*, G.R. No. 204819, April 8, 2014, 721 SCRA 146, 731-847 [Per *J.* Mendoza, *En Banc*].

Courts are not structured to predict facts, acts or events that will still happen. Unlike the legislature, we do not determine policy. We read law only when we are convinced that there is enough proof of the real acts or events that raise conflicts of legal rights or duties. Unlike the executive, our participation comes in after the law has been implemented. Verily, we also do not determine how laws are to be implemented.[219]

There is an actual case or controversy in this case as it involves a conflict of legal rights arising from actual facts, which have been properly established through evidence or judicial notice, and which provide the natural limitations upon judicial interpretation of the statute.

Petitioners invoke a violation of their existing legal rights, among which is their right as victims of human rights violations committed during the Marcos regime. They invoke an act from the executive branch, which allegedly violates their rights and was allegedly committed with grave abuse of discretion amounting to lack or excess of jurisdiction. On the other hand, respondents insist on the President's right to exercise his executive discretion on who may or may not be buried at the Libingan ng mga Bayani. Thus, a conflict of rights must be determined by this Court in accordance with the Constitution and statutes. This Court's ruling on the matter will not be merely advisory; on the contrary, it shall be binding among the parties and shall be implemented with force and effect. Thus, there is an actual case or controversy.

**XIX**

Associate Justice Peralta contends that petitioners have no *locus standi* because they failed to show any direct suffering or personal injury that they have incurred or will incur as a result of Ferdinand E. Marcos' burial.[220]

I cannot agree.

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[219] *Id.* at 738-739.

[220] *Ponencia*, p. 11.

The requirement of *locus standi* requires that the party raising the issue must have "a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result."[221]

In *Public Interest Center, Inc. v. Roxas*:[222]

> In *Integrated Bar of the Philippines v. Zamora*, this Court defined legal standing as follows:
>
> Legal standing or *locus standi* has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The gist of the question of standing is whether a party alleges "such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."
>
> In public suits, the plaintiff, representing the general public, asserts a "public right" in assailing an allegedly illegal official action. The plaintiff may be a person who is affected no differently from any other person, and could be suing as a "stranger," or as a "citizen" or "taxpayer." To invest him with *locus standi*, the plaintiff has to adequately show that he is entitled to judicial protection and has a sufficient interest in the vindication of the asserted public right.[223]
> (Citations omitted)

Several petitioners allege that they are human rights victims during the Marcos regime who had filed claims under Republic Act No. 10368. In their Petitions, they claim that respondents' questioned acts affect their right to reparation and recognition under Republic Act No. 10368 and international laws. As petitioners have an interest against Ferdinand E. Marcos and have claims against the State in connection with the violation

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[221] *People v. Vera*, 65 Phil. 56, 87 (1937) [Per *J.* Laurel, First Division].

[222] 542 Phil. 443 (2007) [Per *J.* Carpio Morales, Second Division].

[223] *Id.* at 455-456.

of their human rights, petitioners are vested with material interest in the President's act in allowing the Marcos burial at the Libingan ng mga Bayani.

In any case, the rule on standing has been relaxed "when the matter is of transcendental importance, of overreaching significance to society, or of paramount public interest."[224] In *In Re Supreme Court Judicial Independence v. Judiciary Development Fund:*[225]

> Transcendental importance is not defined in our jurisprudence, thus, in *Francisco v. House of Representatives*:
>
> > There being no doctrinal definition of transcendental importance, the following instructive determinants formulated by former Supreme Court Justice Florentino P. Feliciano are instructive: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.[226] (Citations omitted)

Given that public property and funds are involved and there are allegations of disregard of constitutional and statutory limitations by the executive department, this Court may properly act on the Petitions.

The *ponencia* states that petitioners violated the doctrines of exhaustion of administrative remedies and hierarchy of

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[224] *In Re Supreme Court Judicial Independence v. Judiciary Development Fund (Resolution)*, UDK-15143, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/15143.pdf> [Per *J.* Leonen, *En Banc*], citing *Biraogo v. Philippine Truth Commission*, 651 Phil. 374, 441 (2010) [Per *J.* Mendoza, *En Banc*], in turn citing *Social Justice Society v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*, 591 Phil. 393, 404 (2008) [Per *J.* Velasco, Jr., *En Banc*], *Tatad v. Secretary of the Department of Energy*, 346 Phil. 321, 359 (1997) [Per *J.* Puno, *En Banc*], and *De Guia v. Commission on Elections*, G.R. No. 104712, May 6, 1992, 208 SCRA 420, 422 [Per *J.* Bellosillo, *En Banc*].

[225] Resolution, UDK-15143, January 21, 2015 [Per *J.* Leonen, *En Banc*].

[226] *Id.* at 9-10.

courts,[227] which essentially espouse the principle that no direct resort to this Court is allowed when there are other plain, speedy, and adequate remedies.

However, there are exceptions to this rule, as restated in *Diocese of Bacolod*:

(a) When there are genuine issues of constitutionality that must be addressed at the most immediate time;

(b) When the issues involved are of transcendental importance. In these cases, the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence. The doctrine relating to constitutional issues of transcendental importance prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection;

(c) In cases of first impression, and no jurisprudence yet exists that will guide the lower courts on this matter;

(d) When the constitutional issues raised are better decided by this court;

(e) When the filed petition reviews the act of a constitutional organ;

(f) When there is a time element presented in this case cannot be ignored;

(g) When there is no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their rights; and

(h) When the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities,

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[227] *Ponencia*, p. 13.

> or the appeal was considered as clearly an inappropriate remedy."[228]

These exceptions are present in these consolidated cases. First, these cases involve reviewing the act of another constitutional organ, that is, the President's exercise of discretion in allowing Ferdinand E. Marcos' burial at the Libingan ng mga Bayani. Second, these Petitions raise constitutional questions that would be better decided by this Court, as well as issues relating to public policy that may be beyond the competence of the lower courts. These cases are likewise of first impression, and no jurisprudence yet exists on this matter. Thus, the Petitions cannot be dismissed by invoking the doctrine of hierarchy of courts and exhaustion of administrative remedies.

**XX**

Grave abuse of discretion is committed when the President violates his or her own oath of office. Thus, in Article VII, Section 5 of the 1987 Constitution:

> ARTICLE VII
> Executive Department
>
> . . . . . . . . . .
>
> SECTION 5. . . .
>
> "I, do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President . . . of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the nation. So help me God."

The President's duty to faithfully execute the laws of the land is enshrined in the Constitution. Thus, in Article VII, Section 17:

> SECTION 17. The President shall have control of all executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

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[228] *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf> 15-18 [Per *J.* Leonen, *En Banc*].

In *Almario v. Executive Secretary*,[229] we have clarified that the faithful execution clause is not a separate grant of power but an obligation imposed on the President. The President is, therefore, not above the law or above judicial interpretation. He is duty-bound to obey and execute them. Thus, "administrative or executive acts, orders and regulations shall be valid ony when they are not contrary to the laws or the Constitution."[230]

In *Almario*, the President's proclamation of several national artists was nullified because several rules, guidelines, and processes of the National Commission on Culture and the Arts and the Cultural Center of the Philippines were disregarded. This Court declared that the actions of the President, contrary to the spirit of these rules, constituted grave abuse of discretion:

> Thus, in the matter of the conferment of the Order of National Artists, the President may or may not adopt the recommendation or advice of the NCCA and the CCP Boards. In other words, the advice of the NCCA and the CCP is subject to the President's discretion.
>
> Nevertheless, the President's discretion on the matter is not totally unfettered, nor the role of the NCCA and the CCP Boards meaningless.
>
> Discretion is not a free-spirited stallion that runs and roams wherever it pleases but is reigned in to keep it from straying. In its classic formulation, 'discretion is not unconfined and vagrant' but 'canalized within banks that keep it from overflowing.'
>
> The President's power must be exercised in accordance with existing laws. Section 17, Article VII of the Constitution prescribes faithful execution of the laws by the President:
>
> > Sec. 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.
>
> The President's discretion in the conferment of the Order of National Artists should be exercised in accordance with the duty to faithfully execute the relevant laws. The faithful execution clause is best construed as an obligation imposed on the President, not a separate

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[229] 714 Phil. 127 (2013) [Per *J.* Leonardo-de Castro, *En Banc*].

[230] CIVIL CODE, Art. 7.

grant of power. It simply underscores the rule of law and, corollarily, the cardinal principle that the President is not above the laws but is obliged to obey and execute them. This is precisely why the law provides that "[a]dministrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution."[231]

**XXI**

The ponencia's characterization of Ferdinand E. Marcos as "just a human who erred like us"[232] trivializes the magnitude of the suffering that he inflicted on scores of Filipinos.

Ferdinand E. Marcos' "errors" were not errors that a President is entitled to commit. They were exceptional in both severity and scale. They were inhuman acts.

Ferdinand E. Marcos provided the atmosphere of impunity that allowed the molestations, rape, torture, death, and disappearance of thousands of Filipinos. Ferdinand E. Marcos was the President who, rather than preserve and protect the public trust, caused untold anguish upon thousands of Filipino families. Their trauma, after all these years, still exists.

Ferdinand E. Marcos plundered the nation's coffers. The systematic plunder was so exceptional and outrageous that even after being ousted, he and his family brought more than ₱27,000,000.00 in freshly printed notes, 23 wooden crates, 12 suitcases and bags, and various boxes of jewelry, gold bricks, and enough clothes to fill 57 racks[233] with them to their exile in Hawaii.

These were not accidents that humans, like us, commit. These were deliberate and conscious acts by one who abused his power.

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[231] *Almario v. Executive Secretary*, 714 Phil. 127, 163-164 (2013) [Per *J.* Leonardo-de Castro, *En Banc*].

[232] *Ponencia*, p. 49.

[233] Ocampo Memorandum (G.R. No. 225973), p. 5, *citing* Nick Davies, *The $10bn question: what happened to the Marcos millions?*, The Guardian, May 7, 2016 <https://www.theguardian.com/world/2016/may/07/10bn-dollar-question-marcos-millions-nick-davies> (visited November 7, 2016).

To suggest that Ferdinand E. Marcos was "just a human who erred like us" is an affront to those who suffered under the Marcos regime.

To suggest that these were mere errors is an attempt to erase Ferdinand E. Marcos' accountability for the atrocities during Martial Law. It is an attempt to usher in and guarantee impunity for them as well as for those who will commit the same in the future.

It is within the power of this Court to prevent impunity for gross violations of human rights, systematic plunder by those whom we elect to public office, and abuse of power at the expense of our toiling masses. We should do justice rather than characterize these acts as the "mere human error" of one whom We have characterized as a dictator and an authoritarian.

**XXII**

Interpreting the law is not mere power. It is not simply our personal privilege.

Judicial review is an awesome social responsibility that should always be discharged with the desire to learn from history and to do justice. Social justice will not come as a gift. It is a product of the constant, conscious, and determined effort to understand our society and do what is right. Justice will not come when we insist that we should decide behind a veil of ignorance. Precisely, our expanded jurisdiction in the present Constitution contains our People's command for this Court not to forget that never again should this Court be blind to reality.

The reality is that the retelling of the story of Martial Law is agonizing to many who went through the ordeal. Reliving it for eternity, with the transfer of the remains of he who is responsible for the ordeal to the sacred grounds of the Libingan ng mga Bayani, will permanently cause untold anguish to the victims.

The mother who stood by her principles but was tortured, molested, or raped during Martial Law will now have to explain to her daughter why he who allowed that indignity to happen is now at the Libingan ng mga Bayani.

The family of the father or the mother or the son or the daughter or the nephew or niece or cousin who disappeared will have extreme difficulty accepting that the remains of Ferdinand E. Marcos—the President who was Commander-in-Chief and who had control over all those who wielded state coercion during Martial Law—is buried in a place that implies that he is a hero. They will have to explain to themselves, with the pain and anguish that they still suffer, why the most powerful man who was unable to help them find their kin is granted honors by this State.

Those who will celebrate this country's pride every year with the commemoration of People Power or the EDSA Revolution will also live with the contradiction that the remains of the President they ousted for his abuses is now interred at the Libingan ng mga Bayani.

National healing cannot happen without the victims' participation and consent.

The decision of the majority to deny the Petitions robs this generation and future generations of the ability to learn from our past mistakes. It will tell them that there are rewards for the abuse of power and that there is impunity for human rights violations. The decision of the majority implies that, learning from the past, our People should be silent and cower in fear of an oppressor. After all, as time passes, the authoritarian and the dictator will be rewarded.

Sooner rather than later, we will experience the same fear of a strongman who will dictate his view on the solutions of his favored social ills. Women will again be disrespected, molested, and then raped. People will die needlessly—perhaps summarily killed by the same law enforcers who are supposed to protect them and guarantee the rule of law. Perhaps, there will be people who will be tortured after they are shamed and stereotyped.

We forget the lessons of the past when we allow abuse to hold sway over the lives of those who seem to be unrelated to us. Silence, in the face of abuse, is complicity.

The burial of Ferdinand E. Marcos at the Libingan ng mga Bayani is not an act of national healing. It cannot be an act of

healing when petitioners, and all others who suffered, are not consulted and do not participate. Rather, it is an effort to forget our collective shame of having failed to act as a People as many suffered. It is to contribute to the impunity for human rights abuses and the plunder of our public trust.

The full guarantee of human rights is a fundamental primordial principle enshrined in the Constitution. It is not the antithesis of government.

To deny these Petitions is to participate in the effort to create myth at the expense of history.

Ferdinand E. Marcos' remains, by law, cannot be transferred to the Libingan ng mga Bayani. Ferdinand E. Marcos is not a "bayani."

Ferdinand E. Marcos is not a hero.

**ACCORDINGLY**, I vote to **GRANT** the consolidated Petitions.

## DISSENTING OPINION

**CAGUIOA, *J.*:**

I vehemently dissent.

Ultimately, the *ponencia*'s reason to dismiss the petitions is that there is "no clear constitutional or legal basis" to hold that there was a grave abuse of discretion attending President Rodrigo R. Duterte's order to inter former President Marcos's remains in the *Libingan ng mga Bayani* ("LNMB"). And the premise of the statement is that the sole authority in determining who are entitled and disqualified to be interred at the LNMB is the AFP Regulations.

I cannot, as a magistrate and a citizen, in good conscience, agree. My reasons are set forth below.

***The burial of former President Marcos does <u>not</u> raise a political***

***question beyond the ambit of judicial review.***

The *ponencia* holds that President Duterte's decision to have the remains interred at the LNMB involves a political question that is not a justiciable controversy.

I disagree.

The issues of justiciability and political question are inextricably intertwined. They are in reality two sides of the same coin. Their resolution usually involves mutually exclusive choices. A determination favoring one necessarily negates the other. It is an "either/or" scenario.

Invariably, any discussion of the political question doctrine will draw in the concept of judicial power and review. In turn, the presence of grave abuse of discretion amounting to lack or excess of jurisdiction is the stimulus for the exercise of judicial review.

As the doctrine of political question evolved in this jurisdiction, so did the concept of judicial power. At present, judicial power, as defined in paragraph 2, Section 1, Article VIII of the 1987 Constitution,[1] includes the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. This expanded concept of judicial power has consequently bounded, if not marginalized, the political question doctrine.

The petitioners argue that their petitions raise justiciable issues over which the Court has the power of judicial review under

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[1] Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

its expanded jurisdiction under the 1987 Constitution.[2] They cite, among others, *The Diocese of Bacolod v. COMELEC*,[3] *Marcos v. Manglapus*,[4] *Integrated Bar of the Philippines v. Zamora*,[5] *Estrada v. Desierto*,[6] and *Francisco v. The House of Representatives*[7] in support of their argument. These cases have resolved the political question issue as well.

On the other hand, public respondents argue that President Duterte's determination to have the remains of former President Marcos interred at the LNMB does not pose a justiciable controversy.[8] The Solicitor General claims that the decision involves "wisdom"[9] and thus beyond judicial review. In fine, public respondents pose "policy or wisdom" considerations to thwart the Court from taking cognizance of the petitions.[10] In support of his position, the Solicitor General relies on the cases of *Mamba v. Lara*,[11] *Belgica v. Ochoa*,[12] and *Tañada v. Cuenco*[13] as jurisprudential anchors.

In *Francisco v. The House of Representatives*,[14] the Court, after recalling the deliberations of the 1986 Constitutional Commission in relation to Section 1, Article VIII[15] of the 1987

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[2] Lagman Petition, p. 3, par. 5.

[3] G.R. 205728, January 21, 2015, 747 SCRA 1.

[4] 258 Phil. 479 (1989).

[5] 392 Phil. 618 (2000).

[6] 406 Phil. 1 (2001).

[7] 460 Phil. 830 (2003).

[8] OSG Consolidated Comment, I.A, p. 24.

[9] *Supra*, par. 55, p. 24.

[10] OSG Consolidated Comment, par. 51, p. 24; Public Respondent's Memorandum, par. 55, p. 27.

[11] 623 Phil. 63 (2009).

[12] 721 Phil. 416 (2013).

[13] 103 Phil. 1051 (1957).

[14] *Supra* note 7, at 910.

