

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 DETEN...

G.R. No. 225973. August 08, 2017

Ponente: PERALTA, J.

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PERALTA, J.:

On November 8, 2016, the Court dismissed the petitions challenging the intended burial of the mortal remains of Ferdinand E. Marcos (Marcos), former President of the Republic of the Philippines, at the Libingan ng mga Bayani (LNMB). As the Filipino public witnessed through the broadcast media and as the Office of the Solicitor General (OSG) manifested[1] based on the letter sent by the Philippine Veterans Affairs Office (PVAO) of the Department of National Defense (DND), Marcos was finally laid to rest at the LNMB around noontime of November 18, 2016, which was ten (10) days after the promulgation of the judgment and prior to the filing of petitioners' separate motions for reconsideration.

Now before Us are the following matters for resolution:

- Motions for reconsideration (MRs) filed by Ocampo et al.,[2] Lagman et al.,[3] Rosales et al.,[4] Latiph,[5] and De Lima;[6]
- Urgent motion or petition for the exhumation of Marcos' remains at the LNMB filed by Lagman et al.;[7] and
- Petitions to cite respondents in contempt of court filed by Ocampo et al.[8] and Rosales et al.,[9] which were consolidated[10] with the case and docketed as G.R. No. 228186 and G.R. No. 228245, respectively.

Respondents were ordered to file their Comment to the above-mentioned pleadings, as to which they complied in due time.

We shall first tackle the procedural issues raised.

Political question doctrine

Petitioners argue that the main issue of the petitions does not deal on the wisdom of the actions of President Rodrigo R. Duterte (Duterte) and the public respondents but their violation of the 1987 Constitution (Constitution), laws, and jurisprudence. They posit that, under its expanded jurisdiction, the Court has the duty to exercise judicial power to review even those decisions or exercises of discretion that were formerly considered political questions in order to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of a public officer.

From the records of the proceedings of the 1986 Constitutional Commission, it is clear that judicial power is not only a power but also a duty which cannot be abdicated by the mere invocation of the political question doctrine.[11] Nonetheless, Chief Justice Roberto Concepcion clarified that Section 1, Article VIII of the

Constitution was not intended to do away with "truly political questions," which are beyond judicial review due to the doctrine of separation of powers.[12] In *Francisco, Jr. v. The House of Representatives*,[13] this Court conceded that Section 1 Article VIII does not define what are "truly political questions" and "those which are not truly political," and that identification of these two species may be problematic since there has been no clear standard. In the end, however, We resolved that, "[i]n our jurisdiction, the determination of whether an issue involves a truly political and 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." [14]

The Court sees no cogent reason to depart from the standard set in *Francisco, Jr.* Applying that in this case, We hold that petitioners failed to demonstrate that the constitutional provisions they invoked delimit the executive power conferred upon President Duterte. Significantly, AFP Regulations G 161-375 was issued by order of the DND Secretary, who, as the alter ego of the President, has supervision and control over the Armed Forces of the Philippines (AFP) and the PVAO. The Veterans Memorial Historical Division of the PVAO is tasked to administer, develop and maintain military shrines such as the LNMB. As held in Our Decision, AFP Regulations G 161-375 is presumptively valid and has the force and effect of a law and that, until set aside by the Court, is binding upon executive and administrative agencies like public respondents, including the President as the chief executor of the laws.

While the Bill of Rights stands primarily as a limitation not only against legislative encroachments on individual liberties but also against presidential intrusions,[15] petitioners failed to show as well that President Duterte violated the due process and equal protection clauses in issuing a verbal order to public respondents that authorized Marcos' burial at the LNMB. To note, if the grant of presidential pardon to one who is totally undeserving cannot be set aside under the political question doctrine,[16] the same holds true with respect to the President's power to faithfully execute a valid and existing AFP regulation governing the LNMB as a national military cemetery and military shrine.

More so, even if subject to review by the Court, President Duterte did not gravely abuse his discretion when he allowed Marcos' burial at the LNMB because it was already shown that the latter is qualified as a Medal of Valor Awardee, a war veteran, and a retired military personnel, and not disqualified due to dishonorable separation/reversion/discharge from service or conviction by final judgment of an offense involving moral turpitude. 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.[17]

Locus standi

Petitioners claim to have a legal standing to file the petitions because they have already sustained direct injury as a result of the act being questioned in this case. With respect to petitioners who are human rights violation victims (HRVVs) during the martial law period, they contend that their right to dispute Marcos' burial at the LNMB rests on their right to full and effective remedy and entitlement to reparation as guaranteed by the State under the Constitution as well as the domestic and international laws. In particular, they cite Republic Act (R.A.) No. 10368, arguing that Marcos' burial at the LNMB distorts the historical bases upon which their rights to other non-monetary compensation were granted, and is an affront to their honor and dignity that was restored to them by law. Essentially, petitioners decry that Marcos' burial at the LNMB results in illegal use of public funds, re-traumatization, historical revisionism, disregard of their state recognition as heroes and their rights to effective reparation and to satisfaction.

Petitioners' contentions still fail to persuade.

Locus standi or legal standing 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.[18] Generally, a party will be allowed to litigate only when he or she can demonstrate that (1) he or she has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by the remedy being sought.[19] Petitioners have not clearly shown the direct injury they suffered or would suffer on account of the assailed memorandum and directive allowing Marcos' burial at the LNMB.

Petitioners' view that they sustained or will sustain direct injury is founded on the wrong premise that Marcos' burial at the LNMB contravenes the provisions of the Constitution: P.D. No. 105; R.A. Nos. 289, 10066, 10086, 10368; and international laws. However, as the Court fully explained in the assailed Decision, the historical and legal bases governing the LNMB unequivocally reveal its nature and purpose as an active military cemetery/grave site over which President Duterte has certain discretionary authority, pursuant to his control and commander-in-chief powers, which is beyond the Court's judicial power to review.

Petitioners cannot also maintain that Marcos' burial at the LNMB serves no legitimate public purpose and that no valid emulative recognition should be given him in view of his sins as recognized by law and jurisprudence. They have not proven that Marcos was actually not qualified and in fact disqualified under the provisions of AFP Regulations G 161-375. Moreover, the beneficial provisions of R.A. No. 10368 cannot be extended to construe Marcos' burial at the LNMB as a form of reparation for the HRVVs. As We pointed out, such unwarranted interpretation is tantamount to judicial legislation, hence, unconstitutional. It is not Marcos' burial at the LNMB that would result in the "re-traumatization" of HRVVs but the act of requiring them to recount their harrowing experiences in the course of legal proceedings instituted by them or their families to seek justice and reparation for the gross human rights violations.

While the Court has adopted a liberal attitude and recognized the legal standing of concerned citizens who have invoked a public right allegedly breached by a governmental act, there must be showing that the issues raised are of transcendental importance which must be settled early.[20] Since the term has no exact definition, the Court has provided the following instructive guides to determine whether a matter is of transcendental importance: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of 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 the questions being raised.[21] As held in the assailed Decision and further elucidated below, petitioners are unable to satisfy all three determinants.

At this point, suffice it to state that given the public character of the LNMB and the general appropriations for its maintenance and upkeep, petitioners failed to prove illegal disbursement of public funds by showing that Marcos is disqualified to be interred at the LNMB under the provisions of existing Constitution, laws, and regulations. Also, they did not establish that a special disbursement was ordered for the Marcos burial apart from the funds appropriated for the interment of those who are similarly situated, which are sourced from the Maintenance and Other Operating Expenses of the AFP and are regularly included in the General Appropriations Act. As aptly noted by the OSG, the Marcos family would shoulder all the expenses for the burial and that the AFP is even authorized to claim reimbursement for the costs incurred therefor.

In stressing the alleged transcendental importance of the case, petitioners made much out of the Court's issuance of Status Quo Ante Order (SQAQO), the conduct of oral arguments, and the mass protest across various sectors of the Philippine society. They erred. The SQAQO was issued so as not to render moot and academic the petitions

filed while the oral arguments were held in order to enlighten Us on difficult and complicated issues involved in this case. The concerted actions that transpired were but manifestations of the people's exercise of freedom of speech and expression or the right to peaceably assemble and petition the government for redress of grievances. The legal requisites for judicial inquiry before a question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court were not at all dispense with.

Exhaustion of
Administrative Remedies
and Hierarchy of Courts

Petitioners claim that the filing of an MR before public respondents and the Office of the President (OP) would have been an exercise in futility, and that direct resort to this Court is justified by the following special and compelling reasons; (1) the very alter egos of President Duterte, if not the President himself, would rule on the MR; (2) a mere verbal instruction of the President already put in motion the task of organizing Marcos' burial at the LNMB; (3) the denial of an appeal to the OP is a forgone conclusion in view of the President's repeated pronouncements during his election campaign, after the filing of the petitions, and subsequent to the promulgation of the Court's Decision, that he would allow Marcos' burial at the LNMB; (4) the case involves a matter of extreme urgency which is evident from the Court's issuance of SQAQ; (5) whether the President committed grave abuse of discretion and violated the Constitution and the laws is purely a question of law; (6) as proven by the clandestine burial of Marcos in coordination with public respondents, there is up other plain, speedy and adequate remedy to assail the acts which are patently illegal and made with grave abuse of discretion; (7) the strong public interest involved as shown by the nationwide protests; and (8) the case is impressed with public interest and transcendental issues.

We do not subscribe.

The purpose behind the settled rule that a motion for reconsideration is a condition sine qua non for the filing of a petition for certiorari is to grant the court or administrative body which issued the assailed decision, resolution or order the opportunity to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.[22] Even if the challenged issuance of public respondents were rendered upon the verbal order of President Duterte, it cannot be denied that the concerned AFP officials still have the power to enforce compliance with the requirements of AFP Regulations G 161-375, as amended.[23] The logical and reasonable remedy to question the burial procedures and the allocation of plots should be with public respondents who issued the directives.

If the court or administrative body is given an opportunity to correct itself on an MR, there is no reason then not to extend such basic courtesy to public respondents since they are subordinates who merely follow the orders of their Commander-in-Chief. Like the President who is tasked to faithfully execute the laws of the land, they are also enjoined to obey the laws and are entitled to the disputable presumption of regularity in the performance of their official duties. Having been charged to exercise over-all supervision in the implementation of AFP Regulations G 161-375, public respondents could correct the interment directive issued should there be any meritorious ground therefor. The fact that the administrative regulation does not provide a remedy to question an interment directive does not automatically entitle petitioners to directly implore this Court considering that it does not prevent them to appeal or ask for reconsideration based on their claim of right to due process or an opportunity to be heard on an issue over which they insist to have a standing to intervene.

Likewise, the Court cannot anchor its judgment on news accounts of President Duterte's statements with regard to the issue of Marcos' burial at the LNMB. Newspaper articles amount to "hearsay evidence, twice removed" and

are therefore not only inadmissible but without any probative value at all whether objected to or not, unless offered for a purpose other than proving the truth of the matter asserted.[24] As it is, the news article is admissible only as evidence that such publication exists with the tenor of the news therein stated.[25] The same rules apply to news article published via the broadcast media or the internet communication. While it may be asserted that President Duterte's position on the issue is consistent, We must base Our decision on a formal concrete act, preferably a written order denying the MR or appeal, so as to avoid being entangled in possibly moot and academic discourses should he make a volte-face on the issue. Needless to state, he should be given an opportunity to correct himself, as it is disputably presumed that he would maintain his solemn oath to faithfully and conscientiously fulfill his duties as President of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate himself to the service of the Nation.[26]

The fact that the Court was prompted to issue the SQAQO does not make this case extremely urgent to resolve. Instead of issuing a temporary restraining order (TRO) and a writ of preliminary injunction (WPI), We issued (and extended) the effectivity of the SQAQO in order not to render moot and academic the issues raised in the petitions. With respect to the alleged strong public interest on the case as shown by the nationwide protests, the Court views that such mass actions indicate the controversial nature of the issue involved. Again, the requisites of judicial review must be satisfied.