[15] Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Constitution, espoused that there are two species of political questions: (1) "truly political questions" or "non-justiciable political questions" and (2) "justiciable political questions" or those which are "not truly political questions." Thus, truly political questions are beyond judicial review while courts can review questions which are not truly political in nature.[16] The Court explained in *Francisco*:

> However, Section 1, Article VIII, of the Constitution does not define what are "truly political questions" and "those which are not truly political. Identification of these two species of political questions may be problematic. There has been no clear standard. The American case of *Baker v. Carr* attempts to provide some:
>
> > x x x Prominent on the surface of any case held to involve a political question is found a *textually demonstrable constitutional commitment* of the issue to a *coordinate political department*; or *a lack of judicially discoverable and manageable standards for resolving it*; or the *impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion*; or the *impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government*; or *an unusual need for questioning adherence to a political decision already made*; or the *potentiality of embarrassment from multifarious pronouncements by various departments on one question*. (Italics supplied)
>
> Of these standards, the more reliable have been the first three: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) the lack of judicially discoverable and manageable standards for resolving it; and (3) the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion. These standards are not separate and distinct concepts but are interrelated to each in that the presence of one strengthens the conclusion that the others are also present.

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Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[16] *Supra* note 7, at 911-912.

The problem in applying the foregoing standards is that the American concept of judicial review is radically different from our current concept, for Section 1, Article VIII of the Constitution provides our courts with far less discretion in determining whether they should pass upon a constitutional issue.

In our jurisdiction, the determination of whether an issue involves a truly political question and a non-justiciable question lies in the answer to the question of whether there are constitutionally imposed limits on powers or functions conferred upon political bodies. If there are, then our courts are duty-bound to examine whether the branch or instrumentality of the government properly acted within such limits. This Court shall thus now apply this standard to the present controversy.[17] (Citations omitted)

As early as the landmark case of *Tañada v. Cuenco*,[18] the Court has already recognized that, while the action of the executive or legislative department may be dictated by public or political policy, or may involve a question of policy or its wisdom, the judiciary is nonetheless charged with the special duty of determining the limitations which the law places on all official action, *viz*:

"It is not easy, however, to define the phrase 'political question', nor to determine what matters fall within its scope. It is frequently used to designate all questions that lie outside the scope of the judicial questions, which under the constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government." x x x

x x x x x x x x x

"x x x What is generally meant, when it is said that a question is political, and not judicial, is that it is a matter which is to be exercised by the people in their primary political capacity, or that it has been specifically delegated to some other department or particular officer of the government, with discretionary power to act. x x x Thus the

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[17] *Id*.

[18] *Supra* note 13.

Legislature may in its discretion determine whether it will pass a law or submit a proposed constitutional amendment to the people. The courts have no judicial control over such matters, not merely because they involve [a] political question, but because they are matters which the people have by the Constitution delegated to the Legislature. **The Governor may exercise the powers delegated to him, free from judicial control, so long as he observes the laws and acts within the limits of the power conferred.** His discretionary acts cannot be controllable, not primarily because they are of a political nature, but because the Constitution and laws have placed the particular matter under his control. **But every officer under a constitutional government must act according to law and subject him to the restraining and controlling power of the people, acting through the courts, as well as through the executive or the Legislature.** One department is just as representative as the other, and the judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action. The recognition of this principle, unknown except in Great Britain and America, is necessary, 'to the end that **the government may be one of laws and not [of] men**' — words which Webster said were the greatest contained in any written constitutional document." x x x[19]

The Solicitor General argues that the wisdom of the President cannot be questioned when, in the exercise of his powers under the Constitution and the Administrative Code, he deemed it appropriate to inter the remains of former President Marcos in a parcel of land of the public domain devoted for the purpose of being a military shrine, and recognize his having been a former President, a Medal of Valor Awardee, a member of the retired military personnel, and a war veteran.[20]

A mere invocation of the wisdom of the President's actions and orders does not make them untrammeled, as indeed, the exercise of Presidential powers and prerogatives is not without limitations — the exercise of the Presidential power and

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[19] *Id*. at 1066-1067 (emphasis supplied).

[20] OSG Consolidated Comment, par. 60. p. 25; Public Respondents' Memorandum, par. 62, p. 29.

prerogative under the Constitution and the Administrative Code, which the public respondents invoke, is circumscribed within defined constitutional, legal, and public policy standards.

In fact, the reliance by the Solicitor General on the powers of the President under the Constitution and the 1987 Revised Administrative Code ("RAC") to justify his decision to inter the remains of former President Marcos in the LNMB necessarily calls into play any and all underlying constitutional and legal **limitations** to such powers. Within this paradigm, judicial review by the Court is justifiable, if not called for. There is, thus, no truly political question in relation to the assailed action of the President if this is justified to have been made allegedly pursuant to his purported powers under the Constitution and the RAC.

Apart from his powers under the Constitution and the RAC, the Solicitor General also argues that the President's order to allow former President Marcos' interment at the LNMB is based on his determination that it shall promote national healing and forgiveness, and redound to the benefit of the Filipino people.[21] He further argues that the President's decision is not simply a matter of political accommodation, or even whim, but, viewed from a wider perspective, it is geared towards changing the national psyche and thus begin the painful healing of this country.[22] Lastly, he argues that the said order is in keeping with the President's campaign promise, his quest for genuine change and his desire to efface Marcos' remains as the symbol of polarity.[23]

In fine, the Solicitor General asks the Court to take the foregoing arguments at face value and admit them as truisms without any question, on the proposition that if the Court were to scrutinize them, then the President's wisdom is being doubted.

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[21] OSG Consolidated Comment, par. 61, p. 26; Public Respondents' Memorandum, par. 63, p. 29.

[22] OSG Consolidated Comment, par. 3, p. 5.

[23] *Supra*, Prefatory Statement, pp. 3-5.

This request, however, the Court cannot grant without abnegating its constitutional *duty*[24] of judicial review.

***Requisites of Judicial Review***

The flipside to the political question doctrine would be the requisites of judicial review. Before the Court may hear and decide a petition assailing the constitutionality of a law or any governmental act, the following must first be satisfied: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[25] Of these four, the most important are the first two requisites,[26] and thus will be the focus of the following discussion.

*The case presents an actual controversy ripe for adjudication.*

In *Belgica v. Ochoa*,[27] the Court expounded anew on the requirement of actual case or controversy in this wise:

> By constitutional fiat, judicial power operates only when there is an actual case or controversy. This is embodied in Section 1, Article VIII of the 1987 Constitution which pertinently states that 'judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable x x x.' Jurisprudence provides that an actual case or controversy is one which '**involves a conflict of legal rights, an**

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[24] *Francisco v. The House of Representatives, supra* note 7, at 889-890.

[25] *Belgica v. Ochoa, supra* note 12, at 518-519.

[26] *Id*. at 519, citing *Joya v. Presidential Commission on Good Government,* 296-A Phil. 595, 602 (1993).

[27] *Id*. at 519-520.

**assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. In other words**, '[**t]here must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence**.' Related to the requirement of an actual case or controversy is the requirement of 'ripeness,' meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. '**A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. It is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action**.' 'Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions.' (Emphasis supplied).

With these standards, this case presents an actual case or controversy that is ripe for adjudication. The antagonistic claims on the legality of the interment of former President Marcos at the LNMB as shown in petitioners' assertion of legally enforceable rights that may be infringed upon by the subject interment, on the one hand, and the Solicitor General's insistence on the President's prerogative to promote national healing, on the other, clearly satisfy the requirement for contrariety of legal rights. Furthermore, the issues in this case are also ripe for adjudication because it has not been denied that initial preparations and planning for the subject interment have already been undertaken by public respondents.[28]

*Petitioners have locus standi.*

I do not agree with the *ponencia's* holding that none of the petitioners had standing to file the petitions for failure to show direct and personal injury.

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[28] *Gov't. now preparing for Marcos burial at Libingan*, available at <http://www.rappler.com/nation/142266-philippines-malacanang-preparations-ferdinand-marcos-burial-libingan-ng-mga-bayani>, last accessed on October 17, 2016.

*Locus standi* is defined as a right of appearance in a court of justice on a given question.[29] It refers to a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act.[30] To satisfy the requirement of legal standing, one must allege such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.[31]

In *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*,[32] the Court recognized that in public actions, suits are not usually brought by parties who have been personally injured by the operation of a law or any other government act but by concerned citizens, taxpayers or voters who actually sue in the public interest. Thus, in a long line of cases, non-traditional plaintiffs, such as concerned citizens, taxpayers and legislators, who have not been personally injured by the assailed governmental act, have been given standing by this Court provided specific requirements have been met.[33]

For legislators, they have standing to maintain inviolate the prerogatives, powers, and privileges vested by the Constitution in their office and are allowed to sue to question the validity of any official action, which infringe upon their legislative prerogatives.[34]

In the case of taxpayers, they are allowed to sue where there is a claim that public funds are illegally disbursed or that public

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[29] *Araullo v. Aquino*, 737 Phil. 457, 535 (2014), citing *Black's Law Dictionary*, 941 (6th Ed. 1991).

[30] *Spouses Imbong v. Ochoa, Jr.*, G.R. Nos. 204819, *etc.*, April 8, 2014, 721 SCRA 146, citing *Anak Mindanao Party-list Group v. Ermita*, 558 Phil. 338, 350 (2007).

[31] *Galicto v. Aquino*, 683 Phil. 141, 170 (2012).

[32] 450 Phil. 744, 803 (2003).

[33] *Francisco v. The House of Representatives*, *supra* note 7, at 895.

[34] *Osmena III v. PSALM*, G.R. No. 212686, September 28, 2015, p. 9.

money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law.[35]

When suing as a concerned citizen, the person complaining must allege that he has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of. When the issue concerns a public right, however, it has been held that being a citizen and having an interest in the execution of the laws is already sufficient.[36]

Applying the foregoing standards to the present case:

(1) Victims of human rights violations during martial law have the requisite legal standing to file their respective petitions. Their personal and direct interest to question the interment and burial of former President Marcos at the LNMB rests on their right to a full and effective remedy and entitlement to monetary and non-monetary reparations guaranteed by the State under the Constitution, domestic and international laws.

(2) Petitioners also have standing as citizens-taxpayers. The public character of the LNMB and the general appropriations for its maintenance, preservation and development satisfy the requirements for a taxpayer's suit. To be sure, petitioners' assertion of every citizen's right to enforce the performance of a public duty and to ensure faithful execution of laws suffices to clothe them with the requisite legal standing as concerned citizens.

(3) However, Members of Congress in the Lagman petition and petitioner De Lima have no personality to maintain the suit as legislators because they failed to allege, much less show, how the President's directive to have the remains of former

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[35] *Chavez v. JBC,* 691 Phil. 173, 196 (2012).

[36] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 589 Phil. 387, 486 (2008).

President Marcos interred at the LNMB usurps or infringes upon their legislative functions.

(4) Similarly, petitioners Saguisag, *et al.*, as intervenors in the case, have no legal standing to maintain the suit in regard to their claim as human rights lawyers as this is too general to clothe them the legal interest in the matter in litigation or in the success of either of the parties required under the Rules of Court.[37]

Be that as it may, the question of *locus standi* is but corollary to the bigger question of the proper exercise of judicial power.[38] The Court may brush aside technical rules when the matter is of transcendental importance deserving the attention of the Court in view of their seriousness, novelty and weight as precedents.[39]

The *ponencia* concludes by saying that "[the interment] would have no profound effect on the political, economic, and other aspects of our national life considering that more than twenty-seven years since his death and thirty years after his ouster have already passed." Prescinding from this statement's sheer and utter disregard of Philippine history, the implications that the assailed act bear on the State's policy to guarantee full respect for human rights embodied in the Constitution, on the body of jurisprudence acknowledging the atrocities committed during martial law, and on the legislative enactments and treaty obligations granting full protection and reparation to the victims of human rights violations, undoubtedly elevate this case to the level of transcendental importance. A relaxation of the rules of legal standing is thus properly called for.

***Certiorari and prohibition are proper remedies.***

The Solicitor General assails the propriety of the remedies sought by petitioners. He argues that a petition for *certiorari*

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[37] See *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), id.* at 487.

[38] *David v. Macapagal-Arroyo*, 522 Phil. 705, 763 (2006).

[39] *Biraogo v. The Philippine Truth Commission of 2010,* 651 Phil. 374, 442 (2010).

and prohibition does not lie against public respondents inasmuch as the President, in directing the interment of former President Marcos at the LNMB, did not exercise judicial, quasi-judicial or ministerial functions.

The petitioners' resort to *certiorari* and prohibition was proper. A petition for *certiorari* or prohibition under Rule 65 is an appropriate remedy to question, on the ground of grave abuse of discretion, the act of any branch or instrumentality of government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.[40]

To reiterate, the expanded definition of judicial power, under Article VIII, Section 1 of the Constitution, imposes upon the Court and all other courts of justice, the power and the duty not only to "settle actual controversies involving rights which are legally demandable and enforceable" but also "to determine whether or not there has been a grave abuse of discretion on the part of any branch or instrumentality of the Government."

In the case of *Araullo v. Aquino*,[41] the Court clarified that the special civil actions of *certiorari* and prohibition under Rule 65 of the Rules of Court are remedies by which the courts discharge this constitutional mandate. Thus, it was ruled that:

> [T]he remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions.*

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[40] *Jardeleza v. Sereno*, G.R. No. 213181, August 19, 2014, 733 SCRA 279, 328, citing *Araullo v. Aquino*, *supra* at 531; *Villanueva v. Judicial and Bar Council*, G.R. No. 211833, April 7, 2015.

[41] *Supra* note 29.

Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.

Necessarily, in discharging its duty under Section 1, *supra,* to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action. This entrustment is consistent with the republican system of checks and balances.[42]

Therefore, that the assailed act and/or issuances do not involve the exercise of judicial, quasi-judicial or ministerial functions is of no moment. Under the Court's expanded jurisdiction, the validity of the President's directive to have the remains of former President Marcos interred and buried at the LNMB and the legality of the assailed Memorandum and Directive issued by public respondents, are proper subjects of a petition for *certiorari* and prohibition.

***Petitioners did not violate the rule on hierarchy of courts.***

The *ponencia* holds that petitioners failed to observe the rule on hierarchy of courts as they should have filed with the Regional Trial Court exercising jurisdiction over public respondents, and that there exist no special, compelling and important reasons to justify direct resort to this Court.

I disagree.

In *The Diocese of Bacolod v. COMELEC*,[43] citing *Bañez, Jr. v. Concepcion*,[44] the Court held:

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[42] *Id.* at 531.

[43] *Supra* note 3.

[44] 693 Phil. 399, 412 (2012).

The Court must enjoin the observance of the policy on the hierarchy of courts, and now affirms that the policy is not to be ignored without serious consequences. The strictness of the policy is designed to shield the Court from having to deal with causes that are also well within the competence of the lower courts, and thus leave time to the Court to deal with the more fundamental and more essential tasks that the Constitution has assigned to it. The Court may act on petitions for the extraordinary writs of *certiorari*, prohibition and *mandamus* only when absolutely necessary or when serious and important reasons exist to justify an exception to the policy.

x x x x x x x x x

The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefore. Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe. x x x[45]

In the same case, ***however***, the Court recognized that hierarchy of courts is not an iron-clad rule. Direct invocation of this Court's jurisdiction may be allowed for special, important and compelling reasons clearly spelled out in the petition, such as: (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) *when the issues involved are of transcendental importance;* (c) *in cases of first impression*; (d) when the constitutional *issues raised are best decided by this Court*; (e) w*hen the time element presented in*

[45] *Supra* note 3, at 42-43.

*this case cannot be ignored;* (f) when the petition reviews the act of a constitutional organ; (g) when there is no other plain, speedy, and adequate remedy in the ordinary course of law; (h) when public welfare and the advancement of public policy so dictates, or *when demanded by the broader interest of justice*; (i) when the orders complained of are patent nullities; and (j) when appeal is considered as clearly an inappropriate remedy.[46]

Contrary to the *ponencia*'s holding, there **are** special and compelling reasons attendant in the case at bar which justify direct resort to this Court. Apart from the fact that the issues presented here are of transcendental importance, as earlier explained, they are being brought before the Court for the first time. As no jurisprudence yet exists on the matter, it is best that this case be decided by this Court.

Moreover, while the petitions may have been directed against the Memorandum and Directive issued by public respondents, the ultimate act assailed is an executive action. In *Drilon v. Lim*,[47] the Court ruled:

> In the exercise of this jurisdiction, lower courts are advised to act with the utmost circumspection, bearing in mind the consequences of a declaration of unconstitutionality upon the stability of laws, no less than on the doctrine of separation of powers. As the questioned act is usually the handiwork of the legislative or the executive departments, or both, it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better determined after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion.[48]

Furthermore, time was of the essence in this case. The public pronouncement of Presidential Spokesman Ernesto Abella that the burial for former President Marcos would push through

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[46] *The Diocese of Bacolod v. COMELEC, id.* at 44-49.

[47] G.R. No. 112497, August 4, 1994, 235 SCRA 135.

[48] *Id.* at 140.

"unless the Supreme Court will issue a TRO"[49]; news reports that the burial would be scheduled on September 18, 2016,[50] and the President's statement that he was willing to allow the Marcos family to decide on the date of the burial and adding that they could even set the date of the burial on September 11, 2016,[51] cannot be ignored.

***Exhaustion of administrative remedies does not apply in this case.***

The *ponencia* upholds the Solicitor General's claim that petitioners failed to exhaust administrative remedies because they should have first sought with the Office of the President the reconsideration of the subject directives.

This is untenable.

The doctrine of exhaustion of administrative remedies is not absolute as there are numerous exceptions laid down by jurisprudence, namely: (a) when there is a violation of due process; (b) *when the issue involved is purely a legal question*; (c) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (d) when there is estoppel on the part of the administrative agency concerned; (e) when there is irreparable injury; (f) *when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter*; (g) *when to require exhaustion of administrative remedies would be unreasonable*;

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[49] *Palace: Hero's burial for Marcos to proceed unless there's a TRO*, available at <http://www.gmanetwork.com/news/story/577948/news/nation/palace-hero-s-burial-for-marcos-to-proceed-unless-there-s-a-tro>, last accessed on October 17, 2016.

[50] *Palace clueless on who will pay for Marcos funeral*, available at <http://manilastandardtoday.com/news/-main-stories/top-stories/213621/palace-clueless-on-who-will-pay-for-marcos-funeral.html>, last accessed on October 17, 2016.

[51] *Duterte confirms Marcos burial at the Libingan ng mga Bayani*, available at <http://cnnphilippines.com/news/2016/08/07/marcos-libingan-ng-mga-bayani-burial.html>, last accessed on October 17, 2016.

(h) when it would amount to a nullification of a claim; (i) when the subject matter is a private land in land case proceedings; (j) when the rule does not provide a plain, speedy and adequate remedy; or (k) *when there are circumstances indicating the urgency of judicial intervention*.[52]

In the petitions before the Court, circumstances (b), (f), (g) and (k) are present.

*First,* as already mentioned, the case involves a matter of extreme urgency. The urgency of judicial intervention is self-evident in the Court's decision to issue a Status Quo Ante Order on August 23, 2016, which was extended until November 8, 2016.

*Second,* the principal issue in this case of whether the President, in ordering the interment and burial of the remains of former President Marcos at the LNMB, committed grave abuse of discretion and/or violated the Constitution and other statutes is purely of law and will ultimately be decided by the courts of justice. In this regard, *Vigilar v. Aquino*[53] explains the reason for the exception, *viz:*

> Said question at best could be resolved only *tentatively* by the administrative authorities. **The final decision on the matter rests not with them but with the courts of justice. Exhaustion of administrative remedies does not apply, because nothing of an administrative nature is to be or can be done. The issue does not require technical knowledge and experience but one that would involve the interpretation and application of law.** (Emphasis supplied.)

*Third,* it was upon the verbal order of the President that the assailed Memorandum and Directive were issued by public respondents. This, in fact, is extant in the very language of the Memorandum itself. Moreover, the President, on numerous occasions, had insisted that, notwithstanding oppositions,

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[52] *The Diocese of Bacolod v. COMELEC, supra* note 3, at 59-60, citing *Spouses Chua v. Ang*, 614 Phil. 416, 425-426 (2009).

[53] 654 Phil. 755, 761-762 (2011), citing *Republic v. Lacap*, G.R. No. 158253, March 2, 2007.

including the filing of the consolidated petitions, he would make good his promise to allow the burial of the former President Marcos at the LNMB[54] and even allow the Marcos family to decide on the date of the burial. With these pronouncements, seeking relief with the Office of the President would have been an exercise in futility.

**Substantive Issues**

Having established the jurisdiction of this Court to rule upon these consolidated petitions under Rule 65, pursuant to its power of judicial review under the expanded definition of judicial power in Article VIII, Section 1 of the Constitution, I now proceed to the substantive issues.

***Grave abuse of discretion***

The office of the writs of *certiorari* and prohibition is to correct errors of jurisdiction arising from grave abuse of discretion. Very simply, then, the most important question that needs to be answered in this case is fairly straightforward: whether or not public respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction in ordering the interment of former President Marcos in the LNMB.

Restated, in ordering the interment of former President Marcos in the LNMB, did public respondents contravene or violate the Constitution, the law, or existing jurisprudence?[55] If they did, then they committed grave abuse of discretion,[56] the *ponencia*

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[54] *Duterte asked to reconsider Marcos burial at Libingan ng mga Bayani,* available at <http://www.gmanetwork.com/news/story/568973/news/nation/duterte-asked-to-reconsider-marcos-burial-at-libingan-ng-mga-bayani>, last accessed on October 17, 2016; *Duterte: Follow the law on hero's burial for Marcos available at* <http://news.abs-cbn.com/news/08/11/16/duterte-follow-the-law-on-heros-burial-for-marcos>, last accessed on October 17, 2016.

[55] See *Perez v. Court of Appeals*, 516 Phil. 204, 209 (2006); *Dueñas, Jr. v. House of Representative Electoral Tribunal,* 610 Phil. 730, 760 (2009).

[56] See *Spouses Balangauan v. CA, et al.,* 584 Phil. 183 (2008); *Banal III v. Panganiban, et al.,* 511 Phil. 605 (2005); *Republic of the Philippines v. COCOFED,* 423 Phil. 735 (2001).

concedes as much. Whimsicality, caprice and arbitrariness are also considered in determining the existence of grave abuse. I fully concur with Justice Leonen's discussion on the subject, and will confine my discussion to whether the interment violates the Constitution, law or jurisprudence.

Directly answering the question, I believe that the petitions are with merit, and that the order to inter the remains of former President Marcos in the LNMB is contrary to the Constitution, the law, and several executive issuances that have the force of law, as well as the public policy that the Constitution, the said laws, and executive issuances espouse and advance. The argument that burying former President Marcos in the LNMB does not make him a hero disregards the status of the LNMB as a national shrine, the public policy in treating national shrines, the standards set forth in these laws and executive issuances as well as in the AFP LNMB burial regulations ("AFP Regulations").

Before explaining how the intended interment of former President Marcos violates the Constitution, law, executive issuances, public policy, and custom, it would be *apropos* to examine the legal bases offered by the Solicitor General and private respondents Heirs of Marcos in defending the legality of the President's act of allowing the interment and burial of former President Marcos in the LNMB, as upheld by the *ponencia*.

*The President's power to reserve tracts of land of the public domain for a specific public purpose.*

The *ponencia* considers the President's power to reserve land for public purpose, under Section 14, Chapter IV of Book III, Title I of the RAC, as basis for the decision to inter former President Marcos in the LNMB.[57] Section 14 provides:

SECTION 14. *Power to reserve Lands of the Public and Private Domain of the Government*. — (1) The President shall have the power to reserve for settlement or public use, and for specific public purposes,

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[57] OSG Comment ¶131-138, pp. 42-44.

any of the lands of the public domain, the use of which is not otherwise directed by law. The reserved land shall thereafter remain subject to the specific public purpose indicated until otherwise provided by law or proclamation.

(2) He shall also have the power to reserve from sale or other disposition and for specific public uses or purposes, any land belonging to the private domain of the Government, or any of the Friar lands, the use of which is not otherwise directed by law, and thereafter such land shall be used for the **purposes specified by such proclamation** until otherwise provided by law.

This power is, in turn, traced by the Solicitor General to the President's power to reserve lands under Commonwealth Act No. 141, or the Public Land Act.[58] The provision that empowers the President to reserve tracts of land of the public domain for a specific purpose, in turn, reads:

**CHAPTER XI**

*Reservations for Public and Semi-Public Purposes*

SECTION 83. Upon the recommendation of the Secretary of Agriculture and Commerce, the President may designate **by proclamation** any tract or tracts of land of the public domain as reservations for the use of the Commonwealth of the Philippines or of any of its branches, or of the inhabitants thereof, in accordance with regulations prescribed for this purpose, or for quasi-public uses or purposes when the public interest requires it, including reservations for highways, rights of way for railroads, hydraulic power sites, irrigation systems, communal pastures or *leguas comunales,* public parks, public quarries, public fishponds, workingmen's village and other improvements for the public benefit.

First of all, it bears noting that under the provisions of both the RAC and the Public Land Act, this power to reserve government lands of the public and private domain is exercised through a Presidential Proclamation[59] or, under the Revised

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[58] OSG Comment ¶131-138, pp. 42-44.

[59] Under Section 4, Chapter II of Book III, Title I of the Revised Administrative Code, a proclamation is an "act of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend.

Administrative Code of 1917, by executive order.[60] Elsewhere in the Public Land Act, the proclamation where the reservation is made is forwarded to the Director of Lands, and may require further action from the Solicitor General.[61]

An illustration is found in the factual milieu of *Republic v. Octobre*,[62] wherein a particular tract of land of the public domain was reserved for a public purpose by proclamation, and thereafter released through a subsequent proclamation by President Magsaysay. The Court cited therein the authority of the President under Section 9 of the Public Land Act to reclassify lands of the public domain "*at any time and in a similar manner,* transfer lands from one class to another," to validate the release of the reservation through the subsequent proclamation. This supports the conclusion that the positive act that "perfects" the reservation for public purpose (or release) is the issuance of a proclamation. In fact, in *Republic v. Estonilo*,[63] this mode was considered necessary for a reservation to be effective or valid:

> To segregate portions of the public domain as reservations for the use of the Republic of the Philippines or any of its branches, like the Armed Forces of the Philippines, all that is needed is a **presidential proclamation** to that effect.

In this case, however, there is no dispute that this power, argued by the Solicitor General as belonging exclusively to the President, was exercised through a verbal order. Based on the foregoing, this falls short of the manner prescribed by law for its exercise. Accordingly, absent a Presidential Proclamation, I fail to fathom how these laws (the RAC and the Public Land Act) can be used to justify the decision to inter former President Marcos in the LNMB. Moreover, without any showing that the interment is consistent with LNMB's purpose as a national shrine, it cannot be undertaken as no change in the said specific purpose has been validly made.

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[60] CA 141, Sec. 64(d) and (e).

[61] CA 141, Secs. 86 to 88.

[62] 123 Phil. 698 (1966).

[63] 512 Phil. 644, 646 (2005).

But even assuming arguendo that the President can exercise the power to reserve lands of the public domain through a verbal order, the exercise of this power as basis for the decision to inter former President Marcos in the LNMB must still be scrutinized in two ways: first, does the interment constitute public use or public purpose; and second, is there any law that directs the use of the land the President seeks to reserve.[64]

Based on the language of Section 14, Chapter IV of Book III, Title I of the RAC itself, the power to reserve land is qualified by the standards stated therein:

(1) That the reservation be for settlement or public use, and for specific public purposes;

(2) That the use of the land sought to be reserved is not otherwise directed by law.

*First requirement: reserve tracts of land of the public domain for a specific public purpose.*

On the first standard, petitioners argued during the oral arguments that the fulfillment of the President's campaign promise, made in favor of a private party, or to inter a dictator or plunderer does not constitute a legitimate public purpose as it does not serve public good. During the interpellation by Justice Carpio, this was discussed:

**JUSTICE CARPIO:**
If you bury somebody in the *Libingan*, you have to spend money, correct?

**ATTY. COLMENARES:**
Yes, Your Honor.

**JUSTICE CARPIO:**
Funds will be spent?

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[64] "The matter to be considered then is whether there is any law that directs or authorizes the President to release a disposable public land from a reservation previously made" *(Republic v. Octobre, supra* note 62, at 701).

**ATTY. COLMENARES:**
Yes, Your Honor.

**JUSTICE CARPIO:**
And you will be using public property, correct?

**ATTY. COLMENRES:**
Yes, Your Honor.

**JUSTICE CARPIO:**
Now, the rule is public funds and public property can be used only for a public purpose, not a private purpose, correct?

**ATTY. COLMENARES:**
Yes, Your Honor.

**JUSTICE CARPIO:**
So, when you bury somebody in the *Libingan* who has been dishonorably discharged or separated from service, are you using public funds and property for a public purpose or for a private purpose?

**ATTY. COLMENARES:**
That is not transformed, Your Honor. The shrine is intended for, the public purpose or the shrine is for enshrinement or the recognition of those who are revered and esteemed and now you are going to put someone who is not revered and esteemed. That will be a violation of that, Your Honor.

**JUSTICE CARPIO:**
Public purpose means is that (sic), means the use of the funds or the property is for the general welfare for the public good?

**ATTY. COLMENARES:**
Yes, Your Honor.

**JUSTICE CARPIO:**
But if a person has been dishonorably discharged from service and you bury him there in a government property that is for a private purpose to extol or honor the family or the person?

**ATTY. COLMENARES:**
Yes, Your Honor.

**JUSTICE CARPIO:**
That is not for the public, there is no public good there, correct?

**ATTY. COLMENARES:**
Yes, Your Honor.

**JUSTICE CARPIO:**
So if the President now amends the regulations because the regulations state, that if you are dishonorably discharged, you cannot be buried in the Libingan and former President Marcos was dishonorably separated by the people in 1986, he cannot be buried but if the President now, the incumbent President amends the regulation to say that he can still be buried upon my instruction that cannot be done because that's against the Constitution because you're using public funds or property for a private purpose, correct?

**ATTY. COLMENARES:**
Yes, Your Honor, in that sense and also in addition, if you agree with the petitioner's contention that R.A. 289 has a standard, the President's directive cannot amend R.A. 289 and now must therefore also be struck down, Your Honor.

**JUSTICE CARPIO:**
Okay, thank you counsel, that's all.[65]

For his part, the Solicitor General stood firm and insisted that the subject interment serves a public purpose, when interpellated by Justice Leonen:

**SOLICITOR GENERAL CALIDA:**
I have here an excerpt, Your Honor, Section 14. "*The Power to Reserve Lands of the Public and Private Domain of the Government – (1) The President shall have the power to reserve for settlement or public use, and for specific public purposes, any of the lands of the public domain, the use of which is not otherwise directed by law.*"

**JUSTICE LEONEN:**
So there are two things there, public use and public purpose.

**SOLICITOR GENERAL CALIDA:**
Yes, Your Honor.

**JUSTICE LEONEN:**
Okay. Is the creation of a Libingan ng mga Bayani falling under that power of the president, that statutory power, for public use?

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[65] TSN, August 31, 2016, pp. 55-63.

**SOLICITOR GENERAL CALIDA:**
Yes, Your Honor.

**JUSTICE LEONEN:**
Can any member of the public use the Libingan?

**SOLICITOR GENERAL CALIDA:**
Not any member, Your Honor. It should be within the guidelines of the AFP Regulations.

**JUSTICE LEONEN:**
So is it still public use?

**SOLICITOR GENERAL CALIDA:**
It will be public use, Your Honor, depending on the observance of the classifications which allow certain persons to be interred at the Libingan ng mga Bayani.

**JUSTICE LEONEN:**
But if it's not public, if only a few individuals, select individuals, can use the Libingan, therefore, it is not public use.

**SOLICITOR GENERAL CALIDA:**
Maybe it can be public use but for a limited and classified persons (sic) only, Your Honor.

**JUSTICE LEONEN:**
Is that the concept of public use? Is it your submission that that is the concept of public use?

**SOLICITOR GENERAL CALIDA:**
Because the cemetery can only accommodate so much, it cannot accommodate the entire public of the Philippines, Your Honor.

**JUSTICE LEONEN:**
Okay, we'll go to that later. In fact, you cited the case in your consolidated comment. Chinese Cemetery, I think, vs. the City of Manila where you said, that it does not need to have a character of everybody using it to be public use, correct? And therefore, the key there…

**SOLICITOR GENERAL CALIDA:**
If there is a public purpose for it, yes, Your Honor.

**JUSTICE LEONEN:**
Yes. So the key there is public purpose.[66]

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[66] TSN, September 7, 2016, pp. 139-141.

There appears to be some confusion on the part of the Solicitor General as to the difference between the terms "public use" and "public purpose". "Public use" connotes the traditional concept of use by the public while "public purpose" is understood more to mean in furtherance of the public good, or in the public interest.[67] The requirement of public purpose is necessary because public funds and properties cannot be used to serve primarily private benefit.

This Court, in rejecting the validity of appropriating public funds for a private purpose, explained in *Pascual v. Secretary of Public Works and Communications*:[68]

> As regards the legal feasibility of appropriating public funds for a private purpose, the principle according to Ruling Case Law, is this:
>
> "It is a general rule that *the legislature is without power to appropriate public revenue for anything but a public purpose* x x x It is the essential character of the *direct* object of the expenditure which must determine its validity as justifying a tax, and not the magnitude of the interests to be affected nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion. ***Incidental* advantage to the public or to the state, which results from the promotion of private interests and the prosperity of private enterprises or business, does *not* justify their aid by the use of public money**." (25 R. L. C. pp. 398-400; italics supplied)

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[67] There has been a shift from the literal to a broader interpretation of "public purpose" or "public use" for which the power of eminent domain may be exercised. The old concept was that the condemned property must actually be used by the general public (*e.g.* roads, bridges, public plazas, *etc*.) before the taking thereof could satisfy the constitutional requirement of "public use". Under the more current concept, "public use" means public advantage, convenience or benefit, which tends to contribute to the general welfare and the prosperity of the whole community, like a resort complex for tourists or housing project (*Heirs of Juancho Ardano v. Reyes*, 125 SCRA 220 [1983]; *Sumulong v. Guerrero*, 154 SCRA 461 [1987]). (*Province of Camarines Sur v. Court of Appeals*, G.R. No. 103125, May 17, 1993).

[68] 110 Phil. 331 (1960).

The rule is set forth in Corpus Juris Secundum in the following language:

> "In accordance with the rule that the *taxing power must be exercised for public purposes only*, discussed *supra* sec. 14, money raised by taxation can be expended *only for public purposes and* ***not for the advantage of private individuals.***" (85 C.J.S. pp. 645-646; italics supplied.)