There is also no merit in petitioners' contention that the issue of whether President Duterte and public respondents violated the Constitution and the laws and/or committed grave abuse of discretion is purely a question of law that the Court ultimately has to resolve. To reiterate, the issue of allowing Marcos' burial at the LNMB involves a truly political question which is within the full discretionary authority and wisdom of President Duterte to decide. There is no constitutionally imposed limits on the powers or functions conferred upon him, much less grave abuse of discretion in the exercise thereof. Similarly, public respondents cannot be faulted for issuing the interment directive in their official capacities pursuant to the President's verbal order and to a valid and binding administrative regulation.

Petitioners' direct resort to the Court cannot also be justified by the ruling in *Drilon v. Lim*[27] that –

x x x [I]n the exercise of this jurisdiction [to consider the constitutionality of a law], 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 concurrence of the majority of those who participated in its discussion.[28]

Such opinion bears no relation to the doctrines on exhaustion of administrative remedies and hierarchy of courts. Instead, it refers to the duty of a purposeful hesitation which every court, including Us, is charged before declaring a law unconstitutional, on the theory that the measure was first carefully studied by the executive and the legislative departments and determined by them to be in accordance with the fundamental law before it was finally approved.[29]

It bears emphasis that the Constitution is clear that judicial power, which 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, is vested not just in the Supreme Court but also upon such lower courts established by law.[30] The organic act vests in Us appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive

agreement, law, presidential decree, proclamation, order, instruction, ordinance or regulation is in question.[31] This means that the resolution of such cases may be made in the first instance by said lower courts.[32] Under the law, the proper Regional Trial Court exercises concurrent jurisdiction over extraordinary remedies such as petitions for certiorari, prohibition and/or mandamus and equally wields the power to grant provisional relief/s.

In a case where the constitutionality of an executive order was challenged, the Court stressed that, while lower courts should observe a becoming modesty in examining constitutional questions, they are nonetheless not prevented from resolving the same whenever warranted, subject only to review by the highest tribunal.[33] Besides, even if the case is one of first impression, the New Civil Code provides that no judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws.[34] What is missing in the rules may be found in the general principles of logic, justice and equity.[35] A judge may apply a rule he sees fit to resolve the issue, as long as the rule chosen is in harmony with general interest, order, morals and public policy.[36]

Despite the patent procedural defects of the petitions, the Court nevertheless fully discussed the substantive merits of the case and finally ruled in favor of President Duterte's decision to allow Marcos' burial at the LNMB.

The substantive issues raised in the MR shall now be discussed in seriatim.

Mootness of the Case

The OSG argues that Marcos' burial at the LNMB on November 18, 2016 is a supervening event that rendered moot and academic the MRs of petitioners-movants. Consequently, this Court must refrain from resolving the issues raised in the MRs for to do so would result in an absurd situation wherein Marcos' remains would have to be exhumed if the assailed Decision is overturned. The OSG asserts that petitioners-movants cannot plead for the exhumation without first complying with Articles 306 to 309 of the New Civil Code.[37]

We disagree.

An issue becomes moot and academic when any declaration thereon would be of no practical use or value such that there is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the claim.[38] On this basis, the Court holds that the MRs filed by petitioners-movants have not been mooted by Marcos' burial at the LNMB. There is still a live controversy between the parties. The MRs were not rendered illusory considering that the execution pending their resolution may still be voided in the event that We find merit in the contentions of petitioners-movants. In that sense, a declaration sustaining their motions and granting their prayer for relief would still be of practical value.

SQAO, Petitions for Contempt and Motion for Exhumation

Lagmao et al. contend that the right of a party to file a MR is impaired and that due process is derailed if a decision that is not yet final and executory is implemented. In this case, the Decision must become final and executory before the dissolution of the SQAO can take effect. Pending its finality, the absence of a court order enjoining Marcos' burial at the LNMB is of no moment because the lifting of the SQAO is contingent upon the finality of the Decision. Consistent with *Tung Ho Steel Enterprises Corporation v. Ting Guan Trading Corporation*,[39] which applied Sections 1 and 4 of Rule 52 of the Rules of Court (Rules), while the reglementary period for filing a MR has not expired, the Decision and the SQAO as an accessory order must not be enforced. Accordingly, a premature and void execution of the Decision can be recalled even *motu proprio* by this Court.

The assertions lack merit.

While the Court concedes that execution takes place only when decisions become final and executory,[40] there are cases that may be executed pending appeal[41] or are immediately executory[42] pursuant to the provisions of the Rules and the statutes as well as by court order. Yet, the fact that a decision is immediately executory does not prevent a party from questioning the decision before a court of law.[43]

As regards the SQAQ, Tung Ho is inapplicable for having factual and procedural antecedents that are different from the instant case. Instead, We should find guidance in *Buyco v. Baraquia*,[44] which ruled that the lifting of a WPI due to the dismissal of the complaint is immediately executory even if the dismissal of the complaint is pending appeal. It was held:

A writ of preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It is merely a provisional remedy, adjunct to the main case subject to the latter's outcome. It is not a cause of action in itself. Being an ancillary or auxiliary remedy, it is available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case.

The writ is provisional because it constitutes a temporary measure availed of during the pendency of the action and it is ancillary because it is a mere incident in and is dependent upon the result of the main action.

It is well-settled that the sole object of a preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo until the merits of the case can be heard. It is usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the status quo of the controversy before a full hearing can be had on the merits of the case.

x x x x

The present case having been heard and found dismissible as it was in fact dismissed, the writ of preliminary injunction is deemed lifted, its purpose as a provisional remedy having been served, the appeal therefrom notwithstanding.

Unionbank v. Court of Appeals enlightens:

". . . a dismissal, discontinuance or non-suit of an action in which a restraining order or temporary injunction has been granted operates as a dissolution of the restraining order or temporary injunction," regardless of whether the period for filing a motion for reconsideration of the order dismissing the case or appeal therefrom has expired. The rationale therefor is that even in cases where an appeal is taken from a judgment dismissing an action on the merits, the appeal does not suspend the judgment, hence the general rule applies that a temporary injunction terminates automatically on the dismissal of the action." [45]

By nature, a SQAQ is similar to the provisional remedies of TRO and WPI.[46] Thus, when the Court dismissed the petitions in Our Decision, the SQAQ, in effect, became *functus officio*; it could not stand independent of the main proceeding.[47] Such dismissal necessarily carried with it the lifting of the SQAQ issued during the pendency of the action. Being interlocutory and ancillary in character, the order automatically dissolved upon dismissal of the main case.[48] The SQAQ is effective immediately upon its issuance and upon its lifting despite the existence of the right to file and the actual filing of a MR or appeal.[49]

Petitioners-movants know for a fact that a SQAQ has a definite life span; that it automatically ceases to have effect upon the expiration of the period.[50] In this case, the SQAQ was initially effective until September 12, 2016.[51] It was extended twice, up to October 18, 2016,[52] and then until November 8, 2016[53] when the

Decision was eventually promulgated. If a SQAQO has no specific time frame, petitioners need not have pleaded for an extension and this Court need not have reissued separate resolutions therefor. With the dismissal of the petitions, a court order for the reinstatement of the SQAQO is again necessary. There must be a new exercise of judicial power.[54] Petitioners-movants were cognizant of this rule. On November 11, 2016, Lagman et al. filed a "Manifestation"[55] praying "that the Honorable Supreme Court may consider reissuing the Status [Quo] Ante Order and/or advising the Respondents not to proceed with the said burial pending resolution of the motion/s for reconsideration to be interposed seasonably. " On the same day, Ocampo et al. also filed an "Extremely Urgent Motion"[56] praying, among others, to "[direct] respondents to hold in abeyance or refrain from executing any plans on the interment of the remains of Marcos Sr. at the Libingan pending the formal service of the Decision to petitioners, the resolution of the Motion for Reconsideration to be filed by petitioners, and the finality of the Honorable Court's Decision[.] " However, We did not act on these pleadings.

Finally, based on the title, allegations, and relief being sought, this consolidated case is one for prohibition; hence, essentially in the nature of petitions for injunction. Under Section 4, Rule 39 of the Rules,[57] judgments in actions for injunction are immediately executory; it shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the court.

With the dismissal of the petitions and the lifting of the SQAQO, nothing stood to hinder respondents from acting on and proceeding with Marcos' burial at the LNMB prior to the expiration of the period to file a MR and before its resolution. Considering that there is no fault or punishable acts to speak of, respondents cannot be held guilty of indirect contempt under Section 3 (c) and (d), Rule 71 of the Rules.[58] On the same ground, neither is there any legal justification to order the exhumation of the mortal remains of Marcos and subject the same to forensic examination to ascertain its authenticity.

Non-publication of AFP Regulations

Lagman et al. raise a new issue. They propound that AFP Regulations 161-375 cannot be used as basis to justify Marcos' burial at the LNMB because, per certification issued by Director Flordeliza C. Vargas-Trinidad,[59] AFP Regulations G 161-371 to 161-375 were not filed with the Office of the National Administrative Register (ONAR) of the University of the Philippines Law Complex. This failure is in violation of the mandatory requirement of Sections 3 (1) and 4, Chapter 2, Book VII of the Administrative Code of 1987. Being legally invalid, defective and unenforceable, no rights, privileges and obligations have accrued therefrom or been vested thereby.

They are mistaken.

Chapter 2, Book VII of the Administrative Code of 1987 provides:

SECTION 3. Filing. – (1) Every agency[60] shall file with the University of the Philippines Law Center three (3) certified copies of every rule[61] adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons.

(2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.

(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.

SECTION 4. Effectivity. – In addition to other rule-making requirements provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law, or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The

agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

The publication requirement in the ONAR is confined to issuances of administrative agencies under the Executive Branch of the government.[62] Exempted from this prerequisite are the military establishments in all matters relating exclusively to Armed Forces personnel.[63] A plain reading of AFP Regulations G 161-371 to 161-375 reveals that they are internal in nature as that they were issued merely for the guidance of the concerned AFP units which are tasked to administer the LNMB. Moreover, in view of the nature of the LNMB as an active military cemetery, it cannot be said that AFP Regulations G 161-375 is a regulation which "adversely affect, or impose a heavy and substantial burden on, the citizenry in a matter that implicates the very nature of government we have adopted" such that registration with the ONAR is not only "a matter of administrative convenience but x x x a dictate of due process." [64]

In the exercise of executive power, the President has inherent power to adopt rules and regulations – a power which is different from a delegated legislative power that can be exercised only within the prescribed standards set by law – and to delegate this power to subordinate executive officials.[65] On July 12, 1957, then President Carlos P. Garcia, in the exercise of his powers of control and to reserve public land, issued Proclamation No. 423. Pursuant thereto, the AFP Chief of Staff issued AFP Regulations G 161-371 on February 2, 1960, which was eventually succeeded by AFP Regulations G 161-375. By granting the AFP Chief of Staff the power to administer a military reservation site then known as Fort Wm McKinley (now Fort Andres Bonifacio), part of which is now the LNMB, former President Garcia and the presidents subsequent to him effectively delegated their rule-making power. As expressed in said regulations, they were issued "By Order of the Secretary of National Defense/Defense Minister, " who, in turn, is under the Office of the President.

Assuming that AFP Regulations G 161-375 is invalid for non-compliance with the publication requirement in the ONAR, its invalidity would still not result in the denial of Marcos' burial at the LNMB. Since the Administrative Code of 1987 is prospective in its application, President Duterte may apply AFP Regulations G 161-373 issued on April 9, 1986[66] as legal basis to justify the exercise of his presidential prerogative. Under this earlier regulation, Marcos may be buried at the LNMB because he is a Medal of Valor Awardee, President and AFP Commander-in-Chief, Minister of National Defense, Veteran, and Statesman. Moreover, unlike the succeeding regulations, AFP Regulations G 161-373 contains no provisions on disqualification for interment.