Explaining the reason underlying said rule, Corpus Juris Secundum states:

> "Generally, under the express or implied provisions of the constitution, *public funds may be used only for a public purpose.* The right of the legislature to appropriate funds is *correlative with its right to tax*, and, under constitutional provisions against taxation except for public purposes and prohibiting the collection of a tax for one purpose and the devotion thereof to another purpose, *no appropriation of state funds can be made for* ***other than a public purpose*** x x x
>
> x x x x x x x x x
>
> "The test of the constitutionality of a statute requiring the use of public funds is whether the statute is designed to promote the public interests, as opposed to the furtherance of the advantage of individuals, although each advantage to individuals might *incidentally* serve the public x x x" (81 C.J.S. p. 1147; italics supplied.)[69]

While the Solicitor General argues that expenditures for the interment are supported by AFP appropriations, the President's discretion in spending AFP appropriations to support the interment of former President Marcos in the LNMB, by virtue of his power of budget implementation and his power to reserve the tract of land, remains, as stated, subject to the public purpose requirement. In this case, the legitimateness of the purpose will depend on what this Court determines to be the nature of the interment — public or private. Does it serve the public at large, or merely the partisan interests of certain individuals?

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[69] *Id*. at 340. Emphasis and underscoring supplied.

The *ponencia* holds that the recognition of the former President Marcos's status or contributions as a President, veteran or Medal of Valor awardee satisfies the public use requirement, and the interment as compensation for ***valuable services rendered*** is public purpose that justifies use of public funds. Apart from lacking legal basis, this holding conveniently overlooks the primary purpose of the interment extant in the records — the Solicitor General has admitted that the burial of former President Marcos was a campaign promise of the President to the Marcos family:

**JUSTICE CAGUIOA:**
Before the President gave his verbal order to have the remains of President Marcos interred in the *Libingan*, did the heirs of President Marcos make a personal request to that effect?

**SOLICITOR GENERAL CALIDA:**
In fact, Your Honor, that was a campaign promised (sic) even before he was a President.

**JUSTICE CAGUIOA:**
And that was a promised (sic) given to, whom?

**SOLICITOR GENERAL CALIDA:**
To the heirs of President Marcos, Your Honor.[70]

This admission by the Solicitor General indicates to me that the interment is primarily to favor the Marcos family, and serves no legitimate public purpose. Therefore, the first requirement for the legitimate exercise of the President's power to reserve has not been met. Moreover, any disbursement of public funds in connection with the interment will not be for a public purpose, as it is principally for the advantage of a private party — separate from the motivation for the same.

The holding of the *ponencia*, shown in this light, is illogical: Marcos is not a hero, and burying him in the LNMB will not convert him into a hero. But somehow, his interment primarily serves a public purpose or otherwise serves the interest of the public at large, and this Court will allow the expenditure of

[70] TSN, September 7, 2016, pp. 39-40.

public funds to inter him as a President, veteran, and/or a Medal of Valor awardee as compensation for valuable public services rendered — **turning a blind eye to the disservice, damage and havoc that former President Marcos caused to this country**.

*Second requirement: the use of the land sought to be reserved not otherwise directed by law.*

The second requirement for the validity of a reservation requires the determination of the existence of a law that requires a different use for the land to be reserved. This was the standard in *Republic v. Octobre*,[71] when the Court interpreted Section 64(e) of the Revised Administrative Code of 1917, the applicable provision then in force, *viz*:

SEC. 64. *Particular powers and duties of President of the Philippines.* — In addition to his general supervisory authority, the President of the Philippines shall have such specific powers and duties as are expressly conferred or imposed on him by law and also, in particular, the powers and duties set forth in this chapter.

Among such special powers and duties shall be:

x x x x x x x x x

[(d) To reserve from settlement or public sale and for specific public uses any of the public domain of the (Philippine Islands) Philippines the use of which is not otherwise directed by law, the same thereafter remaining subject to the specific public uses indicated in the executive order by which such reservation is made, until otherwise provided by law or executive order.]

(e) To reserve from sale or other disposition and for specific public use or service, any land belonging to the private domain of the Government of the Philippines, the use of which is not otherwise directed by law; and *thereafter such land shall be used for the specific purposes directed by such executive order until otherwise provided by law.*[72]

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[71] *Supra* note 62, at 700-701.

[72] Italics supplied.

and held that "[t]he matter to be considered then is whether there is any law that directs or authorizes the President to release a disposable public land from a reservation previously made." Plainly, the powers in Section 64(d) and (e) are restated in Section 14 of the RAC cited by the Solicitor General. The Court's interpretation of Section 64(e), and by necessary extension now to Section 14 of the RAC, has two implications: *first*, the existence of a law directing the use of the land sought to be reserved affects the validity of the reservation — and the provisions of the said law will form part of the standards by which the court can determine the existence of grave abuse in case of violation, and *second*, the original specific public use or purpose continues until a subsequent law or executive issuance releases or changes the said specific public use or purpose for which the land was originally reserved.

In other words, the Solicitor General's invocation of Section 14 of the RAC, as intimated earlier, confirms that the decision to inter former President Marcos in the LNMB is not a truly political question as said decision is, in law, subject to the Court's power of judicial review — to determine whether the standards of Section 14 of the RAC have been met, and alongside all other laws, issuances, judicial decisions and state of facts subject to judicial notice that relate to former President Marcos as the intended beneficiary of the directive to be interred in the LNMB. Moreover, since the land that is the present site of the LNMB is already reserved by Presidential Proclamation for a specified public use or purpose — for national shrine purposes — then such specified use or purpose **continues** until the land is released by another Presidential Proclamation. Since in this case, there is no such Presidential Proclamation, the interment and concomitant expenditure of public funds must, if justified by Section 14 of the RAC, constitute public purpose and be consistent with the specified purpose of its reservation, *i.e.* Proclamation No. 208 (s. 1967).

In fine, the verbal order to inter falls short of the required manner of exercising the power to reserve. Moreover, the interment cannot be justified by the power to reserve because it is not a legitimate public purpose, and is not consistent with

the national shrine purposes of LNMB's reservation. **For the same reasons that the interment serves no legitimate public purpose, no use of public property or public funds can be made to support it.**

*Faithful execution and power of control*

As another basis for the power to order the interment of former President Marcos in the LNMB, the Solicitor General cites the President's power of control over the executive department. On the other hand, Heirs of Marcos insist that the President's order merely implements the express provisions of RA 289 and the pertinent AFP Regulations and, as such, cannot be considered as capricious or whimsical, nor arbitrary and despotic.

Petitioners, however, aver the opposite – that the Memorandum and Directive to bury former President Marcos at the LNMB violate the faithful execution clause because it disregards the clear and unequivocal declaration made by Congress in RA 10368 that former President Marcos is a recognized human rights violator.

There is no argument as to the existence of the power of control and duty of faithful execution. However, as applied to the case at bar, it bears to revisit the extent of the power of control and duty to faithfully execute laws.

The President's power of control and duty to faithfully execute laws are found in Article VII, Section 17 of the 1987 Constitution, which provides:

> SECTION 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

In Book IV, Chapter 7, Section 38(a) of the RAC, control is defined to include "authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and

programs." It has also been jurisprudentially defined as the "power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."[73]

In *Phillips Seafood (Philippines) Corp. v. The Board of Investments*,[74] the Court held that the power of control is not absolute, and may be effectively limited:

> **Such "executive control" is not absolute.** The definition of the structure of the executive branch of government, and the corresponding degrees of administrative control and supervision is not the exclusive preserve of the executive. **It may be effectively limited by the Constitution, by law, or by judicial decisions.** x x x (Emphasis supplied)

Therefore, while the order to inter former President Marcos in the LNMB may be considered an exercise of the President's power of control, this is necessarily subject to the limitations similarly applicable to his subordinate, the Philippine Veterans Affairs Office ("PVAO") or the Quartermaster General — found in the Constitution, laws and executive issuances.

This is consistent with the duty imposed upon the President by the faithful execution clause, which this Court explained, thus:

> That the President cannot, in the absence of any statutory justification, refuse to execute the laws when called for is a principle fully recognized by jurisprudence. In *In re Neagle*, the US Supreme Court held that the faithful execution clause is "not limited to the enforcement of acts of Congress according to their express terms." According to Father Bernas, *Neagle* "**saw as law that had to be faithfully executed not just formal acts of the legislature but any duty or obligation inferable from the Constitution or from statutes.**"[75] (Emphasis and underscoring supplied)

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[73] *Ham v. Bachrach Motor Co., Inc.*, 109 Phil. 949-957 (1960).

[74] 597 Phil. 649, 661 (2009).

[75] *Biraogo v. Philippine Truth Commission of 2010*, *supra* note 39, at 538-539.

Verily, the claim that the President is merely faithfully executing law (i.e. the AFP Regulations) when he ordered the interment must be examined in the context of the other duties or obligations inferable from the Constitution and from statutes that relate to the facts of this case. And the order to inter cannot be considered a valid exercise of his power of control, or his duty to faithfully execute the laws because the interment violates the Constitution, laws and executive issuances — how it violates these provisions are discussed subsequently in this dissent.

*Residual powers of the President*

In default of, or in addition to, the President's power to reserve lands, power of control, and faithful execution of the laws, the Solicitor General claims that the decision to inter former President Marcos is an exercise of the residual powers of the President. And, in this connection, the Solicitor General harps on the inherent and exclusive prerogative of the President to determine the country's policy of national healing.[76]

Residual powers are provided in Book III, Title I, Chapter 7, Section 20 of the RAC, thus:

**SECTION 20.** Residual Powers. — Unless Congress provides otherwise, the President shall exercise such other powers and functions vested in the President which are provided for under the laws and which are not specifically enumerated above, or which are not delegated by the President in accordance with law.

In *Larin v. Executive Secretary*,[77] the claim of exercise of residual power to validate the streamlining of the Bureau of Internal Revenue was examined in light of whether or not a law exists that gives the President the power to reorganize.

Another legal basis of E.O. No. 132 is Section 20, Book III of E.O. No. 292 which states:

> "Sec. 20. Residual Powers. — Unless Congress provides otherwise, the President shall exercise ***such other powers and***

[76] OSG Memorandum or Consolidated Comment.

[77] 345 Phil. 961 (1997).

> ***functions vested in the President which are provided for under the laws*** and which are not specifically enumerated above or which are not delegated by the President in accordance with law." (italics ours)
>
> This provision speaks of such other powers vested in the President under the law. What law then which gives him the power to reorganize? It is Presidential Decree No. 1772 which amended Presidential Decree No. 1416. These decrees expressly grant the President of the Philippines the continuing authority to reorganize the national government, which includes the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities and to standardize salaries and materials. The validity of these two decrees are unquestionable. x x x[78]

On the other hand, in *Sanlakas v. Reyes*,[79] this Court made the following observation on "residual powers":

> The lesson to be learned from the U.S. constitutional history is that the Commander-in-Chief powers are broad enough as it is and become more so when taken together with the provision on executive power and the presidential oath of office. Thus, the plenitude of the powers of the presidency equips the occupant with the means to address exigencies or threats which undermine the very existence of government or the integrity of the State.[80]

Inasmuch as the Solicitor General has failed to provide the persuasive constitutional or statutory basis for the exercise of residual power, or even the exigencies which "undermine the very existence of the government or the integrity of the State" that the order to inter former President Marcos in the LNMB seeks to address, the Court should have been left with no recourse except to examine the factual bases, if any, of the invocation of the residual powers of the President, as this is the duty given to the Court pursuant to its power of judicial review. Jurisprudence mandates that there is no grave abuse of discretion provided there is sufficient factual basis for the exercise of

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[78] *Id.* at 979.

[79] 466 Phil. 482 (2004).

[80] *Id.* at 518.

residual powers.[81] Conversely, when there is absence of factual basis for the exercise of residual power, this will result in a finding of arbitrariness, whimsicality and capriciousness that is the essence of grave abuse of discretion.

As early as *Marcos v. Manglapus*,[82] the Court, after conceding to then President Corazon Aquino the discretion to prohibit the Marcoses[83] from returning to the Philippines under the "residual unstated powers of the President x x x to safeguard and protect general welfare," proceeded to still ascertain if her decision had factual basis, *viz*:

> Under the Constitution, judicial power includes the duty to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." [Art. VIII, Sec. 1] Given this wording, we cannot agree with the Solicitor General that the issue constitutes a political question which is beyond the jurisdiction of the Court to decide.
>
> The present Constitution limits resort to the political question doctrine and broadens the scope of judicial inquiry into areas which the Court, under previous constitutions, would have normally left to the political departments to decide. But nonetheless there remain issues beyond the Court's jurisdiction the determination of which is exclusively for the President, for Congress or for the people themselves through a plebiscite or referendum. We cannot, for example, question the President's recognition of a foreign government, no matter how premature or improvident such action may appear. We cannot set aside a presidential pardon though it may appear to us that the beneficiary is totally undeserving of the grant. Nor can we amend the Constitution under the guise of resolving a dispute brought before us because the power is reserved to the people.
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> There is nothing in the case before us that precludes our determination thereof on the political question doctrine. The

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[81] *Marcos v. Manglapus, supra* note 4; *Sanlakas v. Reyes, supra* note 79; and *Integrated Bar of the Philippines v. Zamora, supra* note 5.

[82] *Supra* note 4.

[83] Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Irene M. Araneta, and Imee Manotoc.

deliberations of the Constitutional Commission cited by petitioners show that the framers intended to widen the scope of judicial review but they did not intend courts of justice to settle all actual controversies before them. **When political questions are involved, the Constitution limits the determination to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned**. If grave abuse is not established, the Court will not substitute its judgment for that of the official concerned and decide a matter which by its nature or by law is for the latter alone to decide. In this light, it would appear clear that the second paragraph of Article VIII, Section 1 of the Constitution, defining "judicial power," which specifically empowers the courts to determine whether or not there has been a grave abuse of discretion on the part of any branch or instrumentality of the government, incorporates in the fundamental law the ruling in *Lansang v. Garcia* [G.R. No. L-33964, December 11, 1971, 42 SCRA 448] that:

> Article VII of the [1935] Constitution vests in the Executive the power to suspend the privilege of the writ of habeas corpus under specified conditions. Pursuant to the principle of separation of powers underlying our system of government, the Executive is supreme within his own sphere. However, the separation of powers, under the Constitution, is not absolute. What is more, it goes hand in hand with the system of checks and balances, under which the Executive is supreme, as regards the suspension of the privilege, but only if and when he acts within the sphere allotted to him by the Basic Law, and the authority to determine whether or not he has so acted is vested in the Judicial Department, which, in this respect, is, in turn, constitutionally supreme.
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> In the exercise of such authority, the function of the Court is merely to check — not to supplant — the Executive, or to ascertain merely whether he has gone beyond the constitutional limits of his jurisdiction, not to exercise the power vested in him or to determine the wisdom of his act x x x [At 479-480].

Accordingly, **the question for the Court to determine is whether or not there exist factual bases for the President to conclude that it was in the national interest to bar the return of the Marcoses to the Philippines. If such postulates do exist, it cannot be said that she has acted, or acts, arbitrarily or that she has gravely abused her discretion in deciding to bar their return**.

We find that from the pleadings filed by the parties, from their oral arguments, and the facts revealed during the briefing in chambers by the Chief of Staff of the Armed Forces of the Philippines and the National Security Adviser, wherein petitioners and respondents were represented, **there exist factual bases for the President's decision**.[84] (Emphasis supplied)

In *Integrated Bar of the Philippines v. Zamora*,[85] the Court, while conceding that the President has the power to call out the armed forces to prevent or suppress lawless violence, invasion or rebellion, **again** inquired into the factual determination by then President Joseph Ejercito Estrada as to the necessity to call out the armed forces, particularly the Marines, to aid the PNP in visibility patrols around the metropolis before it ruled that he did not gravely abuse his discretion. The Court observed:

The 1987 Constitution expands the concept of judicial review by providing that "[T]he Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." Under this definition, the Court cannot agree with the Solicitor General that the issue involved is a political question beyond the jurisdiction of this Court to review. **When the grant of power is qualified, conditional or subject to limitations, the issue of whether the prescribed qualifications or conditions have been met or the limitations respected, is justiciable - the problem being one of legality or validity, not its wisdom**. Moreover, the jurisdiction to delimit constitutional boundaries has been given to this Court. **When political questions are involved, the Constitution limits the determination as to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned**.

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[84] *Marcos v. Manglapus*, *supra* note 4, at 506-508.

[85] *Supra* note 5.

Thus, it is the unclouded intent of the Constitution to vest upon the President, as Commander-in-Chief of the Armed Forces, full discretion to call forth the military when in his judgment it is necessary to do so in order to prevent or suppress lawless violence, invasion or rebellion. Unless the petitioner can show that the exercise of such discretion was gravely abused, the President's exercise of judgment deserves to be accorded respect from this Court.

**The President has already determined the necessity and factual basis for calling the armed forces**. In his Memorandum, he categorically asserted that, [V]iolent crimes like bank/store robberies, holdups, kidnappings and carnappings continue to occur in Metro Manila x x x. **We do not doubt the veracity of the President's assessment of the situation, especially in the light of present developments. The Court takes judicial notice of the recent bombings perpetrated by lawless elements in the shopping malls, public utilities, and other public places. These are among the areas of deployment described in the LOI 2000. Considering all these facts, we hold that the President has sufficient factual basis to call for military aid in law enforcement and in the exercise of this constitutional power**.[86] (Citations omitted; emphasis supplied)

In both *Marcos v. Manglapus* and *Integrated Bar of the Philippines v. Zamora*, the Court, pursuant to the expanded concept of judicial power under the 1987 Constitution, took the "pragmatist" approach that a political question[87] should be subject to judicial review to determine whether or not there had been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action was being questioned. In turn, a determination of the existence or non-existence of grave abuse of discretion is greatly dependent upon a finding by the Court that the concerned official had adequate factual basis for his questioned action.