Compliance with the 1987
Constitution, statutes, and
jurisprudence

Petitioners-movants reiterate that AFP Regulations G 161-375 does not have the force and effect of Law and cannot be a valid source of any right, obligation or power for violating the Constitution, international and municipal laws, and foreign and local jurisprudence, which, cannot be disregarded as they are deemed incorporated in administrative regulations.

Again, the Court is not persuaded.

On the 1987 Constitution

Ocampo et al. maintain that Marcos' burial at the LNMB brazenly violates the Constitution, the basic principles of which are respect for human rights and dignity and public accountability. Rosales et al. hold that the spectacle of burying Marcos at the LNMB undermines the recognition of his crimes and takes away the very historical premises on which so much of our present constitutional design and order is anchored. And, Latiph expresses that Marcos was an epitome of anti-democracy, representing oppression and tyranny which the Constitution rejects.

It is asserted that We ignored the intent expressed by the Filipinos when they ratified the Constitution, which, among others, orders the AFP to be the protector of the people (Sec. 3, Art. II); adopts an independent foreign policy (Sec. 7, Art. II); directs the State to take positive and effective measures against graft and corruption (Sec. 27, Art. II); restricts the powers of the President to suspend the privilege of the writ of habeas corpus and proclamation of martial law (Sec. 18, Art. VII); expands the power and duty of the Supreme Court (Sec. 1, Art. VIII); directs that education 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 (Sec. 3 [2], Art. XIV); requires the State to strengthen the patriotic spirit and nationalist consciousness of the military, and respect for people's rights in the performance of their duty (Sec. 5 [2], Art. XVI); creates the Commission on Human Rights (Sec. 17, Art. XIII); and causes the establishment of the Presidential Commission on Good Government (PCGG) and the Comprehensive Agrarian Reform Program (CARP) as well as the enactment of R.A. Nos. 9745, 9851, 10353, and 10368.

Moreover, for *Rosales et al.*, the cases of *Manila Prince Hotel v. GSIS*,^[67] *Agabon v. NLRC*,^[68] *Serrano v. Gallant Maritime Services, Inc.*, et al.,^[69] *Gutierrez v. House of Representatives Committee on Justice*,^[70] and *Gamboa v. Finance Secretary Teves. et al.*^[71] prove that the Constitution has self-executing provisions. *Ocampo et al.* add that this Court struck down in *Manila Prince Hotel* the argument that some provisions of the Constitution are not self-executing and requires implementing legislation, and that provisions claimed to be non self-executing can still be violated if the questioned act is directly opposite the provisions that require the government to undertake.

Finally, it is contended that our constitutional tradition has consistently followed the doctrine that the silence of the Constitution does not mean the absence of constitutional principles and commands. *Rosales et al.* cite *Angara v. Electoral Commission*,^[72] wherein the Court, following the doctrine of necessary implication, appeared to have recognized the principle of separation of powers and Our power of judicial review. Also, *Ocampo et al.* refer to *Egerton v. Earl of Brownlow*,^[73] wherein an act based on public policy considerations was allegedly struck down despite the fact that there was no law or jurisprudence prohibiting it.

The Court need not belabor once more in discussing the points raised above as most, if not all, of the above submissions were considered and passed upon in the Decision.

As the OSG correctly counters, reliance on *Manila Prince Hotel* is misplaced because the issue there was whether Sec. 10, Art. XII of the Constitution, a provision which was not invoked in this case, is self-executing. Petitioners-movants repeatedly failed to demonstrate precisely how Sections 3, 7, 11, 13, 23, 26, 27 and 28 of Art. II; Sec. 18, Art. VII; Sec. 1, Art. VIII; Sec. 1, Art. XI; Sec. 3[2], Art. XIV; Sec. 5 [2], Art. XVI; and Sec. 17, Art. XIII of the Constitution prohibit Marcos' burial at the LNMB. In fact, even the Statement^[74] dated November 24, 2016, which was issued by some members of the Constitutional Commission, offers no consolation as nowhere therefrom could We find any specific constitutional provision/s violated by the interment of Marcos.

The provisions of the Constitution being invoked in this case are simple and clear. They are not equivocal as to necessitate resort to extraneous aids of construction and interpretation, such as the proceedings of the Constitutional Commission or Convention, in order to shed light on and ascertain the true intent or purpose thereof.^[75] *Verba legis* should prevail since the presumption is that the words in which the constitutional provisions are couched express the objective sought to be attained.^[76] The authors of our Constitution were not only the members of the Constitutional Commission but also all those who participated in its ratification. Since the ideas and opinions exchanged by a few of its commissioners should not be presumed to be the opinions of all of them, it is the specific text – and only that text – which was the result of the deliberations of the Commission that must be read and construed.^[77] As this Court, through Justice Leonen, held in *David v. Senate Electoral*

Tribunal:[78]

In the hierarchy of the means for constitutional interpretation, inferring meaning from the supposed intent of the framers or fathoming the original understanding of the individuals who adopted the basic document is the weakest approach.

These methods leave the greatest room for subjective interpretation. Moreover, they allow for the greatest errors. The alleged intent of the framers is not necessarily encompassed or exhaustively articulated in the records of deliberations. Those that have been otherwise silent and have not actively engaged in interpellation and debate may have voted for or against a proposition for reasons entirely their own and not necessarily in complete agreement with those articulated by the more vocal. It is even possible that the beliefs that motivated them were based on entirely erroneous premises. Fathoming original understanding can also misrepresent history as it compels a comprehension of actions made within specific historical episodes through detached, and not necessarily better-guided, modern lenses.

Moreover, the original intent of the framers of the Constitution is not always uniform with the original understanding of the People who ratified it. In *Civil Liberties Union*:

While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framer's understanding thereof.

Considering that the Court may not ascribe to the Constitution meanings and restrictions that would unduly burden the powers of the President,[79] its plain and unambiguous language with respect to his power of control as Chief Executive and Commander-in-Chief should be construed in a sense that will allow its full exercise. It cannot be conveniently claimed that various provisions of the Constitution, taken together, necessarily imply the prohibition of Marcos' burial at the LNMB. The silence of the Constitution cannot be unreasonably stretched to justify such alleged proscription.

On R.A. No. 289

Petitioners Ocampo et al. and Lagman et al. insist that R.A. No. 289 is applicable in determining the standards on who are entitled to be buried at the LNMB. As a special law, its provisions prevail over the power to allocate lands of the public domain granted to the President by the Administrative Code of 1987. Its salutary objective encompasses all subsequent shrines or memorials as interment grounds for former Presidents, heroes, and patriots, regardless of the time it was constituted and its location.

While We agree that R.A. No. 289 is an existing and valid law for not having been amended or repealed by subsequent ones, it is maintained that said law and the LNMB are unrelated to each other. Up to now, the Congress has deemed it wise not to appropriate any funds for the construction of the National Pantheon or the creation of the Board on National Pantheon. Significantly, the parcel of land subject matter of Proclamation No. 431, which was later on revoked by Proclamation No. 42, is different from that covered by Proclamation No. 208. Even Justice Caguioa's dissent, as to which Justice Jardeleza concurred, concluded that it is non sequitur to argue the applicability of R.A. No. 289, or the standards indicated therein, to the LNMB because the land on which the National Pantheon was to be built refers to a discrete parcel of land that is totally distinct from the site of the

LNMB. Except for Justice Leonen, the other justices who dissented to the majority opinion were silent on the matter.

On R.A. No. 10368

The applicability of R.A. No. 10368 was reiterated by petitioners-movants. Ocampo et al. posit that Marcos' burial at the LNMB is diametrically opposed and evidently repugnant to the legislative intent and spirit of R.A. No. 10368, which statutorily declared the policy of the State to recognize the heroism and sacrifices of all human rights violations victims (HRVVs) during the Marcos regime. The HRVVs cannot be recognized and their dignity cannot be restored if the perpetrator is extolled and given honors befitting that of a hero, tantamount to exonerating him. from the abuses of Martial Law. To recall Justice Leonen raised the same arguments in his dissent, stating that Marcos' burial at the LNMB is violative of R.A. No. 10368 because it may be considered as an effort "to conceal abuses during the Marcos regime" or to "conceal x x x the effects of Martial Law"; that it undermines the recognition of his complicity.

On their part, Lagman et al. and Rosales et al. assert that aside from the repealing clause expressly provided for under Sec. 31 of R.A. No. 10368, the incompatibility between AFP Regulations G 161-375 and said law satisfies the standard of effecting a repeal by implication. Under the doctrine of necessary implication, every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege.

We differ.

The provisions of R.A. No. 10368 are straightforward. The rights of HRVVs to recognition and reparation have been set and defined under the law, which grants specific remedies. Glaringly, not one of its provisions could be construed to justify denying former Pres. Marcos or his family of any rights which have been vested by law or regulation. R.A. No. 10368 repudiated no commendation or revoked any distinction attained by Marcos during his lifetime, particularly those which he accomplished outside the period of September 21, 1972 to February 25, 1986. Neither did it nullify any right or benefit accruing to him because of such achievements. The Court cannot do more than what the law clearly provides. To stretch its scope is not only unreasonable but also tantamount to judicial legislation.

Based on the history of the passage of R.A. No. 10368 and the events that led to or precipitated its enactment,[80] what the legislature actually had in mind is accurately reflected in the language of the law. As a matter of fact, in the sponsorship speech of Senator Francis G. Escudero, he expressed that the "bill seeks to provide reparation and recognition of the survivors and relatives of the victims of human rights during the regime of former Pres. Ferdinand Marcos" and that "[i]n order to qualify for compensation under this Act, the human rights violation must have occurred during the period from September 21, 1972 to February 25, 1986." [81] In the Senate, Senators Franklin M. Drilon and Panfilo M. Lacson withdrew their reservation to interpellate on the measure.[82] Likewise, in the House of Representatives (House), no member 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.[83] Thus, this Court is of the view that the statutory omission – the non-inclusion of the prohibition of Marcos' burial at the LNMB – was both deliberate and significant. Congress itself did not consider it as part and parcel of reparation to HRVVs.

Even on the assumption that there is in fact a legislative gap caused by such an omission, neither could the Court presume otherwise and supply the details thereof, because a legislative lacuna cannot be filled by judicial fiat. Indeed, courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the

inclusion. Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission.[84]

Indeed, the Court cannot supply legislative omission. We cannot engraft upon a law something that has been omitted but is believed as ought to have been embraced.[85] This Court cannot, under its power of interpretation, supply the omission even though the omission may have resulted from inadvertence or because the case in question was not foreseen or contemplated." [86] If the law is too narrow in scope or has shortcoming, it is for the Legislature alone to correct it by appropriate enactment, amendment or even repeal.[87]

With regard to the non-monetary reparation to HRVVs under Sec. 5 of R.A. No. 10368, Rosales et al. argue that the Court's narrow interpretation is inconsistent with the prevailing jurisprudence and international law for failure to recognize the all-encompassing concept of the right to an effective remedy. To them, non-monetary reparation is not limited to a hollow commitment to provide services from government agencies including public respondents.

We are not amendable.

It is well established that courts may avail themselves of extrinsic aids such as the records of the deliberations or the actual proceedings of the legislative body in order to assist in determining the construction of a statute of doubtful meaning. Where there is doubt as to what a provision of a statute means, the meaning put to the provision during the legislative deliberation or discussion on the bill may be adopted.[88]

Notably, R.A. No. 10368 is the consolidation of Senate Bill (S.B.) No. 3334[89] and House Bill (H.B.) No. 5990[90] of the 15th Congress. S.B. No. 3334 substituted S.B. Nos. 2615[91] and 3330,[92] which were both referred to and considered by the Senate Committees on Justice and Human Rights and Finance. While S.B. No. 3334 did not provide for non-monetary compensation,[93] H.B. No. 5990[94] afforded such benefit. The Conference Committee on the Disagreeing Provisions of H.B. No. 5990 and S.B. No. 3334 resolved to adopt the provision of the House of Representatives on non-monetary compensation (appearing as Section 5 of now R.A. No. 10368) but did not include its definition under H.B. No. 5990.[95] As defined by the House, it "refers to a non-pecuniary compensation given to a victim of human rights violation or members of the family to restore the family's honor and dignity and shall include, but not limited to, psychotherapy, counseling, medical care, social amelioration and honorific recognition." [96] Hence, interpretation of the term should be viewed in light of this definition such that any non-monetary compensation to be granted must be similar in nature with the enumerated services.

If a statute is plain and free from ambiguity, it must be given its literal meaning or applied according to its express terms, without any attempted interpretation, and leaving the court no room for any extended ratiocination or rationalization.[97] When the letter of the law is clear, to seek its spirit elsewhere is simply to venture vainly, to no practical purpose, upon the boundless domains of speculations.[98] A strictly literal interpretation of a statute may be disregarded and the court may consider the spirit and reason of the statute where a literal meaning would be impossible, render the provision/s meaningless, or lead to inconvenience, absurdity, contradiction, injustice or mischievous results, or would defeat the clear purpose of the lawmakers.[99] Liberality has a place only when, between two positions that the law can both accommodate, the more expansive or more generous option is chosen.[100] It has no place where no choice is available at all because the terms of the law do riot at all leave room for discretion.[101]

The function of the courts is *jus dicere* and not *jus dare*; to interpret law, and not to make law or give law.[102] Our duty is not to amend the law by enlarging or abridging the same.[103] This Court should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the

law, or give the law a construction which is repugnant to its terms.[104] We cannot interpose our own views as to alter them.[105] Simply put, the Court, must not read into the law what is not there.[106] The letter of the law cannot be disregarded on the pretext of pursuing its spirit.[107] To do so would be engaging in judicial legislation, which is abjured by the trias politica, principle and in violation of one of the most basic principles of a republican and, democratic government – the separation of powers.[108]

Judicial power covers only the recognition, review or reversal of the policy crafted by the political departments if and when a case is brought before it on the ground of illegality, unconstitutionality or grave abuse of discretion (i.e., blatant abuse of power or capricious exercise thereof).[109] The determination of the wisdom, fairness, soundness, justice, equitableness or expediency of a statute or what "ought to be" as a matter of policy is within the realm of and should be addressed to the legislature.[110] If existing laws are inadequate, the policy-determining branches of the government, specifically the duly elected representatives who carry the mandate of the popular will, may be exhorted peacefully by the citizenry to effect positive changes.[111] True to its constitutional mandate, the Court cannot craft and tailor statutory provisions in order to accommodate all of situations no matter how ideal or reasonable the proposal may sound.[112] No matter how well-meaning, We can only air Our views in the hope that Congress would take notice.[113]

x x x [The] Court should give Congress a chance to perform its primordial duty of lawmaking. The Court should not pre-empt Congress and usurp its inherent powers of making and enacting laws. While it may be the most expeditious approach, a short cut by judicial fiat is a dangerous proposition, lest the Court dare trespass on prohibited judicial legislation.[114]

Judicial activism should never be allowed to become judicial exuberance.[115] In this case, no amount, of logic or convenience can convince Us to perform an insertion of a matter that was clearly not included in R.A. No. 10368 as enacted. Just like his return to the country, Marcos' burial at the LNMB is a delicate and complex subject with far reaching implications. No one can deny this as even the Post-EDSA presidents, including the two Aquino governments, as well as the past Congresses did not dare, wittingly or unwittingly, to finally put the issue to rest. In view of its political (and even economic) repercussions, We must leave the task of enlarging the scope of benefits to the HRVVs to the legislative authority where it properly belongs and which must be assumed to be just as capable of compassionate consideration as courts are thought to be.[116]

Observance of the IHR Laws

Rosales et al. propound that mere existence of human rights laws, administrative rules, and judicial issuance in the Philippines is not equivalent to full compliance with international law standards. It is contended that if the State is to ensure its commitment to the principles of international human rights law, HRVVs must be given full satisfaction and guarantees of non-repetition as defined by Principles 22 and 23 of 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 and Guidelines"). Similarly, Ocampo et al. hold that the HRVVs are entitled to restitution, compensation, rehabilitation, and satisfaction as contemplated in Sections 19 to 22 of the Basic Principles and Guidelines. Essentially, as the Chief Justice expressed in her dissent, there must holistic reparation – financial and symbolic.

The Basic Principles and Guidelines and the Updated Set of Principles for the Protection and. Promotion of Human Rights Through Action to Combat Impunity ("UN Principles on Impunity") are neither a treaty nor have attained the status of generally accepted principles of international law and/or international customs. Justice Arturo D. Brion fittingly observed in his Separate Concurring Opinion that they do not create legally binding obligations because they are not international agreements but are considered as "soft law" that cannot be interpreted as constraints on the exercise of presidential prerogative. Consistent with Pharmaceutical and Health

Care Assoc. of the Phils, v. Health Sec. Duque III,[117] the Basic Principles and Guidelines and the UN Principles on Impunity are merely expressions of non-binding norms, principles, and practices that influence state behavior; therefore, they cannot be validly considered as sources of international law that is binding upon the Philippines under Art. 38 (1), Chapter II[118] of the Statute of the International Court of Justice.

It is evident from the plain text of the Basic Principles and Guidelines and the UN Principles on Impunity that they are recommendatory in character. The Resolution of the General Assembly adopting the Basic Principles and Guidelines states:

2. Recommends that States take the Basic Principles and Guidelines into account, promote respect thereof and bring them to the attention of members of the executive bodies of government, in particular law enforcement officials and military and security forces, legislative bodies, the judiciary, victims and their representatives, human rights defenders and lawyers, the media and the public in general; (Underscoring ours)

As to the UN Principles on Impunity, the concluding portion of its Preamble reads:

Pursuant to the Vienna Declaration and Programme of Action, the following principles are intended as guidelines to assist States in developing effective measures for combating impunity. (Underscoring ours)

Had the Congress intended to incorporate the provisions of the Basic Principles and Guidelines and the UN Principles on Impunity, which was already adopted by the United Nations as early as 2005, it could have done so by expressly mentioning them in the Declaration of Policy under Sec. 2 of R.A. No. 10368. During the consideration of S.B. No. 3334 and H.B. No. 5990, petitioners-movants should have petitioned the Commission on Human Rights to make the necessary recommendations to the Congress or otherwise directly lobbied to the lawmakers to include the Basic Principles and Guidelines and the UN Principles on Impunity in the proposed law. They did not. Nonetheless, they can do so for the enactment of amendatory laws.

While the States have a duty to repair violations of human rights and international humanitarian law, the modalities of the reparation vary according to the right violated, the gravity of the violation, the harm done, or the persons affected. The Basic Principles and Guidelines recognizes that the different forms of reparation may be awarded depending on the facts of each case and whenever applicable.

Even if the Basic Principles and Guidelines and the UN Principles on Impunity are treated as binding, international laws, they do not prohibit Marcos' burial at the LNMB. We already noted in the Decision that they do not derogate against the right to due process of the alleged human rights violator. Aside from Art. 14, Part III of the ICCPR,[119] XIII (27) of the Basic Principles and Guidelines[120] and Principle 9 of the UN Principles on Impunity[121] are clear and unequivocal. Certainly, observance of due process must not be sacrificed in pursuing the HRVVs' right to full and effective remedy under the international human rights law. The recognition and protection of a person's human rights and dignity must not trample upon that of another who we do not like or those who are perceived to be against us. Justice and equity demands that there be a balancing of interests in the enforcement of both. For the Constitution is a law for all classes of men at all times and there is only one Bill of Rights with the same interpretation for both unloved and despised persons on one hand and the rest who are not so stigmatized on the other.[122]

Disqualification under the AFP Regulations

Dishonorable Discharge

Rosales et al. assert that "active service," as defined in Sec. 3 of P.D. No. 1638, contemplates both civilian and military service. Thus, the term "dishonorable discharge" applies equally to civilians who are guilty of conduct so reprehensible and tainted with manifest disrespect to the rule of law. In Marcos' case, he was ousted from the

Presidency by the Filipinos and was forced into dishonorable exile abroad. Lagman et al. posit that Marcos' burial at the LNMB would completely nullify all that the EDSA People Power Revolution stands for. It would desecrate the spirit of EDSA as it would sweep under the rug of impunity the cardinal sins of Marcos against the Filipinos.

The Court subscribes to the OSG's contention that the two instances of disqualification under AFP Regulations G 161-375 apply only to military personnel in "active service." For the purpose of P.D. No. 1638, the definition of "active service" under Sec. 3 covers the military and civilian service rendered prior to the date of separation or retirement from the AFP. Once separated or retired, the military person is no longer considered as in "active service." In addition, the term dishonorable discharge in AFP Regulations G 161-375 refers to an administrative military process. Petitioners-movants have not shown that Marcos was dishonorably discharged from military service under the law or rules prevailing at the time his active service was terminated or as set forth by any of the grounds and pursuant to the procedures described in AFP Circular 17, Series of 1987[123] issued on October 2, 1987.

Moral Turpitude

Ocampo et al., Lagman et al., Rosales et al., and Latiph argue that the November 8, 2016 Decision distinctly stands out as an aberration that contradicts and undoes the previous court rulings against Marcos. They contend that the majority opinion chose to ignore *Republic v. Sandiganbayan (First Division)*,[124] *Republic v. Sandiganbayan*,[125] *Marcos, Jr. v. Rep. of the Phils.*,[126] *Marcos v. Sec. Manglapus*,[127] *Dizon v. Brig. Gen. Eduardo*,[128] *Mijares v. Hon. Rañada*,[129] *PCGG v. Judge Peña*,[130] *Bisig ng Manggagawa sa Concrete Aggregates, Inc. v. NLRC*,[131] *Galman v. Sandiganbayan*,[132] *In Re Estate of Marcos Human Rights Litigation*[133] and *Hilao v. Estate of Marcos*,[134] which characterized the Martial Law as a regime filled with human rights violations and memorialized Marcos as a dictator who plundered the country. Rosales et al. opine that it is immaterial that the decisions of this Court and the foreign, tribunals were mere civil in character because all those litigation involved exhaustive presentation of evidence wherein Marcos and his heirs were fully heard and have enjoyed due process before courts of competent jurisdiction.

We disagree.

The cited cases cannot be relied upon to bar Marcos' burial at the LNMB. *Galman v. Sandiganbayan*, *Marcos v. Sec. Manglapus*, *Republic v. Sandiganbayan*, *Marcos, Jr. v. Rep. of the Phils.*, *PCGG v. Judge Peña*, and *Mijares v. Hon. Rañada* did not involve the power and authority of the President to order an interment at the LNMB, while *Republic v. Sandiganbayan (First Division)*, *Republic v. Sandiganbayan*, and *Marcos, Jr. v. Rep. of the Phils.* pertained to forfeiture cases under R.A. No. 1379,[135] which this Court declared as civil in nature. More importantly, these cases did not convict Marcos of a crime. The complaints, denunciations, and charges against him no matter how numerous and compelling do not amount to conviction by final judgment of an offense involving moral turpitude. Neither mere presence of an offense involving moral turpitude nor conviction by final judgment of a crime not involving moral turpitude would suffice. The twin elements of "conviction by final judgment" and "offense involving moral turpitude" must concur in order to defeat one's entitlement for burial at the LNMB. The conviction by final judgment referred to is a criminal conviction rendered by a civil court, not one that is handed down by a general court martial. The highest quantum of evidence – proof beyond reasonable doubt, not preponderance of evidence or substantial evidence – must be satisfied. Rosales et al., therefore, erred in supposing that Marcos could never be disqualified under AFP Regulations G 161-375 because it would be absurd that he would appoint a Judge Advocate General to prosecute him and convene a General Court Martial to convict him.