Thus, conceding to the President the power to order the interment of the former President in the LNMB, did he, however, have competent factual basis to conclude that his decision would

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[86] *Integrated Bar of the Philippines v. Zamora*, *supra* note 5, at 638-645.

[87] Not to be confused with a "truly political question" pursuant to the *Francisco v. HRET* formulation.

promote national healing, genuine change and forgiveness, redound to the benefit of Filipino people, change the national psyche, begin the painful healing of this country, and efface the Marcos' remains as a symbol of polarity?

National healing, genuine change, forgiveness, change in national psyche, and effacing the Marcos's remains as the symbol of polarity are not matters which the Court can or may take judicial notice of.[88] They are not self-evident or self-authenticating. The public respondents and the private respondents, Heirs of Marcos, have, therefore, the burden to factually substantiate them. The Court cannot be left, on its own, to divine their significance in practical terms and flesh them out.

Regarding national healing, does the Solicitor General expect the Court to commiserate with and feel for whatever "pain and suffering" the Marcos family may stand to endure if former President Marcos is not interred in the LNMB? The Court has not even been apprised of the nature of such "pain and suffering." In fact, counsel for the heirs of Marcos refused to provide an answer when asked on this issue during the oral arguments, thus:

**JUSTICE CAGUIOA**:

Can you tell me what injuries the Marcos family is suffering because President Marcos is (has) not been interred in the Libingan? Is there any injury?

**ATTY. RAFAEL-ANTONIO**:

Your Honor, with all due respect the issue here is the propriety of the decision of President Duterte to inter him. The injury which

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[88] Rule 129, Section 1 provides that judicial notice is mandatory with respect to "the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions," while Section 2 provides that judicial notice is discretionary with respect to matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions."

the Marcos family may be suffering would be, to discuss this, would be amounting to an academic discussion, Your Honor.

**JUSTICE CAGUIOA**:

Not necessarily, we are a court of law and a court of equity and as judges we are mandated to find a solution to any legal controversy prescinding from the emotions…

**ATTY. RAFAEL-ANTONIO**:

Your Honor…

**JUSTICE CAGUIOA**:

That is the basis of my question.

**ATTY. RAFAEL-ANTONIO**:

Yes, Your Honor. I agree, Your Honor, but equity must follow the law and in this case, the laws applicable do not consider the injuries on the family of the deceased.

**JUSTICE CAGUIOA**:

So do I take it that you will not answer my question?

**ATTY. RAFAEL-ANTONIO**:

Yes, Your Honor.[89]

"[T]he painful healing of this country," borrowing the words of the Solicitor General, of the wounds brought about by the Marcos martial rule actually started with his ouster in 1986 and has progressed significantly throughout the ensuing three decades. Indeed, as far as Heirs of Marcos are concerned, they have almost regained their former political stature. At present, there is a Marcos senator,[90] who almost made it to the Vice Presidency, a Marcos representative[91] to the Congress of the Philippines, and a Marcos governor.[92] On the other hand, the victims of the Marcos martial rule have partly won their day in court and have been so far awarded sizeable judgments.[93]

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[89] TSN, September 7, 2016, pp. 50-51.

[90] Ferdinand "Bongbong" R. Marcos, Jr.

[91] Representative Imelda R. Marcos.

[92] Ilocos Norte Governor Imee Marcos.

[93] *In Re: Estate of Marcos Human Rights Litigation*, 910 F. Supp. 1460 (D. Haw. 1995), upheld in *Hilao v. Marcos*, 103. F.3d 762 (9th Cir. 1996).

Several laws (e.g. RA 10368) have been enacted that recognize the deaths, sufferings, injuries, deprivations that they endured, and accord them reparation. In simple terms, there appears to be no perceptible empirical correlation between the intended burial of former President Marcos and the supposed national healing the President seeks to promote. To be sure, no reason has been offered that would clothe the President's decision as essential to this supposed national healing.

"Genuine change", without more, may have been an excellent slogan during the campaign period, but as a reason for the decision to inter former President Marcos in the LNMB, is too amorphous and nebulous. What is it in the present Filipino life that requires "genuine change", the Solicitor General has not even attempted to explain. How does the interment of former President Marcos in the LNMB effect this "genuine change"? Again, the Solicitor General has not proffered any kind of explanation.

As defined, forgiveness is a "conscious, deliberate decision to release feelings of resentment or vengeance" toward a person or group who has caused harm, regardless of whether such persons are deserving of the same.[94] Conversely, forgiveness does not mean glossing over or denying the seriousness of an offense committed against one's person, nor does it mean condoning or excusing offenses or legal accountability.[95] Instead, forgiveness entails the recognition of the pain that one has suffered, without letting such pain prevent one from attaining healing or moving on with their life.[96]

On the part of the Marcos heirs, the Solicitor General quotes in their Memorandum Ilocos Norte Governor Imee Marcos' message[97] of "simple sorry"[98] during the recent commemoration of her

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[94] *What Is Forgiveness?*, available at <http://greatergood.berkeley.edu/topic/forgiveness/definition>, last accessed on October 17, 2016.

[95] *Id*.

[96] *Id*.

[97] Public Respondents' Memorandum, p. 4.

[98] *Id*.

father's birthday, wherein she purportedly "humbly sought forgiveness."[99] Is this the forgiveness that the President is after? But, forgiveness cannot be exacted from the victims of the Marcos martial rule because the State has no right to **impose** the same upon them. The Court is helpless in the absence of a reasonable and acceptable explanation how the President's objective of "forgiveness" is achieved by the intended interment.

Unlike in *Marcos v. Manglapus* where "from the pleadings filed by the parties [therein], from their oral arguments, and the facts revealed during the briefing in chambers by the Chief of Staff of the Armed Forces of the Philippines and the National Security Adviser, wherein petitioners and respondents [therein] were represented, there exist factual bases for the President's decision" to bar the return of the Marcoses to the Philippines in the national interest,[100] the Solicitor General has not identified any tangible and material benefit that the nation will reap with the interment of former President Marcos in the LNMB. Thus, the Court is left with no alternative but to conclude that it will only be Heirs of Marcos, who are private citizens, who will stand to benefit from the interment.

The Solicitor General's postulate that the burial of the former President's remains in the LNMB is "geared towards changing the national psyche" is, again, as vague as the other motherhood statements that have been bandied about.

"Psyche" is simply defined as the soul, mind or personality of a person or group[101] and the mental or psychological structure of a person, especially as a motive force.[102] Conversely, "national psychology" may refer to the soul, mind, or personality of a nation, or the mental psychological structure of a nation.

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[99] *Id*.

[100] *Marcos v. Manglapus*, *supra* note 4, at 507-508.

[101] "*Psyche*", available at <http://www.merriam-webster.com/dictionary/psyche>, last accessed on October 17, 2016.

[102] http://www.dictionary.com/browse/psyche, last accessed on October 17, 2016.

The Solicitor General cannot just presume that the Court is knowledgeable of the "national psyche" that the President desires to engender or change. The President's intentions may be noble, but the Court cannot be expected to speculate as to what he understands "national psyche" to be or how the interment will engender or change the "national psyche".

As to the burial of former President Marcos being in keeping with the President's campaign promise, the Solicitor General effectively takes the position that with the President's proclamation as such, he must now keep his campaign promise because the electorate "has spoken".[103]

But again, this is equivocal to say the least. To some, the campaign promise is but a political concession to the Heirs of Marcos and to attract the votes of the Marcos loyalists. To others, who are perennially political cynics, campaign promises are made to be broken, not cast in stone, and are like debts listed on water. As to the reasons why the voters' preference in the last national elections tilted in favor of the President over the other presidential candidates, political analysts can have their field day. The Court should not try to second guess.

Regarding the Solicitor General's premise that former President Marcos' remains have become the symbol of polarity, again, the necessary foundation for this was not laid.

What the Court can take judicial notice of is that, at present, former President Marcos lies in repose at the Ferdinand E. Marcos Presidential Center,[104] which is situated in Batac, Ilocos Norte. The Center has a museum which showcases memorabilia of the former President, and a mausoleum where his remains lie inside a glass-encased coffin which has been on public display since 1993. Many flock to the mausoleum to view the remains of former President Marcos and he continues to be admired by

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[103] TSN, September 7, 2016, pp. 83-87.

[104] *Despite tourism loss, Batac mayor backs hero's burial for Marcos*, available at <http://www.rappler.com/nation/145804-batac-mayor-her-burial-marcos >, last accessed on October 17, 2016.

his loyalists. Those who are presently vehemently opposing the burial of former President Marcos in the LNMB have not, for more than 20 years, questioned the right and decision of the Heirs of Marcos to have his remains lie in repose at his mausoleum. The so-called "polarity" symbolized by the remains of the former President is, again, not apparent.

Thus, the mere incantation of buzzwords such as "national psyche," "national healing," "genuine change," "campaign promise" and "effacing symbol of polarity" as the wisdom underlying the challenged order of the President appears – in the absence of anything other than such incantation – is nothing more than a legerdemain resorted to to prevent the Court from taking judicial cognition thereof and to make the President's action inscrutable. Without sufficient factual bases, these magic words are ephemeral and ambiguous. The Solicitor General has failed to provide even the minimum specifics as to how such objectives, as lofty as they are or pretended to be, will be achieved if the President's order is implemented. Consequently, this failure to substantiate the factual bases of the President's assailed action should have left the Court with no option but to rule that the President's intended action is bereft of any factual basis — and, for that reason, following *Marcos v. Manglapus*, already constitutes grave abuse of discretion.

***Summation***

To recapitulate: (1) there was no valid exercise of the power to reserve under Section 14 of the RAC; (2) the President may validly order the interment of former President Marcos in the LNMB pursuant to his power of control and his duty to faithfully execute laws, provided that no contravention of the Constitution, laws, executive issuances, public policy, customs and international obligations arises therefrom or is committed; (3) the Solicitor General failed to show any contingency for the valid exercise of the President's residual powers, and likewise failed to demonstrate sufficient factual basis to justify the interment of former President Marcos in the LNMB.

Turning now to the relevant provisions of the Constitution, laws, executive issuances, public policy, customs and

international obligations, I will explain in turn how the interment violates them, and thus, constitutes grave abuse.

***The laws, executive issuances, public policy and customs that were violated.***

*Republic Act No. 289*

Petitioners' reliance on RA 289 as anchor for their argument that the intended burial of former President Marcos is prohibited by this law is misplaced.

RA 289 directed the construction of a National Pantheon intended to be the burial place for all the Presidents of the Philippines, national heroes and patriots,[105] and established the Board of National Pantheon that is mandated to cause the interment in the National Pantheon of the mortal remains of all Presidents of the Philippines, national heroes and patriots.[106] Subsequently, in Proclamation No. 431 issued by President Quirino in 1953, a parcel of land in Quezon City was reserved. Thereafter, by virtue of Proclamation No. 42 (s. 1954), this reservation was withdrawn. No other property has been thus earmarked or reserved for the construction of a National Pantheon.

I agree that RA 289 is not applicable. Reading RA 289 together with Proclamation No. 431 leads to no other conclusion than that the land on which the National Pantheon was to be built refers to a discrete parcel of land that is different from site of the LNMB. To be sure, the history of the LNMB, is that of a parcel of land identified by Proclamation No. 208 Series of 1967, dated May 28, 1967, which is parcel 3, Psu-2031, consisting of 1,428,800 square meters and whose technical description is reflected in said Proclamation No. 208. Accordingly, it is *non sequitur* to argue the applicability of RA 289, or the standards indicated therein, to the LNMB, which is a parcel of land that is totally different and distinct.

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[105] Sec. 1, RA 289.

[106] Sec. 2, *id.*

That said, I fully concur with Justice Leonen that RA 289 remains an effective law consistent with Article 7 of the Civil Code.

*PD 105, RA 10066 and 10086, and the specific policy in the treatment of national shrines*

It has to be acknowledged that there is no dispute that the present LNMB is rightfully a **military memorial declared as a national shrine**. The history of the LNMB, as it is expressed in the different PDs and executive issuances, shows that it is not an ordinary cemetery; it is not an ordinary gravesite. Truthfully, and legally, its status as a national shrine is beyond cavil.

In this regard, PD 105 squarely directs how national shrines should be regarded. And while the decree specifically mentions several places as national shrines, it also unequivocally provides that all national shrines "and others which may be proclaimed in the future as national shrines" are to be regarded and treated as "hallowed places".

Thus, the third *Whereas* clause of PD 105 **mandates** that "it is the **policy** of the Government to **hold** and **keep** said National Shrines as **sacred and hallowed place**."[107]

PD 105 is not a mere executive issuance. It is law. And this law establishes a specific State policy in the treatment of all national shrines declared before and after its issuance. Accordingly, since the LNMB has been declared as a national shrine, the specific State policy to hold and keep national shrines as a "sacred and hallowed place" necessarily covers the LNMB. To be sure, this policy extends to the LNMB despite the fact that its declaration as a national shrine predated PD 105 as there is no rational basis why the LNMB, already declared a national shrine by Proclamation No. 208 in 1967, should be treated differently from those sites that have been declared as national shrines after PD 105.

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[107] P.D. No. 105, 3rd Whereas Clause.

The argument that PD 105 applies only to places of birth, exile, imprisonment, detention or death of great and eminent leaders of the nation is too narrow and myopic a reading that it deserves scant consideration. Indeed, this interpretation is contradicted and belied by the very language of PD 105 itself which recognizes all other national shrines that "may be declared in the future" as also being sacred and hallowed places. The Court can take judicial notice of a number of places declared as national shrines after PD 105 – and therefore to be treated as sacred and hallowed places – that are **not** places of birth, exile, imprisonment, detention or death of great and eminent leaders, such as the Kiangan War Memorial Shrine which was established to perpetuate the surrender site for the Japanese Imperial Forces and to serve as a reminder of the "uselessness of war as a means of solving international differences",[108] the Quezon Memorial Circle which was established in memory of the late President Manuel L. Quezon even as President Quezon died in New York, and the Balete Pass[109] which was a battlefield where the Americans and the Filipinos fought against the Japanese Imperial Forces. To insist that the provisions of PD 105, and the proscription against the prohibited acts listed therein, will apply to a national shrine only if said national shrine is the place of birth, exile, imprisonment, detention or death of a great and eminent leader is plainly ridiculous and downright error.

I find that PD 105 **is** applicable. No proposition is being made to expand the import of the decree beyond its express terms; no penalty is sought against any act involved in this case. What is inescapable, however, is the explicit statement of government policy to hold national shrines sacred. As well, the same policy is reiterated in RA 10066 and RA 10086 — order the preservation or conservation of the cultural significance of national shrines.

In this connection, the policy of PD 105 to hold and keep the LNMB as a "**sacred and hallowed place**" is in keeping

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[108] Presidential Decree No. 1682.

[109] R.A. 10796 (2016).

with, and completely aligned with, the **esteem and reverence** that Proclamation No. 89 accords to the fallen soldiers, war dead and military personnel who were meant to be buried in the LNMB.

As admitted by the Solicitor General during oral arguments, the words "esteem and reverence" in Proclamation No. 89 and "sacred and hallowed" in PD 105 are not empty and meaningless. The words "esteem and reverence" set and mandate how the LNMB, in particular, should be regarded, whereas the words "sacred and hallowed" direct how national shrines, in general, should be treated.

Truly, it is precisely because of the country's collective regard of the LNMB as the memorial in honor of the heroism, patriotism and nationalism of its war dead as well as its fallen soldiers and military personnel that President Duterte held the rites honoring the country's national heroes at the LNMB in the morning of August 29, 2016.[110] There is no question that LNMB has traditionally been the site where National Heroes Day is commemorated.

The main premise of the *ponencia* appears to be that the LNMB is still primarily and essentially a military memorial, or a military shrine, notwithstanding the fact that it was purposely excluded from the military reservation for **national shrine purposes** by Proclamation No. 208. The military nature of the LNMB is seemingly relied upon to argue that standards relating to national shrines in general, and to the LNMB in particular, outside of the standards expressly embodied in the AFP Regulations, cannot apply.

To me this is egregious error. The dual nature of the LNMB as a military memorial and a national shrine cannot be denied.