Rosales et al., Latiph, and De Lima further hold that Sec. 14 (2) Art. III of the Constitution anent the right of the

accused to be presumed innocent arises only in criminal prosecution. Correspondingly, Marcos cannot avail such right because he was not charged criminally; he was not under trial; and would not be sentenced to a penalty where he stood to lose his life or liberty. Moreover, a claim for violation of due process by a criminal offender presupposes that the People of the Philippines was afforded a fair opportunity to arrest and prosecute the accused in a court of competent jurisdiction. In Marcos' case, the People were unable to criminally prosecute him because he was ousted from the presidency and died in a foreign land. Under the principle of territoriality in criminal law, the long arm of the law could not reach him for lack of jurisdiction over his person.

The arguments are untenable;

Aside from criminal prosecution, the presumption of innocence applies in the cases of attorney[136] under suspension or disbarment proceedings, judge[137] and court personnel[138] with pending administrative complaint, detained person[139] before a military tribunal, and employee[140] in labor cases.

The right to be presumed innocent until proven guilty is subsumed in the constitutional right of every person not to be held to answer for a criminal offense without due process of law.[141] This constitutional mandate refers to any person, not only to one who has been arrested, detained or otherwise deprived of liberty, or against whom a complaint or information was formally filed, or who is undergoing trial, or who is awaiting judgment by the trial court, or whose judgment of conviction is pending appeal. In *Herras Teehankee v. Rovira*, [142] the Court observed that bail is constitutionally available to all persons, even those against whom no formal charges are filed. By parity of reasoning, there is no legal or just ground for Us to deny the constitutional right to be presumed innocent to one who is not even criminally prosecuted. Similarly, to place such person in a less favored position than an accused in a criminal case would be, to say the least, anomalous and absurd. It is illogical, if not inane. If there is a presumption of innocence in favor of one already formally charged with criminal offense, a fortiori, this presumption should be indulged in favor of one who is yet to be charged.

Likewise, it is entirely inaccurate to proclaim that there was no opportunity to arrest, try, and convict Marcos for his alleged criminal acts. Petitioners-movants must recall that *Marcos v. Sec. Manglapus* arose precisely because the former president intended to return to the Philippines, but then President Corazon C. Aquino refused on the grounds of national security and public safety. We sustained the exercise of her executive power. On hindsight, Marcos could have been prosecuted for his alleged offenses had he been allowed to come back. As what happened, the Court is unaware of any criminal case that was commenced against Marcos until his death.

Rosales et al. are also grossly mistaken to contend that a deceased person cannot claim any demandable right to due process for it is exclusively reserved to a person with civil personality. As the assailed Decision indicated, no less than the Constitution intends that "full respect for human rights [covers] every stage of a person's development 'from the time he becomes a person to the time he leaves this earth.'"[143] In fact, in our system of laws, all criminal liability is totally extinguished by death.[144] This applies to every Filipino, not just Marcos.

Lagman et al. advance that Marcos must be assessed in his totality as a person, since he did not err as an ordinary human being. He was a disgraced President who was deposed by the sovereign people because he was a dictator, plunderer, and human rights violator; he sinned against the multitude of Filipinos as the magnitude of his transgressions permeated and ruined the very core of the Philippines' democratic society and developing economy; and he was not a noble soldier for faking his wartime exploits and credentials. Of the same view, Ocampo et al. assert that the record of Marcos as a soldier cannot be dichotomized and separated from his record as a President because he is no ordinary soldier and president. As *Marcos v. Sec. Manglapus* held, he is "in a class by itself."

The contentions lack merit.

We already pointed out in Our Decision that the NHCP study is limited to the conclusion that Marcos did not receive the Distinguished Service Cross, the Silver Medal, and the Order of the Purple Heart, and that the U.S. Government never recognized the Ang Mga Maharlika and his alleged leadership of said guerilla unit. It is incomplete as to his entire career. It did not cover and had no adverse findings with respect to his other accomplishments as a legislator, a Secretary of National Defense, a military personnel, a veteran, and a Medal of Valor awardee. When the Decision declared that Marcos is "just a human who erred like us, " it was never the intention of the ponente to trivialize or, as petitioners-movants perceive it to be, forgive and forget what Martial Law has done to the HRVVs and our nation in general. There was no attempt to erase his accountability for the alleged human rights violations and the plunder he committed during the period. What the comparison only meant was to convey the truth that no human is perfect; that it is in our nature to commit sins and make mistakes. The Decision did not pass upon the issue of whether Marcos' "errors" were deliberately or innocently done, extensive or insignificant in scale, or heinous or meritorious in character.

Moreover, the case of *Cudia v. The Superintendent of the Philippine Military Academy (PMA)*,^[145] which was invoked by Rosales et al., is inapplicable. The factual antecedents are different and the applicable laws are unrelated: *Cudia* involves the right to due process of a military cadet who was dismissed from the Philippine Military Academy (PMA) while this case involves the right to be buried of a military personnel at the LNMB; *Cudia* involves the PMA cadet's Honor Code and Honor System Handbook while this case involves the AFP Regulations G 161-375; and *Cudia* involves the exercise of academic freedom by the military academy while this case involves the exercise of executive power by the President.

Even if *Cudia* applies, there is actually no conflict. In that case, the Court affirmed the decision of the PMA, noting that it complied with the due process requirement of the law. We did not substitute the judgment of the military; did not impose standards other than what is traditionally and legally been practiced; and did not enforce a penalty different from what was imposed by the PMA. On the other hand, this case also involves a military regulation that We upheld for not being contrary to the prevailing Constitution, laws, and jurisprudence. This Court affirms the standards as to who may be buried at the LNMB, which are based on our unique military traditions and legal milieu, as codified in various AFP Regulations that took into account existing laws such as C.A. No. 408, P.D. No. 1638, and their amendments.

Finally, the Court resolves the challenge of Rosales et al. with respect to Our citation of U.S. rules and regulations on Arlington National Cemetery (Arlington). First, it must be stressed that We did not heavily rely on the list provided by the Code of Federal Regulations (C.F.R.) as to who are entitled to be buried at the LNMB. The rules and regulations on Arlington, as found in the C.F.R., were mentioned because of their apparent similarity with AFP Regulations G 161-375. They were not the main basis of Our Decision, which can stand on its own even without such reference. Second, We also did not forget to cite the very statute that explicitly enumerates those who are prohibited from interment in Arlington. This is reflected in footnotes 161 and 162 of the Decision. Third, We cannot consider the cases of Timothy McVeigh and Russel Wayne Wagner, allegedly U.S. military men who were denied the right to be buried at the military cemetery. Newspaper or electronic reports cannot be appreciated by the Court, "not because of any issue as to their truth, accuracy, or impartiality, but for the simple reason that facts must be established in accordance with the rules of evidence."^[146] And Fourth, the majority members of the Court did not "insist" the need of a prior proceeding in accordance with § 553.21 of the C.F.R. before any disqualification under 38 U.S.C. § 2411 can be applied. We merely echoed the U.S. rules with respect to a person found to have committed a Federal or State capital crime but who has not been convicted by reason of not being available for trial due to death or flight to avoid prosecution. We do not imply that exactly the same U.S. rules should be applied in Marcos' case but only emphasized the need to guarantee the rights of the accused who enjoys the presumption of innocence. In this jurisdiction, there has been no identical or similar rules to apply; hence, this

Court cannot direct any compliance. Instead, Our lone guide is to determine whether, under AFP Regulations G 161-375, Marcos was dishonorably separated/reverted/discharged from service or whether he was convicted by final judgment of an offense involving moral turpitude, Nothing more, nothing less.

MOA between Ramos and the Marcoses

According to Lagman et al., the 1992 Memorandum of Agreement (MOA), which was executed between the Government of the Republic of the Philippines, represented by then Department of Interior and Local Government (DILG) Secretary Rafael M. Alunan III, and the Marcos family, represented by Mrs. Imelda R. Marcos, is a valid and enforceable government contract, it being not contrary to law or public policy, that has never been impugned. As such, it cannot be amended, revoked or rescinded by the subsequent President in order to honor a personal campaign promise. If the sanctity of a private, contract is protected by the non-impairment clause, with more reason is a State contract inviolable. Also, under the MOA, the Marcos family has irrevocably waived any entitlement of the late president to be buried at the LNMB. They are in estoppel and are guilty of laches because they have not instituted any formal demand or action for 24 years since it was signed.

The Court cannot agree.

The decision of former President Fidel V. Ramos in disallowing Marcos' burial at the LNMB is not etched in stone; it may be modified by succeeding administrations. If one Congress cannot limit or reduce the plenary legislative power of succeeding Congresses,[147] so, too, the exercise of executive power by the past president cannot emasculate that of the incumbent president. The discretionary act of the former is not binding upon and cannot tie the hands of the latter, who may alter the same.

In this case, the MOA expressly provides that "any transfer of burial grounds shall be with prior clearance with the Philippine Government taking into account socio-political climate. " When President Duterte issued his verbal directive, he effectively gave the required prior government clearance bearing in mind the current socio-political climate that is different from the one prevailing at the time of former President Ramos. His factual foundation, which is based on his presumed wisdom and possession of vital information as Chief Executive and Commander-in-Chief, cannot be easily defeated by petitioners-movants' naked assertions. Certainly, the determination of whether Marcos' burial at the LNMB will best serve the public interest lies within the prerogative of the President.

The powers of the Philippine President is not limited only to the specific powers enumerated in the Constitution, i.e., executive power is more than the sum of specific powers so enumerated.[148] Thus, he or she should not be prevented from accomplishing his or her constitutionally and statutorily assigned functions and discretionary responsibilities in a broad variety of areas. Presidential prerogative ought not be fettered or embarrassed as the powers, express or implied, may be impermissibly undermined. If the act is within the exercise of the President's discretion, it is conclusive; if it is without authority and against law, it is void.[149] In the absence of arbitrariness and grave abuse, courts have no power or control over acts involving the exercise of judgment of the Executive Department. The ultimate power over alienable and disposable public lands is reposed in the President of the Philippines.[150] More so, a judicial review should not interfere with or intrude into a great extent on his needed prerogatives in conducting military affairs, We have held that the commander-in-chief power of the President is a wholly different and independent specie of presidential authority such that, by tradition and jurisprudence, it is not encumbered by the same degree of restriction as that which may attach to the exercise of executive control.[151]

With the foregoing, it is unnecessary for Us to discuss whether the Marcos family are in estoppel or guilty of laches.

National reconciliation and forgiveness

As long as it is proven that Marcos' burial at the LNMB is not contrary to the prevailing Constitution, laws, and jurisprudence, public respondents need not show exactly how such act would promote the declared policy of national healing and reconciliation. Regardless of petitioners-movants' disagreement with it, the rationale for the assailed directives pertains to the wisdom of an executive action which is not within the ambit of Our judicial review. As well, the disputed act, just like a law that is being challenged, is tested not by its supposed or actual result but by its conformity to existing Constitution, laws, and jurisprudence. Hence, whether or not Marcos' burial at the LNMB would in fact cause the healing of the nation and reconciliation of the parties is another matter that is immaterial for purposes of resolving this case and irrelevant to the application of AFP Regulations G 161-375. It is presumptuous for petitioners-movants to claim that Marcos' burial at the LNMB will not bring about genuine national healing and closure. While the HRYVs may find it hard to accept, it is not improbable that the rest of the Filipinos may think and feel differently. In either case, the Court cannot engage in conjectures and surmises. Instead, Our policy is 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.[152]

Equally, We cannot pass upon the propositions that Marcos' burial at the LNMB would cleanse the late President Marcos of his sins or consecrate his misdeeds (Lagman et al.); or would clear the image of the Marcos family as they once again attempt to rise into power (Rosales, et al); or would politically rehabilitate their already tarnished reputation and give a shot in the arm to their moribund fanatical followers (Ocampo et al.); or would vindicate him or exonerate each and every plunderer, thief, murderer, human rights violator, and torturer in government or justify every immoral and unlawful act of crooks, trapos, cheaters, and other villains in public office, giving honor to impunity in public office and to a public life without moral principles (De Lima). All these allegations are pure and simple speculations that are devoid of any factual moorings.

Historical revisionism

We concur with Ocampo et al. that this Court was also a victim of Marcos' authoritarian rule and that it cannot isolate itself from history because it was and is a part of it. However, as Justice Brion put it, while the Court is not blind to history, it is not a judge thereof. Accordingly, We should leave Marcos' legacy to the judgment of history. The assailed Decision aptly ruled:

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, [We] must [say] 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), 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. 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. Under R.A. Nos. 10066 (National Cultural Heritage Act of 2009) and 10086 (Strengthening Peoples' Nationalism Through Philippine History Act), the declared State policy is to conserve, develop, promote, and popularize the nation's

historical and cultural heritage and resources. 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. Utmost priority shall be given not only with the research on history but also its popularization.[153]

The President of the Philippines has no authority to unilaterally declare anyone a hero. Also, while it is mandatory for the courts to take judicial notice of Philippine history, the NHCP has the primary jurisdiction with respect thereto.[154] It is the principal government agency responsible for history and has the authority to determine all factual matters relating to official Philippine history. In its task to actively engage in the settlement or resolution of controversies or issues relative to historical personages, places, dates and events, the NHCP Board is empowered to discuss and resolve, with finality, issues or conflicts on Philippine history.[155] The Court only steps in if an action is brought before it to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NHCP.

Equitable consideration

Rosales et al. contend that the Court should apply equity and extend equitable protection to the HRVVs because Marcos' burial at the LNMB causes them irreparable injury as it re-inflicts their trauma and grief while the Marcos' heirs have not shown any injury that they would sustain by its denial.

The argument is untenable.

Justice is done according to law. As a rule, equity follows the law. There may be a moral obligation, often regarded as an equitable consideration (meaning compassion), but if there is no enforceable legal duty, the action must fail although the disadvantaged party deserves commiseration or sympathy.

The choice between what is legally just and what is morally just, when these two options do not coincide, is explained by Justice Moreland in *Vales vs. Villa*, 35 Phil. 769. 788 where he said:

Courts operate not because one person has been defeated or overcome by another, but because he has been defeated or overcome illegally. Men may do foolish things, make ridiculous contracts, use miserable judgment, and lose money by them – indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in addition, a violation of law, the commission of what the law knows as an actionable wrong before the courts are authorized to lay hold of the situation and remedy it.[156]

Equity is "justice outside legality,"[157] It is applied only in the absence of and never against statutory law or, as in this case, appropriate AFP regulations. Courts exercising equity jurisdiction are bound and circumscribed by law or rules and have no arbitrary discretion to disregard them.[158] Here, while there is no provision of the Constitution, law, or jurisprudence expressly allowing or disallowing Marcos' burial at the LNMB, there is a rule, particularly AFP Regulations G 161-375, that is valid and existing. It has the force and effect of law because it was duly issued pursuant to the rule-making power of the President that was delegated to his subordinate official. Hence, it is the sole authority in determining who may or may not be buried at the LNMB.

To conclude, let it be emphasized that Supreme Court decisions do not have to be popular as long as the Constitution and the law are followed. In pursuit of the ideal "cold neutrality of an impartial judge," every member of this august body must be guided by what Justice Isagani A. Cruz fittingly stated in his Dissenting Opinion in *Marcos v. Sec. Manglapus*, thus:

I have no illusion that the stand I am taking will be met with paeans of praise, considering that Marcos is perhaps the most detested man in the entire history of our country. But we are not concerned here with popularity and personalities. As a judge, I am not swayed by what Justice Cardozo called the "hooting throng"

that may make us see things through the prisms of prejudice. I bear in mind that when I sit in judgment as a member of this Court, I must cast all personal feelings aside.

The issue before us must be resolved with total objectivity, on the basis only of the established, facts and the applicable law and not of wounds that still fester and scars that have not healed. And not even of fear, for fear is a phantom. That phantom did not rise when the people stood fast at EDSA – against the threat of total massacre in defense at last of their freedom.[159]

Never has a burial stirred so much emotion, rancor and animosity as this case, drawing the Court in its vortex. We could only do so much, however, deciding the issues in a manner within our competence and otherwise holding back on getting embroiled in politically and emotionally charged controversies, matters better left for other government officials and agencies, the people, and history, eventually, to judge.

Ever mindful that the Court cannot and should not be the ultimate judge of all questions that confront the country, We must ever remain cognizant of the boundaries of our role as final arbiters on questions of law in a carefully wrought structure of government. If we are to do our job well, we must know the limits of our powers and the appropriate yardsticks for our decision-making authority. Overextending ourselves is more likely to be counterproductive, eventually compromising our ability to discharge our responsibilities effectively.

Just like the subject matter of this case, the issues must come to an end and be interred. A man's place in history is for others to decide, not the Court's.

WHEREFORE, the motions for reconsideration, as well as the motion/petition to exhume Marcos' remains at the Libingan ng mga Bayani, are DENIED WITH FINALITY. The petitions for indirect contempt in GR. No. 228186 and GR. No. 228245 are DISMISSED for lack of merit.

SO ORDERED.

Velasco, Jr., Leonardo-De Castro, Bersamin, Del Castillo, Mendoza, Perlas-Bernabe, Martires, Tijam, and Reyes, JJ., concur.

Sereno, C.J., reiterates dissent, please see attached.

Carpio, J., reiterate dissent.

Leonen, J., maintain dissent in the case.

Jardeleza, J., joins dissent of J. Caguioa.

Caguioa, J., see separate dissent.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on August 8, 2017 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled cases, the original of which was received by this Office on October 4, 2017 at 2:06 p.m.

Very truly yours,

(SGD.) FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[*] Rene A.V. Saguisag, et al. filed a petition for certiorari-in-intervention.

[1] Rollo (G.R. No. 225973), pp. 2983-2990.

[2] Id. at 3076-3130.

[3] Id. at 3015-3067.

[4] Id. at 3177-3267.

[5] Id. at 3139-3154.

[6] Id. at 3165-3174.

[7] Id. at 2960-2967.

[8] Rollo (G.R. No. 228186), pp. 2-18.

[9] Rollo (G.R. No. 228245), pp. 3-14.

[10] See Resolution dated November 29, 2016 and December 6, 2016 (Rollo (G.R. No. 225973), pp 3138-A - 3138-F and Rollo (G.R. No. 228245), pp. 23-26.

[11] Francisco, Jr. v. The House of Representatives, 460 Phil. 830, 910 (2003).

[12] Id.

[13] Id.

[14] Id. at 912.

[15] See Dissenting Opinion of Justice Abraham F. Sarmiento in Marcos v. Manglapus, 258-A Phil. 547, 560 (1989).

[16] Marcos v. Manglapus, 258 Phil. 479, 506 (1989).

[17] Id. at 506-507.

[18] Francisco, Jr. v. The House of Representatives, *supra* note 11, at 893.

[19] Atty. Lozano, et al. v. Speaker Nograles, 607 Phil. 334, 342 (2009) and Tolentino v. COMELEC, 465 Phil. 385, 402 (2004).

[20] Prof. David v. Pres. Macapagal-Arroyo, 522 Phil. 705, 758-759 (2006).

[21] Chamber of Real Estate and Builders' Ass'ns, Inc. v. Energy Regulatory Commission (ERC), et al., 638 Phil. 542, 556-557 (2010).

[22] See Commissioner on Internal Revenue v. Court of Tax Appeals, et al., 695 Phil. 55, 61 (2012).

[23] AFP Regulations G 161-375 C-1 dated 18 February 2003 provides.

6. Procedures:

x x x

b. For deceased retired military personnel – The next of kin shall secure the Death Certificate and shall submit this document to the Adjutant General, AFP (Attn: C, NRD) who shall examine and process the same and determine if the deceased is qualified to be interred or reinterred at the LNMB.

c. For deceased veterans and reservists – The next of kin shall secure the Death Certificate and shall submit this document to the Adjutant General, AFP (Attn: C, NRD) who shall issue Certificate of Services and/or authenticated retirement orders of the deceased personnel. Subsequently, same documents shall be submitted to the DCS personnel for RRA, J10 who shall process the documents and determine if the deceased is qualified under par. 3 of the AFPRG and cause the issuance of interment directive. (Rollo, [G.R. No. 225973], Vol. II, p. 1275)

[24] *Feria v. Court of Appeals*, 382 Phil. 412, 423 (2000).

[25] *Id.*

[26] 1987 CONSTITUTION, Article VII, Section 5.

[27] *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135.

[28] *Id.* at 140.

[29] *Id.*

[30] 1987 CONSTITUTION, Article VIII, Section 1.

[31] 1987 CONSTITUTION, Article VIII, Section 5 (2) (a).

[32] *Ynot v. Intermediate Appellate Court*, 232 Phil. 615, 621 (1987)

[33] *Id.*

[34] Article 9.

[35] *Ponce v. NLRC*, 503 Phil. 955, 965 (2005).

[36] *The National Liga ng mga Barangay v. Judge Paredes*, 482 Phil. 331, 347 (2004).

[37] Art. 306. Every funeral shall be in keeping with the social position of the deceased.

Art. 307. The funeral shall be in accordance with the expressed wishes of the deceased. In the absence of such expression, his religious beliefs or affiliation shall determine the funeral rites. In case of doubt, the form of the funeral shall be decided upon by the person obliged to make arrangements for the same, after consulting the other members of the family.

Art. 308. No human remains shall be retained, interred, disposed of or exhumed without the consent of the persons mentioned in Articles 294 and 305.

Art. 309. Any person who shows disrespect to the dead, or wrongfully interferes with a funeral shall be liable to the family of the deceased for damages, material and moral.

[38] See *Spouses Nicolas v. Agrarian Reform Beneficiaries Association (ARBA)*, G.R. No. 179566, October 19, 2016.

[39] G.R. No. 182153, April 7, 2014, 720 SCRA 707.

[40] In *PAL Employees Savings & Loan Ass'n, Inc. v. PAL, Inc.* (520 Phil. 502, 518-519 [2006]), We held:

"x x x Distinguishing a 'final' judgment or order from a 'final and executory' order, the Court in *Intramuros Tennis Club, Inc. v. Philippine Tourism Authority* issued the following clarification:

'A 'final' judgment or order is one that finally disposes of a case, leaving nothing more for the court to do in

respect thereto – such as an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right, or a judgment or order that dismisses an action on the ground of res judicata or prescription, for instance, x x x Now, a 'final' judgment or order in the sense just described becomes 'final and executory' upon expiration of the period to appeal therefrom where no appeal has been duly perfected or, an appeal therefrom having been taken, the judgment of the [appellate] court in turn has become final. It is called a 'final and executory' judgment because execution at such point issues as a matter of right." (citations omitted)

[41] Sec. 2 Rule 39 provides:

Sec. 2. Discretionary execution.

(a) Execution of a judgment or final order pending appeal. – On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

(b) Execution of several, separate or partial judgments. – A several separate or partial judgment may be executed under the same terms and conditions as execution of a judgment or final order pending appeal.