Former President Marcos himself appeared to have recognized the distinction in the discerning manner that he declared sites as military memorials or shrines and national shrines — some

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[110] http://www.gmanetwork.com/news/story/579292/news/nation/duterte-leads-national-heroes-day-rites; http://news.abs-cbn.com/news/08/29/16/look-duterte-leads-national-heroes-day-rites, last accessed on October 17, 2016.

he declared solely as military shrines or memorial shrines, while others sites with military significance were declared as national shrines. To illustrate, he declared the Tirad Pass National Park.[111] Fort San Antonio Abad,[112] "Red Beach" (the landing point of General Douglas MacArthur and the liberating forces),[113] and an area of Mt. Samat,[114] as national shrines, while a parcel of land in Cavinti was declared as a memorial shrine.[115]

The best exemplar, perhaps, is the *Bantayog ng Kiangan*, the site in Ifugao where General Yamashita surrendered to the Allied Forces. On July 9, 1975, former President Marcos issued Proclamation No. 1460, declaring the same as a military shrine under the administration and control of the Military Memorial Division, Department of National Defense.[116] Two years later, on October 17, 1977, he issued Proclamation No. 1682, declaring the previously declared military shrine as a national shrine.[117]

Even PD 1076,[118] issued by former President Marcos on January 26, 1977, that transferred the functions of administration, maintenance and development of national shrines to the PVAO,

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[111] July 23, 1968 *(Declaring the Tirad Pass National Park as Tirad Pass National Shrine, Proclamation No. 433, [1968]).*

[112] May 27, 1967 *(Reserving for National Shrine Purposes a Certain Parcel of Land of the Private Domain Situated in the District of Malate, City of Manila, Proclamation No. 207, [1967]).*

[113] *Reserving Certain Parcel of Land of the Private Domain in Baras, Palo, Leyte for the Province of Leyte, PROCLAMATION NO. 1272, [1974].*

[114] April 18, 1966 (*Excluding from the Operation of Proclamation No. 24, s. 1945, Proclamation No. 25, [1966]*).

[115] March 27, 1973 *(Reserving for Memorial Shrine for the War Dead a Certain Parcel of Land of the Public Domain in Cavinti, Laguna, PROCLAMATION NO. 1123, [1973]).*

[116] *Declaring the "Bantayog sa Kiangan" as a Military Shrine, Proclamation No. 1460, [1975].*

[117] *Declaring the Kiangan War Memorial Shrine in Linda, Kiangan, Ifugao as a National Shrine, Proclamation No. 1682, [1977].*

[118] *Amending Part XII (Education) and Part XIX (National Security) of the Integrated Reorganization Plan, Presidential Decree No. 1076, [1977].*

found its impetus, not on the ground that PVAO should have exclusive jurisdiction over these national shrines, but on the fact that the (then) Department of National Department of Defense had greater capabilities and resources to more effectively administer, maintain and develop the national shrines, and exercised functions more closely related to the significance of the national shrines.[119]

Verily, the argument that the LNMB was initially, primarily, or truly a military memorial to maintain that only the express disqualifications in the AFP Regulations should control in the determination of who may be interred therein, to the exclusion of the provisions of the Constitution, laws and executive issuances, disregards the fact that its status as a national shrine has legal consequences.

The policy of PD 105 with respect to national shrines is reiterated, or more accurately, expanded in the statement of policy in RA 10066[120] that has the objective of "protect[ing], preserv[ing], conserv[ing] and promot[ing] the nation's cultural heritage, its property and histories;[121] and RA 10086[122] that states the policy of the State to conserve, promote and popularize the nation's historical and cultural heritage and resources.[123] Even assuming that PD 105 does not apply to the LNMB, there can be no argument that the later expression of legislative will in RA 10066 and RA 10086 accords even fuller protection to national shrines, which includes the LNMB.

The term "*national shrine*" escapes express legal definition. However, sufficient guidance is found in RA 10066[124] that uses

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[119] Second and Third Whereas Clauses of PD 1076.

[120] *National Cultural Heritage Act of 2009,* Republic Act No. 10066, March 24, 2010.

[121] Article 2(a) of RA 10066.

[122] *Strengthening Peoples' Nationalism Through Philippine History Act*, Republic Act No. 10086, May 12, 2010.

[123] Section 2, RA 10086.

[124] *National Cultural Heritage Act of 2009,* Republic Act No. 10066, March 24, 2010.

different permutations of the term: "*national historical shrines*" is a category of cultural property[125] while the term "*historical shrines*" is defined to refer to historical sites or structures hallowed and revered for their history or association as declared by the National Historical Institute.[126] Thereafter, RA 10066 uses the term "*national shrines*" in its penal provision[127] which could only mean national historical shrine previously defined. Under this law, the National Historical Institute ("NHI"), the body once given powers of administration over the LNMB, was responsible for significant movable and immovable cultural property that pertains to Philippine history, heroes and the conservation of historical artifacts.[128]

In RA 10086, "*national historical shrines*" refers to "sites or structures hallowed and revered for their history or association declared as such by the NHCP,"[129] which is the successor of the NHI mentioned in RA 10066. RA 10086 interchangeably uses shrines[130] and national shrines.[131] In both laws, the word "*conservation*" is defined as "processes and measures of maintaining the cultural significance of a cultural property including, but not limited to, physical, **social or legal preservation**, restoration, reconstruction, **protection**, adaptation or any combination thereof," respectively,[132] which is consistent with, and in fact expanded the protection beyond, what may be argued as merely prohibiting physical desecration in PD 105. The clear legislative mandate in RA 10066 and 10086 require conservation, not only of the physical integrity of national shrines as cultural and historical resources, but also of the cultural significance thereof.

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[125] Section 4, RA 10066 uses the term "national historical shrine".

[126] Section 3, RA 10066.

[127] Section 48, *id.*

[128] Section 31, *id.*

[129] Section 3(n), RA 10086.

[130] Sections 7(d) and (n), *id.*

[131] Sections 3(b), 7(e) and 20, *id.*

[132] Section 3(i) in RA 10066 and Section 3(c), *id.*

These laws operate to accord legal protection to the LNMB so that the standard applicable to it, in particular, esteem and reverence in Proclamation No. 86, and to national shrines, in general, as sacred and hallowed under PD 105, will be upheld and maintained. In other words, if a person who is not worthy of or held in esteem and reverence is sought to be interred in the LNMB, then this would be contrary to the policy to hold LNMB as a sacred and hallowed place — and the Court must step in to preserve and protect LNMB's cultural significance. Relevantly, the NHCP, which has the mandate to discuss and resolve, with finality, issues or conflicts on Philippine history under Section 7 of RA 10086, opposes the interment — another fact completely disregarded by the *ponencia*.

Verily, **the interment of former President Marcos constitutes a violation of the physical, historical and cultural integrity of the LNMB as a national shrine, which the State has the obligation to conserve.**

*AFP Regulations*

Concededly, the LNMB is also a military grave site. The Quartermaster General of the Armed Forces of the Philippines ("AFP") exercises over-all supervision in the implementation of the AFP Regulations concerning burials at the LNMB, specifically, AFP Regulations 161-373 dated April 9, 1986 and the subsequent regulations (AFP Regulations G 161-374 dated March 27, 1998,[133] and AFP Regulations G 161-375 dated September 11, 2000[134] [the AFP Regulations] while the Graves Services Unit ("GSU") is charged with the registration of deceased/graves, allocation of specific section/area, preparation of grave sites, and supervision of burials at the LNMB.[135]

The fact that the LNMB is an active military grave site or cemetery, however, does **not** diminish, and **cannot be used as an excuse** to denigrate, its status as a national shrine. The PDs

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[133] Annex 6, Consolidated Comment.

[134] Annex 7, Consolidated Comment.

[135] AFP Regulations G 161-375.

discussed above are laws while the presidential issuances have the force of law. They must be observed in the use of the LNMB.

National Heroes Day is a regular holiday under Act No. 3827 intended for the Filipinos to reflect on the heroism of our countrymen. This Court can take judicial notice of the custom[136] or tradition of the sitting President to celebrate this national holiday by visiting the LNMB, which, if accorded a most reasonable interpretation, can be taken to mean that LNMB **does** symbolize heroism, or that it is the place where the nation's heroes lie. To argue, therefore, that the word "bayani" in the LNMB is a misnomer, and that no symbolism of heroism should be attached thereto or to those that lie therein as heroes, is, at the very least, contrary to well-established custom.

And this is precisely how the provisions in the AFP Regulations regarding those who are not qualified to be interred in the LNMB should be construed – as an acknowledgment that it is a national shrine, and must be treated as a "sacred and hallowed" resting place. Surely, if "personnel who were **dishonorably** separated/reverted/discharged from service" are to be interred in the LNMB, then LNMB, being a "sacred and hallowed place,"[137] would be **desecrated**. In the same vein, if "authorized personnel who were convicted by final judgment of an offense involving **moral turpitude**"[138] are to be interred in the LNMB, then the status of LNMB as a national shrine would be **tarnished**. Without these disqualifications, the sacredness and hallowedness of the LNMB would be hollow and meaningless.

In other words, it would be, as it is, error, to view or understand the AFP Regulations in a vacuum, independent of or apart from, the policy expressed in Proclamation No. 86 which renamed

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[136] The Requisites of Custom are (1) a number of acts; (2) uniformity: (3) juridical intent; (4) lapse of time; and not contrary to law. 1 Manresa p. 76.

[137] AFP Regulations G 161-374; AFP Regulations G 161-375. Emphasis supplied.

[138] *Id.; id.* Emphasis supplied.

the Republic Memorial Cemetery as "*Libingan ng mga Bayani"* (**Cemetery of the Heroes**[139]) and established therein the standards of "**ESTEEM and REVERENCE",** Proclamation No. 208 which constituted LNMB as a national shrine, PD 105 which specifically provides the specific policy that all national shrines shall be sacred and hallowed places, RA 10086 that characterizes LNMB as a "*national historic shrine*" or a historical site or structure hallowed and revered for its history or association.

These laws and presidential proclamations that have the force of law should be read into, and considered part of, the AFP Regulations.

Basic is the principle in statutory construction that interpreting and harmonizing laws is the best method of interpretation in order to form a uniform, complete, coherent, and intelligible system of jurisprudence, in accordance with the legal maxim *interpretare et concordare leges legibus est optimus interpretandi modus*.[140]

Thus, the disqualifications contemplated under the AFP Regulations should be construed under the aegis of the foregoing laws and executive issuances and their interpretation should not be narrowed by the language used therein. Accordingly, I fully agree with Justice Carpio's position that when Marcos was forcibly taken out of office and removed as a President and a Commander-in-Chief by the sovereign act of the people expressed in the EDSA Revolution – which is an act higher than an act of a military tribunal or of a civilian administrative tribunal – then it can reasonably be said that he was dishonorably separated as a President and dishonorably discharged as a Commander-in-Chief. During the oral arguments, Justice Carpio further clarified that a military personnel, who is a Medal of Valor awardee, retires from the military, joins the government, and while in government, he is dishonorably separated for an

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[139] http://corregidorisland.com/bayani/libingan.html.

[140] *Pabillo v. COMELEC*, G.R. Nos. 216098 & 216562, April 21, 2015, 756 SCRA 606, 672.

offense, then upon his death, he should not be qualified to be interred in the LNMB pursuant to the AFP Regulations themselves because LNMB, being a sacred and hallowed ground, would be besmirched.[141]

In the same manner, the disqualification of those who have been convicted by final judgment of an offense involving moral turpitude should be understood in its normal and ordinary acceptation. In his concurring opinion in *Teves v. COMELEC*,[142] Justice Brion cites the Black's Law Dictionary definition of moral turpitude as an "act of baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general," and Bouvier's Law Dictionary as including "everything which is done contrary to justice, honesty, modesty, or good morals." Citing *In re Basa*[143] and *Zari v. Flores*,[144] Justice Brion lists, among others, estafa, theft, murder, whether frustrated or attempted, attempted bribery, robbery, direct bribery, embezzlement, extortion, frustrated homicide, falsification of document, fabrication of evidence, evasion of income tax, and rape as crimes involving moral turpitude. The commission by a person of any such crimes when proven should surely disqualify him from being buried in the LNMB as it would blacken the sacredness and hallowedness of the LNMB.

In *Republic v. Sandiganbayan*,[145] a *certiorari* petition filed by the Republic of the Philippines (Republic) against the Sandiganbayan, former President Marcos, represented by his heirs: Imelda R. Marcos, Maria Imelda [Imee] Marcos-Manotoc, Ferdinand R. Marcos, Jr. and Irene Marcos-Araneta, and Imelda Romualdez Marcos, which sought to reinstate the Sandiganbayan's earlier decision dated September 19, 2000 that forfeited in favor of the Republic Swiss bank accounts in the aggregate amount

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[141] TSN, August 31, 2016, p. 55.

[142] 604 Phil. 717, 735-742 (2009).

[143] 41 Phil. 275 (1920).

[144] 94 SCRA 317.

[145] 453 Phil. 1059 (2003).

of US$658,175,373.60 as of January 31, 2002, claimed by the Marcoses as theirs and held in escrow in the Philippine National Bank (PNB), this Court made this factual finding and ruling:

> In the face of **undeniable circumstances** and the **avalanche of documentary evidence against them**, **respondent Marcoses failed to justify the lawful nature of their acquisition of the said assets**. Hence, the Swiss deposits should be considered **ill-gotten wealth** and forfeited in favor of the State in accordance with Section 6 of RA 1379[.][146] (Emphasis and underscoring supplied)

In *Marcos, Jr. v. Republic*,[147] this Court ruled that all the assets, properties and funds of Arelma, S.A., an entity created by former President Marcos, with an estimated aggregate amount of US$3,369,975.00 as of 1983, which the Marcos claimed as theirs, were declared ill-gotten wealth and forfeited in favor of the Republic.

This Court, in *Republic v. Sandiganbayan* and *Marcos, Jr. v. Republic*, noted with approval the Solicitor General's evidence, culled from the Income Tax Returns (ITRs) and Balance Sheets filed by the Marcoses, that showed their total income from 1965 to 1984 in the amount of ₱16,408,442.00, with 67.71% thereof or ₱11,109,836.00 allegedly coming from the legal practice of the former President as compared to the official salaries of former President Marcos and Imelda R. Marcos of ₱2,627,581.00 or 16.01% of the total, and the Solicitor General's findings that:

> x x x FM [Ferdinand Marcos] made it appear that he had an extremely profitable legal practice before he became a President (FM being barred by law from practicing his law profession during his entire presidency) and that, incredibly, he was still receiving payments almost 20 years after. **The only problem is that in his Balance sheet attached to his 1965 ITR immediately preceding his ascendancy to the presidency he did not show any Receivables from client at all, much less the ₱10.65-M that he decided to later recognize as income. There are no documents showing any withholding tax certificates. Likewise, there is nothing on record**

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[146] *Id*. at 1149.

[147] 686 Phil. 980 (2012).

**that will show any known Marcos client as he has no known law office.** As previously stated, his networth was a mere ₱120,000.00 in December, 1965. The joint income tax returns of FM and Imelda cannot, therefore, conceal the skeletons of their **KLEPTOCRACY**.[148] (All caps and its emphasis supplied)

This Court also observed the very thorough presentation of the Solicitor General's evidence, *viz*:

The following presentation very clearly and overwhelmingly show in detail how both respondents clandestinely stashed away the country's wealth to Switzerland and hid the same under layers upon layers of foundations and other corporate entities to prevent its detection. Through their dummies/nominees, fronts or agents who formed those foundations or corporate entities, they opened and maintained numerous bank accounts. x x x[149]

*Marcos v. Manglapus*[150] recognized the plunder of the economy attributed to the Marcoses and their cronies and relied thereon as basis to bar the return of the remains of former President Marcos to the country, *viz*:

We cannot also lose sight of the fact that the country is only now beginning to recover from the **hardships brought about by the plunder of the economy attributed to the Marcoses and their close associates and relatives**, many of whom are still here in the Philippines in a position to destabilize the country, while **the Government has barely scratched the surface, so to speak, in its efforts to recover the enormous wealth stashed away by the Marcoses in foreign jurisdictions**. Then, We cannot ignore the continually increasing burden imposed on the economy by the excessive foreign borrowing during the Marcos regime, which stifles and stagnates development and is one of the root causes of widespread poverty and all its attendant ills. The resulting precarious state of our economy is of common knowledge and is easily within the ambit of judicial notice. (Emphasis and underscoring supplied)

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[148] *Republic v. Sandiganbayan*, *supra* note 146, at 1091; *Marcos, Jr. v. Republic, id*. at 1003-1004.

[149] *Republic v. Sandiganbayan*, *id.* at 1093.

[150] *Supra* note 4, at 509.

In *PCGG v. Peña*,[151] this Court recalled the economic havoc engendered by the Marcos regime through the plunder of the country's wealth, *viz*:

> x x x Given the magnitude of the [Marcos] regime's "organized pillage" and the ingenuity of the plunderers and pillagers with the assistance of the experts and best legal minds available in the market, it is a matter of sheer necessity to restrict access to the lower courts, which would have tied into knots and made impossible the Commission's gigantic task of recovering the plundered wealth of the nation, whom the past regime in the process had saddled and laid prostrate with a huge $27 billion foreign debt that has since ballooned to $28.5 billion.

Indeed, as correctly pointed out by petitioner Latiph, this Court has referred to former President Marcos as a dictator in 20 cases and his rule was characterized as authoritarian in 18 cases.

That is not all. Section 2 of RA 10368 is a recognition by legislative fiat that "summary execution, torture, enforced or involuntary disappearance and other gross human rights violations [were] committed during the regime of former President Ferdinand E. Marcos covering from September 21, 1972 to February 25, 1986."

In two United States cases, the United States District Court of Hawaii[152] awarded US$1.2 Billion in exemplary damages and over US$770 Million in compensatory damages to 10,059 plaintiffs for acts of torture, summary execution, disappearance, arbitrary detention and numerous other atrocities, which the jury found former President Marcos personally liable for, and the US 9th Circuit Court of Appeals,[153] applying the "command responsibility" principle, ruled that the district court properly held former President Marcos liable for human rights abuses

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[151] 243 Phil. 93, 107 (1988).

[152] *In Re Estate of Marcos Human Rights Litigation*, 910 F. Supp. 1460 (D. Haw. 1995).

[153] *Hilao v. Marcos*, 103 F.3rd 762(9th Cir. 1996).

which occurred and which he knew about and failed to use his power to prevent.

The NHCP, in its study, "Why Ferdinand Marcos should not be buried at the Libingan ng mga Bayani," which it undertook as part of its mandate to conduct and disseminate historical research and resolve historical controversies, has concluded, among others, that former President Marcos had lied about receiving U.S. medals and that certain actions committed by him as a soldier amounted to "usurpation" and could be characterized as "illegal" and "malicious criminal act." Significantly, the NHCP opposes the proposed burial of former President Marcos.[154]

In the Memorandum filed by petitioners Rosales, et al., they question the basis of the Solicitor General's claim that former President Marcos was a Medal of Valor Awardee. Based on a copy of General Order No. 167 dated October 16, 1958 ("GO 167"), which is Annex "A" to the Rosales Memorandum, former President Marcos obtained not a Medal of Valor but a Medal **for** Valor. A reading of the contents of GO 167 reveals that the account of the purported Marcos' bravery therein had been debunked in the aforementioned study of the NHCP. There is thus reliable basis to seriously doubt the authenticity of the Medal of Valor award of former President Marcos. As the NHCP concluded:

> Mr. Marcos's military record is fraught with myths, factual inconsistencies, and lies. The rule in history is that when a claim is disproven – such as Mr. Marcos's claims about his medals, rank, and guerilla unit – it is simply dismissed. When, moreover, a historical matter is under question or grave doubt, as expressed in the military records about Marcos's actions and character as a soldier, the matter may not be established or taken as fact. A doubtful record also does not serve as sound, unassailable basis of historical recognition of any sort, let alone burial in a site intended, as its name suggests, for heroes.

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[154] The NHCP is the independent government entity that has the mandate to resolve, with finality, issues or conflicts on Philippine history.

This Court's and the United States courts' pronouncements, the provisions of RA 10368, coupled with the observations of the NHCP, on the perniciousness, gravity and depravity of the acts (e.g., plunder, falsification, human rights abuse, dictatorship, authoritarianism) that former President Marcos perpetrated and allowed to be perpetrated are sufficient to qualify them as acts involving moral turpitude, justifying the application of the provision on disqualification in the AFP Regulations. The overwhelming import of all these simply cannot be cast aside as irrelevant just because former President Marcos was not convicted of such crimes by a criminal court. Certainly, this Court cannot close its eyes to these established facts from which it can be legitimately concluded that former President Marcos was guilty of crimes involving moral turpitude, and would have been convicted thereof were it not for his flight and his subsequent death. Unfortunately, the *ponencia* is content to brush aside these determinations on the ground that without a conviction these do not amount to a disqualification provided in the AFP Regulations.

Just as the LNMB should be looked at as one integral whole, as one and indivisible national shrine, despite the presence of a military grave site within its confines, former President Marcos should be viewed and judged in his totality. His soldier persona cannot be separated from his private citizen cum former President persona, and *vice versa*, unless by some miracle one can be excised from the other. Either the entire remains of former President Marcos are allowed to be buried in the LNMB or none of his parts. Whether as a soldier or as a President, former President Marcos does not deserve a resting place together with the heroes at the LNMB.

In the end, the argument that burying former President Marcos in the LNMB does not make him a hero disregards the status of the LNMB as a national shrine. And, even if the standards set forth in the AFP Regulations were to be followed, former President Marcos would still be disqualified to be interred in the LNMB.

Thus, recalling the earlier discussion on the second requirement of the President's power to reserve, it is now clear that the

interment violates the specific public purpose, *i.e.*, national shrine purposes/policies, for which the LNMB was reserved.

To recapitulate, the order to inter former President Marcos in the LNMB is clearly contrary to law (PD 105, RA 10066, RA 10086, and the presidential issuances abovementioned), the AFP Regulations, and the public policy that the said laws, executive issuances, and regulations espouse and advance. In light of the foregoing violations, it is also clear that the interment cannot be justified by the exercise of the President's power of control and duty to faithfully execute laws.

*The 1987 Constitution*

The *ponencia* disposes of petitioners' invocation of the provisions of Article II of the Constitution by holding that these are not self-executing, citing *Tañada v. Angara*. However, it fails to recognize at the same time that, since then, several laws have been passed that "enabled" Article II, Section 11, among which are RA 10353[155] and RA 10368. In this respect, the applicability of these laws, especially RA 10368, as basis to oppose the proposed interment will be addressed below.

***The applicable treaties and international law principles stand to be violated with the burial of former President Marcos in the LNMB.***

Article II, Section 2 of the 1987 Constitution provides that the Philippines "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". One of these principles —as recognized by this Court in a long line of decisions[156] — is the

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[155] "Anti-Enforced or Involuntary Disappearance Act of 2012".

[156] *Government of Hongkong Special Administrative Region v. Muñoz*, G.R. No. 207342, August 16, 2016; *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, 727 Phil. 506 (2014); *Bayan v. Zamora*, 396 Phil. 623 (2000); *Magallona v. Ermita*, G.R. No. 187167, August 16, 2011; *Bayan Muna v. Romulo*, 656 Phil. 246 (2011); *CBK Power Company*

rule of ***pacta sunt servanda*** in Article 26[157] of the 1969 Vienna Convention on the Law of Treaties[158] ("VCLT"), or the performance in good faith of a State's treaty obligations. Borrowing the words of this Court in *Agustin v. Edu*,[159] "[i]t is not for this country to repudiate a commitment to which it had pledged its word. The concept of *pacta sunt servanda* stands in the way of such an attitude, which is, moreover, at war with the principle of international morality."[160]

The Philippines became signatory to the Universal Declaration on Human Rights ("UDHR"),[161] and State-party, **without reservations**, to the International Covenant on Civil and Political Rights ("ICCPR")[162] on October 23, 1966, the Rome Statute[163] on August 30, 2011, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") on June 18, 1986.[164]

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*Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84 & 193407-08, January 14, 2015, 746 SCRA 93; *Abaya v. Ebdane, Jr.*, 544 Phil. 645 (2007); *Department of Budget and Management Procurement Service (DBM-PS) v. Kolonwel Trading*, 551 Phil. 1030 (2007); *Deutsche Bank AG v. Commissioner of Internal Revenue*, 716 Phil. 676 (2013); *Secretary of Justice v. Lantion*, 379 Phil. 165 (2000); *La Chemise Lacoste, S.A. v. Fernandez*, 214 Phil. 332 (1984); *Tañada v. Angara*, 338 Phil. 546, 592 (1997); *Pharmaceutical and Health Care Association of the Phils. v. Duque III*, 561 Phil. 386 (2007).

[157] "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

[158] 1155 U.N.T.S. 331, 8 I.L.M. 679, opened for signature May 23, 1969, entered into force Jan. 27, 1980.

[159] G.R. No. L-49112, February 2, 1979.

[160] *Agustin v. Edu*, G.R. No. L-49112, February 2, 1979.

[161] Adopted by the United Nations General Assembly on December 10, 1948; see *Poe-Llamanzares v. Commission on Elections*, G.R. Nos. 221697 & 221698-700 (Dissenting Opinion), March 8, 2016.

[162] 999 UNTS 171 and 1057 UNTS 407 / [1980] ATS 23 / 6 ILM 368 (1967); the Philippines signed the ICCPR on December 19, 1966 and ratified the same on October 23, 1986.

[163] A/CONF.183/9 of 17 July 1998.

[164] The Philippines ratified the CAT on June 26, 1987.

The UDHR is an international document recognizing inalienable human rights, which eventually led to the creation of several legally-binding treaties, such as the ICCPR and International Covenant on Economic, Social and Cultural Rights ("ICESCR").[165] The Philippines signed the UDHR *because* of its recognition of the rights and values enumerated in the UDHR, and it is that same recognition that led the Philippines to sign and ratify both the ICCPR and the ICESCR.[166]

Article VII, Section 21[167] and Article II, Section 2 of the Constitution[168] adopt the *doctrine of transformation*. Treaties, which have been duly entered and ratified pursuant to the Constitution, must be transformed into municipal law so that they can be applied to domestic conflicts.[169] Once so transformed, treaty obligations enjoy the same legal force and effect as domestic statutes.[170]

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[165] The Philippines signed the ICESCR on December 19, 1966 and ratified the same on June 07, 1974; see: J. von Bernstorff. "The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law" 19 (5) European Journal of International Law 903, 913-914 (2008), cited in *Poe-Llamanzares v. Commission on Elections*, G.R. Nos. 221697 & 221698-700 (Dissenting Opinion), March 8, 2016.

[166] See: *Secretary of National Defense v. Manalo*, 589 Phil. 1, 50-51 (2008) and Separate Opinion of *C.J.* Puno in *Republic v. Sandiganbayan*, in *Poe-Llamanzares v. Commission on Elections*, G.R. Nos. 221697 & 221698-700 (Dissenting Opinion), March 8, 2016.

[167] Art. VII, Sec. 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."

[168] 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."

[169] *Pharmaceutical and Health Care Association of the Phils. v. Duque III*, *supra* note 156; *Commissioner of Customs v. Eastern Sea Trading*, No. L-14279, October 31, 1961, 3 SCRA 351, 356 cited in *Intellectual Property Association of the Philippines v. Ochoa*, G.R. No. 204605, July 19, 2016.

[170] *Secretary of Justice v. Ralph Lantion*, *supra* note 156.

The CAT was transformed by virtue of Republic Act 9745 or the "Anti-Torture Act of 2009".[171] Subsequently, echoing its commitment to the UDHR, the Philippines transformed its obligations under the ICCPR and the CAT, on July 23, 2012, with the enactment of Republic Act No. 10368. The enactment of RA 10368 is, in truth, in fulfillment of the country's duty under Article 2(2) of the ICCPR to "take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant."

Section 2 of RA 10368, echoing the State's policy enshrined in Article II, Section 11 of the Constitution on the value of the dignity of every human person and the guarantee of full respect for human rights, is an acknowledgment of the Philippines' obligations as State-party to the UDHR, ICCPR, and the CAT.

Particularly, in enacting RA 10368, the Philippines categorically recognized its obligation to: (1) "give effect to the rights recognized [in the UDHR, ICCPR and the CAT]"[172] (2) ensure that any person whose rights or freedoms have been violated shall have an effective remedy, even if the violation is committed by persons acting in an official capacity; (3) "recognize the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary

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[171] AN ACT PENALIZING TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT AND PRESCRIBING PENALTIES THEREFOR, November 10, 2009.

[172] R.A. 10368, Sec. 2. "x x x By virtue of Section 2 of Article II of the Constitution adopting generally accepted principles of international law as part of the law of the land, the Philippines adheres to international human rights laws and conventions, the Universal Declaration of Human Rights, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) and Other Cruel, Inhuman or Degrading Treatment or Punishment which imposes on each State party the obligation to enact domestic legislation to give effect to the rights recognized therein and to ensure that any person whose rights or freedoms have been violated shall have an effective remedy, even if the violation is committed by persons acting in an official capacity. x x x"

disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986"; and (4) "restore the victims' honor and dignity."

More importantly, the Philippines acknowledged, through RA 10368, its "moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime" and to "acknowledge the sufferings and damages inflicted upon persons whose properties or businesses were forcibly taken over, sequestered or used, or those whose professions were damaged and/or impaired, or those whose freedom of movement was restricted, and/or such other victims of the violations of the Bill of Rights."[173]

The obligations listed in Section 2 of RA 10368 are **not** to be read in a vacuum. Neither should they be read as bounded by the four corners of that law.

Considering that the enactment of RA 10368 was precisely to "***give effect***"[174] to the rights of human rights victims recognized

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[173] R.A. 10368, Sec. 2.

[174] R.A. 10368, Sec. 2. "xxx By virtue of Section 2 of Article II of the Constitution adopting generally accepted principles of international law as part of the law of the land, the Philippines adheres to international human rights laws and conventions, the Universal Declaration of Human Rights, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) and Other Cruel, Inhuman or Degrading Treatment or Punishment which imposes on each State party the obligation to enact domestic legislation to give effect to the rights recognized therein and to ensure that any person whose rights or freedoms have been violated shall have an effective remedy, even if the violation is committed by persons acting in an official capacity. In fact, the right to a remedy is itself guaranteed under existing human rights treaties and/or customary international law, being peremptory in character (*jus cogens)* and as such has been recognized as non-derogable.

Consistent with the foregoing, it is hereby declared the policy of the State to recognize the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former

in the ICCPR and the CAT, which the Philippines ratified **without reservations**,[175] then RA 10368 must be understood and interpreted within the broader context of the treaties which it effectuates. Consistent with this, I concur with the Chief Justice's discussion on the proper interpretation of the rights of HRVVs and the corollary state obligations under RA 10368.

It is very significant to note that RA 10368, Section 2 which provides: "x x x the Universal Declaration of Human Rights, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) and Other

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President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986 and restore the victims' honor and dignity. The State hereby acknowledges its moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime. x x x"

[175] On May 23, 1969 – the very same day the Convention was opened for signature —the Philippines signed the 1969 Vienna Convention on the Law of Treaties ("***VCLT***") *(1155 U.N.T.S. 331, 8 I.L.M. 679, opened for signature May 23, 1969, entered into force Jan. 27, 1980)* and ratified the same on November 15, 1972. Enshrined in Article 26 of the VCLT is the principle of *pacta sunt servanda*, which requires that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith*" (1969 VCLT 1155 U.N.T.S. 331, 8 I.L.M. 679, Art. 26.)*.

Further, pursuant to the principle of *pacta tertiis nec nocent nec prosunt (1969 VCLT, Art. 34. "A treaty does not create either obligations or rights for a third State without its consent"; see in Brownlie, Principles of Public International Law 598, 6th ed., 2003)* under Article 34 of the VCLT, treaties bind only States parties to it (*Id*.). Consequently, in cases where a State does not want certain provisions of a treaty to apply to it, such exception must be expressed by the State by means of a **reservation,** done at the time the State ratifies the treaty (Art. 2(1)(d), 1969 VCLT).

A reservation is a unilateral statement made by a State whereby the State "purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State" (Art. 2(1)(d), 1969 VCLT). In addition, the reservation must be made "when signing, ratifying, accepting, approving, or acceding to a treaty" (*Id*). In effect, a reservation *removes* the obligation referred to by the State from its legal obligations arising from that treaty (Rhona K.M. Smith, Texts and Materials on International Human Rights 67 (2013)). No such reservations have been made by the Philippines when it to the ICCPR, the Rome Statute, and the CAT.

Cruel, Inhuman or Degrading Treatment or Punishment which imposes on each State party the obligation to enact domestic legislation to give effect to the rights recognized therein and to ensure that any person whose rights or freedoms have been violated shall have an effective remedy, even if the violation is committed by persons acting in an official capacity" is an almost **verbatim** reproduction of Article 2(3) of the ICCPR,[176] which provides:

> 3. Each State Party to the present Covenant undertakes:
> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity x x x.

In addition, in interpreting the State's obligations relative to human rights violations, Article 38(1)(d)[177] of the Statute of the International Court of Justice ("ICJ Statute")[178] specifically recognizes "judicial decisions and the teachings of the most highly qualified publicists ("MHQPs") of the various nations, as subsidiary means for the determination of rules of law." In this regard, it is significant to note that as original member of the United Nations ("UN"), the Philippines is *ipso facto* State-party to the ICJ Statute in accordance with Article 93, Chapter XIV of the UN Charter.[179] In other words, the Court can rely on what are called subsidiary sources of international law such as judicial decisions and teachings of MHQPs.

Finally, decisions of various tribunals[180] authorize the use of the text of the relevant convention as an aid to interpretation

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[176] Sec. 2.

[177] Art. 38(1)(d). "[s]ubject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

[178] 3 Bevans 1179; 59 Stat. 1031; T.S. 993; 39 AJIL Supp. 215 (1945).

[179] Article 93 (1). All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.

[180] Ian Brownlie, *Principles of Public International Law* 45 (6th ed., 2003), citing *Salomon v. Commissioners of Customs and Excise* [1967], 2 QB 116,

even if the statute does not incorporate the convention or even refer to it.

Given the foregoing, which are the parameters that are considered in understanding and interpreting RA 10368, the question before the Court is how to determine whether petitioners, who claim to be victims of human rights violations under the Marcos martial law regime,[181] can rightfully be considered HRVVs.

In an attempt to strip MLHRV petitioners of their characterization as HRVVs and to dilute their rights as such, the Solicitor General argues that the lack of specific mention of "state agents" in Sec. 3 of RA 10368 means that former President Marcos could not be held liable as Commander-in-Chief for human rights abuses suffered by them.[182] This argument, however, fails to consider the 2001 Articles on Responsibility of States for Internationally Wrongful Acts or the Articles on State Responsibility ("ASR").[183]

Contrary to the Solicitor General's claims, the absence of the words "state agents" in RA 10368 does not, by itself, remove the basis for holding former President Marcos liable as Commander-in-Chief of the armed forces for the crimes committed during his martial law regime. To begin with, the principle of "state agents" would only be relevant for purposes of attributing responsibility to a *State*, as reflected in Article 4 of the ASR, viz:

> Article 4. *Conduct of organs of a State.*
>
> 1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever

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CA, at 141 (per Lord Denning, MR), 143 (per Diplock, LJ); ILR 41; *Post Office v. Estuary Radio* [1967] 1 WLR 1396, CA, at 1404; [1968] 2 QB 740 at 757; *Cococraft Ltd. v. Pan American Airways Inc.* [1969] 1 QB 616; [1968] 3 WLR 1273, CA at 1281.