[42] The following are immediately executory:

- Decisions in actions for injunction, receivership, accounting and support (Sec. 4, Rule 39; See *Gan v. Hon. Reyes*, 432 Phil. 105 [2002]; *Lim-Lua v. Lua*, 710 Phil. 211 [2013]; and *Mabugay-Otamias v. Republic*, G.R. No. 189516, June 8, 2016)

- Decisions in expropriation (Sec. 11, Rule 67; See *Diamond Builders Conglomeration v. Country Bankers Insurance Corp.*, 564 Phil. 756 [2007])

- Decisions in favor of the plaintiff in ejectment cases (Sections 19 and 21, Rule 70; See *Northcastle Properties and Estate Corp. v. Judge Paas*, 375 Phil. 564 [1999]; *Aznar Brothers Realty Co. v. Court of Appeals*, 384 Phil. 95 [2000]; *Teresa T. Gonzales La'o & Co., Inc. v. Sheriff Hatab*, 386 Phil. 88 [2000]; *Limpo v. CA*, 389 Phil. 102 [2000]; *Lu v. Judge Siapno*, 390 Phil. 489 [2000]; *Uy v. Hon. Santiago*, 391 Phil. 575 [2000]; *Jason v. Judge Ygaña*, 392 Phil. 24 [2000]; *Candido v. Camacho*, 424 Phil. 291 [2002]; *Torres v. Sicat, Jr.*, 438 Phil. 109 [2002]; *Nayve v. Court of Appeals*, 446 Phil. 473 [2003]; *Office of the Court Administrator v. Corpuz*, 458 Phil. 571 [2003]; *David v. Rod and Cynthia Navarro*, 467 Phil. 108 [2004]; *Mina v. Judge Vianzon*, 469 Phil. 886 [2004]; *Ricafort v. Judge Gonzales*, 481 Phil. 148 [2004]; *Benedicto v. Court of Appeals*, 510 Phil. 150 [2005]; *Bugarin v. Palisoc*, 513 Phil. 59 [2005]; *Republic of the Phils. (represented by the Phil. Orthopedic Center) v. Spouses Luriz*, 542 Phil. 137 [2007]; *City of Naga v. Hon. Asuncion et al.*, 579 Phil. 781 [2008]; *Republic of the Phils. v. Hon. Mangotara, et al.*, 638 Phil. 353 [2010]; *La Campana Dev't Corp. v. Ledesma et al.*, 643 Phil. 257 [2010]; *Calara, et al. v. Francisco et al.*, 646 Phil. 122 [2010]; *ALPA-PCM, Inc. v. Bulasao et al.*, 684 Phil. 451 [2012]; *Vda. de Feliciano v. Rivera*, 695 Phil. 441 [2012]; *Acbang v. Judge Luczon, Jr., et al.*, 724 Phil. 256 [2014]; *Atty. Alconera v. Pallanan*, 725 Phil. 1 [2014]; *Air Transportation Office (ATO) v. Court of Appeals (Nineteenth Division)*, G.R. No. 173616, June 25, 2014, 727 SCRA 196; and *Quilo v. Bajao*, G.R. No. 186199, September 7,

2016)

- Judgment of direct contempt (Sec. 2, Rule 71; See *Diamond Builders Conglomeration v. Country Bankers Insurance Corp.*, 564 Phil. 756 [2007])
- Decisions in civil cases before the Regional Trial Court that are governed by the Revised Rule on Summary Procedure (Sec. 21 of the 1991 Revised Rule on Summary Procedure; See *Sps. Jimenez v. Patricia, Inc.*, 394 Phil. 877 [2000])
- Decisions in Amparo petitions (*Lt. Col. Boac, et al. v. Cadapan et al.*, 665 Phil. 84 [2011])
- Decisions in intra-corporate disputes, except the awards for moral damages, exemplary damages and attorney's fees, if any. (Sec. 4, Rule 1 of A.M. 01-2-04-SC or the Interim Rules of Procedure Governing Intra-Corporate Controversies, as amended; See *Atty. Abrenica v. Law Firm of Abrenica, Tungol & Tibayan*, 534 Phil. 34 [2006] and *Heirs of Santiago C. Divinagracia v. Hon. Judge Ruiz, et al.*, 654 Phil. 340 [2011])
- Orders issued by the rehabilitation court (A.M. No. 00-8-10-SC or the Interim Rules of Procedure on Corporate Rehabilitation; See *Golden Cane Furniture Manufacturing Corp. v. Steelpro Philippines, Inc.*, G.R. No. 198222, April 4, 2016, 788 SCRA 82.
- Dismissal Order grounded on the denial of respondents' right to speedy trial (See *Bonsubre, Jr. v. Yerro*, G.R. No. 205952, February 11, 2015, 750 SCRA 490)
- Judgment based on compromise or judicial compromise (See *Republic of the Phils. v. Court of Appeals*, 357 Phil. 174 [1998]; *AFP Mutual Benefit Association, Inc. v. Court of Appeals*, 370 Phil. 150 [1999]; *Rosauo v. Judge Villanueva, Jr.*, 389 Phil. 699 [2000]; *Salvador v. Ortoll*, 397 Phil. 731 [2000]; *Sps. Magat v. Sps. Delizo*, 413 Phil. 24 [2001]; *Thermphil, Inc. v. Court of Appeals*, 421 Phil. 589 [2001]; *Manipor v. Sps. Ricafort*, 454 Phil. 825 [2003]; *Manila International Airport Authority v. ALA Industries Corp.*, 467 Phil. 229 [2004]; *Sps. Romero v. Tan*, 468 Phil. 224 [2004]; *Spouses Dela Cruz v. Court of Appeals*, 485 Phil. 168 [2004]; *Argana v. Republic of the Philippines*, 485 Phil. 565 [2004]; *Magbanua v. Uy*, 497 Phil. 511 [2005]; *Aromin v. Floresca*, 528 Phil. 1165 [2006]; *Phil. Journalists, Inc. v. National Labor Relations Commission*, 532 Phil. 531 [2006]; *Chong v. Court of Appeals*, 554 Phil. 43 [2007]; *Diamond Builders Conglomeration v. Country Bankers Insurance Corp.*, 564 Phil. 756 [2007]; *Republic of the Phils. v. Florendo, et al.*, 573 Phil. 112 [2008]; *Reyes-Mesugas v. Reyes*, 630 Phil. 334 [2010]; *Gaisano v. Akol* [Resolution], 667 Phil. 512 [2011]; *Rizal, et al. v. Naredo, et al.*, 684 Phil. 154 [2012]; *National Power Corporation v. Sps. Ilelo, et al.*, 690 Phil. 453 [2012]; *Gadrinab v. Salamanca, et al.*, 736 Phil. 279 [2014]; *Metro Manila Shopping Mecca Corp. v. Toledo* [Resolution], G.R. No. 190818, November 10, 2014, 739 SCRA 399; *The Plaza, Inc. v. Ayala Land, Inc.*, G.R. No. 209537, April 20, 2015, 756 SCRA 350; and *Ilaw Buklod ng Manggagawa (IBM) Nestle Phils., Inc. Chapter v. Nestle Phils., Inc.*, G.R. No. 198675, September 23, 2015, 771 SCRA 397)
- Decisions of the Labor Arbiter reinstating a dismissed or separated employee (Article 223 [3rd paragraph] of the Labor Code, as amended by Section 12 of Republic Act No. 6715, and Section 2 of the NLRC Interim Rules on Appeals under R.A. No. 6715; See *International Container Terminal Services, Inc. v. NLRC*, 360 Phil. 527 [1998]; *Philippine Rabbit Bus Lines, Inc. v. NLRC*, 365 Phil. 598 [1999]; *Roquero v. Philippine Airlines Inc.*, 449 Phil. 437 [2003]; *Triad Security & Allied Services, Inc. v. Ortega, Jr.*, 517 Phil. 133 [2006]; *Composite Enterprises, Inc. v. Caparoso*, 556 Phil. 301 [2007]; *Torres, Jr., et al. v. NLRC (4[th] Div.) et al.*, 593 Phil. 357 [2008]; *Garcia, et al. v. Phil Airlines, Inc., et al.*, 596 Phil. 510 [2009]; *Bank of the Philippine Islands v. Labor Arbiter Calanza, et al.*, 647 Phil. 507 [2010]; *Magana v. Medicard Phils., Inc., et al.*, 653 Phil. 286 [2010]; *Pfizer, Inc., et al. v. Velaso*, 660 Phil. 434 [2011]; *3rd Alert Security and Detective Services, Inc. v. Navia*, 687 Phil. 610

[2012]; Ever Electrical Manufacturing, Inc. v. Macam, G.R. No. 192169 (Notice), June 13, 2013; Wenphil Corp. v. Abing, G.R. No. 207983, April 7, 2014, 721 SCRA 126; Bergonio, Jr., et al. v. South East Asian Airlines, et al., 733 Phil. 347 [2014]; Castro, Jr. v. Ateneo de Naga University, G.R. No. 175293, July 23, 2014, 730 SCRA 422; Philippine Airlines, Inc. v. Paz, G.R. No. 192924, November 26, 2014, 743 SCRA 1; Baronda v. Court of Appeals, G.R. No. 161006, October 14, 2015, 772 SCRA 276; and Manila Doctors College v. Olores, G.R. No. 225044, October 3, 2016)

- Reinstatement order of the Voluntary Arbitrator (See Baronda v. Court of Appeals, *supra*).
- Return-to-work order in case of assumption of jurisdiction by the Secretary of Labor (See Manila Hotel Employees Ass'n v. Manila Hotel Corp., 546 Phil. 177 [2007])
- Decisions of certain government agencies (See Pilipino Telephone Corp. v. NTC, 457 Phil. 101 [2003]; Zacarias v. National Police Commission, 460 Phil. 555 [2003]; Davao City Water District v. Aranjuez [Resolution], G.R. No. 194192, June 16, 2015; Republic v. Principalia Management and Personnel Consultants, Inc., G.R. No. 198426, September 2, 2015, 758 SCRA 235; and Remo v. Bueno, G.R. Nos. 175736 & 175898, April 12, 2016)
- Penalties imposed in administrative cases (Dr. Alday v. Judge Cruz, Jr., 426 Phil. 385 [2002])
- Decisions of the Civil Service Commission under the Administrative Code of 1987. (See In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, in the latter's capacity as Sec. of DPWH, 529 Phil. 619, 626 [2006])
- Decisions of the Ombudsman in administrative cases may either be unappealable or appealable. Unappealable decisions are final and executory, and they are as follows: (1) respondent is absolved of the charge; (2) the penalty imposed is public censure or reprimand; (3) suspension of not more than one month; and (4) a fine equivalent to one month's salary. Appealable decisions, on the other hand, are those which fall outside said enumeration, and may be appealed to the CA under Rule 43 of the Rules of Court. An appeal shall not stop the decision from being executory, and that such shall be executed as a matter of course. (Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003, as cited in Villaseñor v. Ombudsman, G.R. No. 202303, June 4, 2014, 725 SCRA 230, 237; See also Buencamino v. Court of Appeals, 549 Phil. 511[2007]; Office of the Ombudsman v. Court of Appeals, et al., 576 Phil. 784 [2008]; Office of the Ombudsman v. Samaniego, 646 Phil. 445 [2010]; Office of the Ombudsman v. Court of Appeals, et al., 655 Phil. 541 [2011]; Facura v. Court of Appeals, 658 Phil. 554 [2011]; Ganaden, et al. v. The Hon. Court of Appeals, et al., 665 Phil. 261 [2011]; Office of the Ombudsman v. De Leon, 705 Phil. 26 [2013]; Dr. Pia v. Hon. Gervacio, Jr., et al., 710 Phil. 196 [2013]; Office of the Ombudsman v. De Chavez, et al., 713 Phil. 211 [2013]; Gupilan-Aguilar v. Office of the Ombudsman, G.R. No. 197307, February 26, 2014, 717 SCRA 503; Office of the Ombudsman v. Valencerina, G.R. No. 178343, July 14, 2014, 730 SCRA 12; and Belmonte v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices, G.R. No. 197665, January 13, 2016, 780 SCRA 483.
- Decisions of Sangguniang Panlungsod or Sangguniang Bayan (Sections 61, 67 and 68 of the Local Government Code; See Mendoza v. Laxina, Sr., 453 Phil. 1013 [2003] and Don v. Lacs, 556 Phil. 170 [2007])
- Decisions of the Office of the President under the Local Government Code (Sec. 12, Rule 43 of the Revised Rules of Court in relation to Sec. 68 of the Local Government Code; See Gov. Calingin v. Court of Appeals, 478 Phil. 231 [2004])
- Decisions of the Supreme Court in disciplinary actions against members of the Bar (See Bergonia v. Atty. Herrera, 446 Phil. 1 [2003]; Brion, Jr. v. Brillantes, Jr., 447 Phil. 347 [2003]; Ramos v. Atty. Pallugna, 484 Phil.