[181] Hereinafter referred to as "MLHRV".

[182] OSG Memorandum, par. 245, p. 93.

[183] 53 UN GAOR Supp. (No. 10) at 43, U.N. Doc. A/56/83 (2001).

position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State.

In these petitions, responsibility for the human rights violations committed during the martial law regime is anchored not on the attribution to the *State* through state agents, but on attribution to former President Marcos, as an individual and Commander-in-Chief.

It is also incorrect to argue that the application of "command responsibility" to former President Marcos would violate the constitutional prohibition on bills of attainder and *ex post facto* laws.[184]

In *Hilao v. Estate of Ferdinand Marcos*,[185] the "command responsibility" principle was applied to hold former President Marcos liable for human rights abuses during his martial law regime, which occurred and which he knew about and failed to use his power to prevent. In *In Re: Estate of Marcos*,[186] it was ruled that the estate of former President Marcos was not immune even if the acts of torture, execution, and disappearance were clearly acts outside of his authority as President and were not taken within any official mandate.

While the foregoing cases were decided by United States of America courts, the rulings therein are binding in this jurisdiction by virtue of the act of state doctrine. The act of state doctrine is the "recognition by a country of the legal and physical consequences of all acts of state in other countries,"[187] and "a

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[184] OSG Memorandum, par. 242, p. 93.

[185] *Maximo HILAO, Class Plaintiffs, Plaintiff-Appellee, v. ESTATE OF Ferdinand MARCOS, Defendant-Appellant*, No. 95-15779, December 17, 1996.

[186] In re: Estate of Ferdinand Marcos, 25 F.3d at 1472 (9th Cir. 1994).

[187] *Berstein v. Van Heyden Fieres Societe' Anonyme*, 163 F.2d 246, 249 (2nd Cir. 1947) (L. Hand, J.), in Ifeanyi Achebe, The Act of State Doctrine

recognition of the effects of sovereignty, the attributes and prerogatives of sovereign power."[188] In *Presidential Commission on Good Government v. Sandiganbayan and Officeco Holdings N.V.*,[189] this Court had occasion to rule that the *act of state* doctrine prohibits States from sitting in judgment on the acts of the government of another State done within its territory.[190] It requires the forum court to exercise restraint in the adjudication of disputes by foreign courts performed within its jurisdiction.[191]

Simply put, convicting former President Marcos for whatever past crimes he might have committed would not only be legally untenable but also absurd; however, the Court must recognize what has already been previously and legally determined and settled.

In light of the foregoing, and given the fact that MLHRV petitioners, who by their personal accounts (narrated during the Oral Arguments held on August 31, 2016)[192] and as alleged under oath in their respective petitions, have suffered human rights violations during martial law, there is no legal obstacle in recognizing them as HRVVs as this is defined under RA 10368. As HRVVs, they have several rights under international law, which the State has the duty to protect.

As culled from the primary sources of international law (the ICCPR and the CAT), and the subsidiary sources of international

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and Foreign Sovereign Immunities Act of 1976: Can They Coexist?, 13 Md. J. Int'l. L. 247 (1989).

[188] Ifeanyi Achebe, The Act of State Doctrine and Foreign Sovereign Immunities Act of 1976: Can They Coexist?, 13 Md. J. Int'l. L. 247 (1989). Available at: http://digitalcommons.law.umaryland.edu/mjil/vol13/iss2/4, last accessed on October 17, 2016.

[189] 556 Phil. 664 (2007).

[190] *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 84 S.Ct. 923 (1964), citing *Blad v. Bamfield*, 3 Swans. 604, 36 Eng.Rep. 992; *PCGG v. Sandiganbayan and Officeco Holdings N.V.*, *id.* at 678, citing Evans, M.d. (Ed.), INTERNATIONAL LAW (First Edition), Oxford University Press, p. 357; *Underhill v. Hernandez*, 168 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 456 (1897).

[191] *PCGG v. Sandiganbayan and Officeco Holdings N.V.*, *id.*, citing Evans, M.D. (Ed.), INTERNATIONAL LAW (First Edition), Oxford University Press, p. 357.

[192] TSN, August 31, 2016, pp. 199-215.

law — namely, the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ("UN Guidelines") — as well as RA 10368, HRVVs are entitled to the following rights: (1) the non-derogable right to an effective remedy; (2) the right against re-traumatization; (3) the right to truth and the State's corollary duty to preserve memory; and (4) the right to reparation.

***1. The right to an effective remedy***

Prescinding from the various laws that have been enacted by the Philippine legislature to promote and protect human rights[193] and the availability of judicial remedies,[194] it must be clarified that the Philippines' obligations do not cease by the mere enactment of laws or the availability of judicial remedies. Article 2 of the ICCPR provides:

> Article 2 (3). Each State Party to the present Covenant undertakes:
>
> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

In turn, General Comment No. 31 to the ICCPR states that the purpose of Article 2 will be defeated if there is no concurrent obligation on the part of the State-party **to take measures to prevent a recurrence** of a violation of the ICCPR.[195] In other words, when RA 10368 recognized the obligation of the Philippines to provide an effective remedy to HRVVs, this can

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[193] OSG Memorandum, par. 332, p. 116.

[194] *Id*.

[195] General Comment No. 31, par. 17, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 1326 May 2004. See par. 17, which states:

> 17. In general, the purposes of the Covenant would be defeated without an obligation integral to Article 2 to take measures to prevent a recurrence of a violation of the Covenant.

only be understood as the Philippines also having the concurrent obligation to prevent a recurrence of the violation of the ICCPR.

This is not the first time this Court has been asked to recognize the obligatory nature of the ICCPR and the General Comments interpreting their provisions. In *Echegaray v. Secretary of Justice*,[196] the Court recognized the binding nature of the ICCPR and relied on General Comment 6 (to Article 6 of the ICCPR) to resolve the issues raised by petitioner Echegaray with respect to the death penalty allegedly violating the Philippines' international obligations. In *Razon, Jr. v. Tagitis*[197] the Court relied upon the U.N. Human Rights Committee ("UNHRC")'s interpretation of Article 2 of the ICCPR on the right to an effective domestic remedy. According to the UNHRC, the act of enforced disappearance violates Articles 6 (right to life), 7 (prohibition on torture, cruel, inhuman or degrading treatment or punishment) and 9 (right to liberty and security of the person) of the ICCPR, and the act may also amount to a crime against humanity.[198]

The obligation to provide effective remedy, and concurrently, to prevent a recurrence, by its nature, is not discharged by the mere passage of laws. This obligation, by necessity, is a continuing one.

### *2. The right to be protected from re-traumatization*

Petitioner Latiph claims that the burial of former President Marcos in "a state funeral as a hero and extending to him full military honors"[199] violates the Philippines' obligations under the UN Guidelines.[200] In response, the Solicitor General merely stated that the premise of these alleged violations is "flawed",[201] in that there is no causal relation between the

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[196] 358 Phil. 410 (1998).

[197] 621 Phil. 536 (2009).

[198] *Razon, Jr. v. Tagitis*, *id.* at 603-604.

[199] Latiph Petition, p. 22.

[200] See also OSG Memorandum, par. 310, p. 110.

[201] OSG Memorandum, par. 312, p. 110.

Philippines' compliance with its international law obligations and former President Marcos burial at the LNMB.

First of all, the claim that the Philippines is not bound by the UN Guidelines because they are merely "guidelines" and "not treaties"[202] or "sources of international law"[203] is inaccurate. While it is true that a treaty only binds States parties to it and generally does not create obligations for States not parties to it pursuant to the principle of *pacta tertiis nec nocent nec prosunt*,[204] the rule does not operate to preclude the application of the UN Guidelines to the Philippines. This is because the UN Guidelines **do not** create new international or domestic legal obligations, but merely identify mechanisms, modalities, procedures and methods for the implementation of ***existing*** legal obligations under international human rights law.[205]

Quite the contrary, and as earlier adverted to,[206] the UN Guidelines constitute subsidiary sources of International Law under Article 38(1)(d) of the ICJ Statute. Principle 10 of the UN Guidelines, pertaining to the treatment of victims, provides:

> 10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her **re-traumatization** in the course of legal and administrative procedures designed to provide justice and reparation.

Significantly, Principle 10 is mirrored by Article II, Section 11 of the Constitution and Section 2 of RA 10368, stating that the

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[202] OSG Memorandum, par. 344, p. 119.

[203] OSG Memorandum, par. 344, p. 119.

[204] ICJ Statute, Art. 34.

[205] Preamble to the Principles and Guidelines, par. 7.

[206] *Supra*.

"State values the dignity of every human, person and guarantees full respect for human rights."

Based on the narrations of the HRVV petitioners, it is the intended interment that would reopen wounds and re-traumatize them. In this regard, international law has recognized that impunity must be considered as a continued and ongoing form of torture.[207] To bury the architect of martial law in the LNMB would be an act of impunity.

***3. The right to truth and the States' duty to preserve memory***[208]

Under Principle 2 of the UN Principles on Impunity,[209] the right to truth pertains to the right to know about past events concerning the violations and about the circumstances and reasons that led to the perpetration of those crimes.

The duty to preserve memory, in Principle 3 of the UN Principles on Impunity, requires that people's knowledge of the history of its oppression be part of its heritage and as such, must be ensured by appropriate measures in fulfilment of the State's duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.

The burial of former President Marcos in the LNMB which, as already explained, is not a mere cemetery but a memorial for heroes, will certainly not further or advance the Philippines' obligation to accord HRVVs their right to truth and preserve memory. Indeed, such an act would blur the real role of former President Marcos in the country's history and in the human

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[207] Nora Sveass, Gross human rights violations and reparation under international law: approaching rehabilitation as a form of reparation, European Journal of Psychotraumatology, Eur J Psychotraumatol. 2013; 4, May 8, 2013.

[208] Rosales Petition.

[209] Subsidiary source of international law under Article 38(1)(d) of the ICJ Statute, *supra*.

rights abuses that the HRVVs suffered under his martial law regime. This is the causal connection between the proposed interment and the violation of the HRVV's right to truth, and the Philippines' duty to preserve memory.

***4. The right to specific forms of reparation for harm suffered under Principles 19, 21, 22, 23 of the UN Guidelines***

The Solicitor General claims that the "Philippines had already taken legislative and other measures to give effect to human rights, and provided not only adequate remedies against human rights violations and procedures for the investigation of these violations and for the prosecution of the perpetrators thereof and the penalties therefor, but also reparation to victims."[210] He further claims that RA 10368 has no bearing on the powers of the President and his subordinates under the Constitution and E.O. 292 and that HRVVs can "be very assured that the interment of the remains of the former President Marcos at the *Libingan* will neither prevent them from claiming any entitlements to reparations under RA 10368 nor dilute their claims, moral or legal, monetary or non-monetary, thereunder.[211]

In other words, the Solicitor General is saying that the existence of several laws[212] and the judicial decisions describing former President Marcos as a plunderer and human rights violator already "restored the dignities and reputation of the victims of the regime"[213] and constitute sufficient reparation to the HRVVs.

I cannot agree. The UN Guidelines, as cited in the CHR's Memorandum, and as explained by CHR Chairman Chito Gascon during the Oral Arguments, provide five general forms of

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[210] OSG Memorandum, p. 322, p. 114.

[211] OSG Memorandum, p. 238, p. 91.

[212] R.A. 9851 or the "Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes against Humanity"; R.A. 10353 or the "Anti-Enforced or Involuntary Disappearance Act of 2012"; R.A. 9201 or the "National Human Rights Consciousness Week Act of 2002" and R.A. 10368; see OSG Memorandum, p. 332, p. 116.

[213] Rosales Petition, par. 8.7, pp. 63-64; OSG Memorandum, par. 400, p. 136.

reparation: (1) restitution, (2) compensation, (3) rehabilitation, (4) satisfaction and (5) guarantees of non-repetition.

**Restitution** requires that the victim be restored to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred.

**Compensation** is provided for any economically assessable damage resulting from gross violations of human rights. In this regard, Article 14 of the CAT requires State-parties to ensure in its legal system that "the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full [a] rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation."

**Rehabilitation** includes medical and psychological care as well as legal and social services. There are a number of definitions of rehabilitation.[214] General Comment 3 to Article 14 of the CAT suggests that rehabilitation "*should be holistic and include medical and psychological care as well as legal and social services.*" Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society."[215]

**Satisfaction** includes, among others: (i) the "verification of the facts and full and public disclosure of the truth to assist the victim or prevent the occurrence of further violations," (ii) an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; (iii) a public apology, (iv) commemorations and tributes to victims, and (v) the inclusion

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[214] Redress. Rehabilitation as a form of reparation under international law. 2009. Dec, Retrieved April 5, 2011, from http://www.redress.org/smartweb/reports/reports, in Nora Sveass, Gross human rights violations and reparation under international law: approaching rehabilitation as a form of reparation, European Journal of Psychotraumatology, Eur J Psychotraumatol. 2013; 4, May 8, 2013.

[215] General Comment No. 3, Art. 14, CAT.

of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

**Guarantees of non-repetition** pertain to measures that may be taken which will contribute to the prevention of the reoccurrence of the human rights violations. This includes "strengthening the independence of the judiciary."

Notably, the Human Rights Committee, in General Comment No. 2 (1992) and General Comment No. 31 (2004)[216] defined rehabilitation as a form of reparation. In particular, General Comment No. 20 states that **amnesties are unacceptable**, among other reasons, because they would "deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible."

The arguments of the Solicitor General are thus belied, and shown to be erroneous, by the breadth and extensiveness of the above-described forms of reparation.

To summarize, there is sufficient basis to rule that the burial of former President Marcos in the LNMB will violate certain international law principles and obligations, which the Philippines has adopted and must abide by, and RA 10368 which transformed the principle and State policy expressed in Article II, Section 11 of the Constitution which states: "The State values the dignity of every human person and guarantees full respect for human rights." In this sense, therefore, a violation of RA 10368 is tantamount to a violation of Article II, Section 11 of the Constitution.

**Summation**

For all the reasons stated, the directive to inter former President Marcos in the LNMB constitutes grave abuse of discretion amounting to lack or excess of jurisdiction for being in violation of: (1) Presidential Proclamations 86 and 208, (2) PD 105, (3) RA 10066, (4) RA 10086, (5) AFP Regulations G 161-375

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[216] Human Rights Committee. General comments to the international covenant on civil and political rights (ICCPR) 1992/2004.

and (6) RA 10368, which is tantamount to a violation of Article II, Section 11 of the Constitution.

When all is said and done, when the cortege led by pallbearers has reached the plot in the LNMB dedicated to the newest "hero" of the land and the coffin containing what is claimed to be the remains of former President Marcos has been finally buried in the ground or entombed above ground, this DISSENT, along with the dissents of the Chief Justice and Justices Carpio and Leonen, will be a fitting eulogy to the slaying of the might of judicial power envisioned in the 1987 Freedom Constitution by the unbridled exercise of presidential prerogative using *vox populi* as the convenient excuse.

Above all, this is a tribute to the fallen, *desaparecidos*, tortured, abused, incarcerated and victimized so that the dictator could perpetuate his martial rule, and to those who fought to attain the freedom which led to the very Constitution from which this Court derives the power to make the decision that it reached today — that their sacrifices, sufferings and struggles in the name of democracy would be duly acknowledged and immortalized.

*"For the survivor who chooses to testify, it is clear: his duty is to bear witness for the dead and for the living. He has no right to deprive future generations of a past that belongs to our collective memory. To forget would be not only dangerous but offensive; to forget the dead would be akin to killing them a second time."*

- Elie Wiesel, Night[217]

**For these reasons, I vote to grant the petitions.**

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[217] Wiesel, E. Night, xv (2006 translation with preface to the new translation); Eliezer "Elie" Wiesel (September 30, 1928-July 2, 2016) was born in the town of Sighet, Transylvania. He was a teenager when he and his family were taken from their home in 1944 to the Auschwitz concentration camp, and then to Buchenwald. *Night* is the terrifying record of his memories of the death of his family, the death of his own innocence, and his despair as a deeply observant Jew confronting the absolute evil of man.

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victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim." (People *vs*. Lastrollo *y* Doe, G.R. No. 212631, Nov. 7, 2016) p. 103

— Considering that the qualifying circumstances of minority and third degree relationship were not duly established, the correct penalty for the simple rape committed is *reclusion perpetua*. (*Id*.)

**SEARCH WARRANT**

*Requisites for the issuance of* — A search warrant may be issued by any court and the resultant case may be filed in another court that has jurisdiction over the offense committed. (People *vs*. Hon. Castillo, Sr., G.R. No. 204419, Nov. 7, 2016) p. 77

— The requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized. (*Id.*)

**TEMPERATE DAMAGES**

*Award of* — Compensatory damages may be awarded in the concept of temperate damages for injury to business reputation or business standing, loss of goodwill, and loss of customers who shifted their patronage to competitors. (Coca-Cola Bottlers Phils., Inc. *vs*. Sps. Bernardo, G.R. No. 190667, Nov. 7, 2016) p. 28

**VALUE ADDED TAX (VAT)**

*Rules on claiming refunds or tax credits of unutilized input VAT* — Discussed. (Commissioner of Internal Revenue

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