184 [2004]; *Mortera v. Atty. Pagatpatan*, 499 Phil. 93 [2005]; *Lim v. Atty. Montana*, 518 Phil. 361 [2006]; *Spouses Tejada v. Atty. Palaña*, 557 Phil. 517 [2007]; *Pangasinan Electric Cooperative I v. Atty. Montemayor*, 559 Phil. 438 [2007].; *Fudot v. Cattleya Land, Inc.*, 591 Phil. 82 [2008]; *Mecaral v. Atty. Velasquez*, 636 Phil. 1 [2010]; *A-1 Financial Services, Inc. v. Atty. Valerio*, 636 Phil. 627 [2010]; *Atty. Alonso et al. v. Atty. Relamida, Jr.* 640 Phil. 325 [2010]; *Yuhico v. Atty. Gutierrez*, 650 Phil. 225 [2010]; *Nebreja v. Atty. Reonal* [Resolution], 730 Phil. 55 [2014]; *Phil. Association of Court Employees (PACE) v. Alibutdan-Diaz*, A.C. No. 10134, November 26, 2014, 742 SCRA 351; *Feliciano v. Bautista-Lozada*, A.C. No. 7593, March 11, 2015, 752 SCRA 245; *Ibana-Andrade v. Paita-Moya*, A.C. No. 8313, July 14, 2015, 762 SCRA 571; *Japitana v. Parado*, A.C. No. 10859 [Formerly CBD Case No. 09-2514], January 26, 2016, 782 SCRA 34; *Floran v. Ediza*, A.C. No. 5325, February 9, 2016, 783 SCRA 301; *In Re: Ferrer* [Resolution], A.C. No. 8037, February 17, 2016, 784 SCRA 118; *Vda. de Dominguez v. Agleron, Sr.* [Notice], A.C. No. 5359, April 18, 2016; and *Quincela, Jr. v. Mijares III* [Notice], A.C. No. 11145, July 26, 2016)

- Decisions of the Supreme Court in urgent election cases (See *Estrella v. COMELEC*, 472 Phil. 328 [2004]; *Jainal v. COMELEC*, 546 Phil. 614 [2007]; *Rivera III v. Commission on Elections*, 551 Phil. 37 [2007]; *Manzala v. Commission on Elections*, 551 Phil. 28 [2007]; *Kabataan Party-List Rep. Palatino, et al. v. Commission on Elections*, 623 Phil. 159 [2009]; *Martinez III v. House of Representatives Electoral Tribunal, et al.*, 624 Phil. 50 [2010]; *Mayor Tolentino v. COMELEC, et al.*, 631 Phil. 568 [2010]; *Dela Cruz v. Commission on Elections, et al.*, 698 Phil. 548 [2012]; *Mayor Abundo, Sr. v. COMELEC, et al.*, 701 Phil. 135 [2013]; *Atong Paglaum, Inc. v. Commission on Elections*, 707 Phil. 454 [2013]; and *Abayon v. House of Representatives Electoral Tribunal*, G.R. Nos. 222236 & 223032, May 3, 2016)

- Decisions of the Supreme Court where there are further proceedings to be taken and there is a need to finally resolve the case with reasonable dispatch (See *Manotok IV, et al. v. Heirs of Homer L. Barque*, 595 Phil. 87 [2008] and *Concorde Condominium, Inc. v. Baculio*, G.R. No. 203678, February 17, 2016, 784 SCRA 263)

- Execution of cases which have dragged on for a number of years (See *Dula v. Dr. Maravilla*, 497 Phil. 569 [2005] and *De Leon v. Public Estates Authority, et al.*, 640 Phil. 594 [2010])

[43] *Remo v. Bueno*, G.R. Nos. 175736 & 175898, April 12, 2016.

[44] 623 Phil. 596 (2009). See also *Sps. Arevalo v. Planters Development Bank et al.*, 686 Phil. 236 (2012) and *Local Water Utilities Administration Employees Association for Progress v. Local Water Utilities Administration*, G.R. Nos. 206808-09, September 7, 2016.

[45] *Buyco v. Baraquia*, 623 Phil. 596, 600-602 (2009). (*Italics, emphasis and underscoring supplied*)

[46] "Apart from the provisional remedies expressly recognized and made available under Rule 56 to Rule 61 of the Rules of Court, the Court has sanctioned only the issuance of the status quo ante order but only to maintain the last, actual, peaceable and uncontested state of things that preceded the controversy. The eminent Justice Florenz D. Regalado, an authority on remedial law, has delineated the nature of the status quo ante order, and distinguished it from the provisional remedy of temporary restraining order, as follows:

There have been instances when the Supreme Court has issued a status quo order which, as the very term connotes, is merely intended to maintain the last, actual, peaceable and uncontested state of things which preceded the controversy. This was resorted to when the projected proceedings in the case made the conservation of the status quo desirable or essential, but the affected party neither sought such relief or the allegations in his pleading did not sufficiently make out a case for a temporary restraining order. The status quo order was thus issued *motu proprio* on equitable considerations. Also, unlike a temporary restraining order or a preliminary injunction, a status quo order is more in the nature of a cease and desist order, since it neither

directs the doing or undoing of acts as in the case of prohibitory or mandatory injunctive relief. The further distinction is provided by the present amendment in the sense that, unlike the amended rule on restraining orders, a status quo order does not require the posting of a bond." (See *Megaworld Properties and Holdings, Inc. v. Majestic Finance and Investment Co., Inc.*, G.R. No. 169694, December 9, 2015 [citations omitted]).

[47] See *Unionbank of the Phils. v. Court of Appeals*, 370 Phil. 837, 845 (1999).

[48] See *Golez v. Leonidas*, 194 Phil. 179, 181 (1981).

[49] See *Gutierrez v. The House of Representatives Committee on Justice, et al.*, 660 Phil. 271, 285 (2011).

[50] See *Dojillo v. COMELEC*, 528 Phil. 890, 907 (2006).

[51] Resolution dated August 23, 2016, rollo (G.R. No. 225973), pp. 317-319.

[52] Resolution dated September 7, 2016, id. at 1591-1595.

[53] Resolution dated October 18, 2016, id. at 2502-2507.

[54] See *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 646.

[55] Rollo (G.R. No. 225973), pp. 2931-2935.

[56] Id. at 2936-2942, 2996-3002.

[57] Sec. 4. Judgments not stayed by appeal. – Judgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support.

The stay of execution shall be upon such terms as to bond or otherwise as may be considered proper for the security or protection of the rights of the adverse party.

[58] Sec. 3. Indirect contempt to be punished after charge and hearing. – After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel,, a person guilty of any of the following acts may be punished for indirect contempt:

x x x

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

x x x

[59] Rollo (G.R. No. 225973). pp. 3068-3072.

[60] "Agency" includes any department, bureau, office, commission, authority or officer of the National Government authorized by law or executive order to make rules, issue licenses, grant rights or privileges, and adjudicate cases; research institutions with respect to licensing functions; government corporations with respect to functions regulating private right, privileges, occupation or business; and officials in the exercise of disciplinary

power as provided by law. (Section 2[1] Chapter 1 Book VII, [ADMINISTRATIVE CODE OF 1987])

[61] "Rule" means any agency statement of general applicability that implements or interprets a law, fixes and describes the procedures in, or practice requirements of, an agency, including its regulations. The term includes memoranda or statements concerning the internal administration or management of an agency not affecting the rights of, or procedure available to, the public. (Section 2[2] Chapter 1 Book VII, [ADMINISTRATIVE CODE OF 1987])

[62] Villanueva v. Judicial and Bar Council, G.R. No. 211833, April 7, 2015, 755 SCRA 182, 206.

[63] Also not covered by the filing requirement are the Congress, the Judiciary, the Constitutional Commissions, the Board of Pardons and Parole, and state universities and colleges.(See Section 1 Chapter 1 Book VII, [ADMINISTRATIVE CODE OF 1987])

[64] See GMA Network, Inc. v. Commission on Elections, G.R. Nos. 205357, 205374, 205592, 205852 & 206360, September 2, 2014, 734 SCRA 88, 153.

[65] See Separate Concurring Opinion of Justice Antonio T. Carpio in ABAKADA GURO Party List (formerly AASJS), at al. v. Hon. Purisima, et al., 584 Phil. 246 (2008).

[66] AFP Regulations G 161-373, issued on April 9, 1986, superseded AFP Regulations G 161-372 issued on July 31, 1973, which, in turn, repeated AFP Regulations G 161-371 issued on February 2, 1960.

[67] 335 Phil. 82 (1997).

[68] 485 Phil. 248 (2004).

[69] 601 Phil. 245 (2009).

[70] 658 Phil. 322 (2011).

[71] 668 Phil. 1 (2011).

[72] 63 Phil. 139 (1936).

[73] 4 HLC 484, [1853] 4 HLC 1, [1853] EngR 885, (1853) 10 ER 359.

[74] Signed by Felicitas Aquino-Arroyo, Adolfo S. Azcuna, Florangel Rosario Braid, Hilario G. Davide, Jr., Edmundo G. Garcia, Jose Lius Martin C. Gascon, Christian S. Monsod, Ricardo J. Romulo, Jaime S.L. Tadeo, and Bernardo M. Villegas (Rollo [G.R. No. 225973], p. 3268).

[75] See Ang Bagong Bayani-OFW Labor Party v. COMELEC, 412 Phil. 308, 338-339 (2001).

[76] Id. 338.

[77] See Dissenting Opinion of J. Leonen in Imbong v. Ochoa, Jr., 732 Phil. 1 (2014).

[78] David v. Senate Electoral Tribunal, G.R. No. 221538, September 20, 2016.

[79] Spouses Constantino, Jr. v. Hon. Cuisia, 509 Phil. 486, 510 (2005).

[80] Refer to the Explanatory Notes of House Bill Nos. 54, 97, 302, 954 and 1693 and Senate Bill Nos. 2615 and 3330 (See People v. Purisima, 176 Phil 186 [1978]; League of Cities of the Phils., et al. v. COMELEC, et al., 623 Phil. 531 [2009]; and Navarro, et al. v. Exec. Secretary Ermita, et al., 663 Phil. 546 [2011]).

[81] Senate Journal No. 38, December 3, 2012. p. 1020.

[82] Senate Journal No. 41, December 10, 2012, p. 1171.

[83] Congressional Record, Vol. 2, No. 44, March 14, 2012, p. 3.

[84] Re: Letter of Court of Appeals Justice Vicente S.E. Veloso For Entitlement to Longevity Pay for His Services As Commission Member III Of The National Labor Relations Commission, A.M. No. 12-8-07-CA, June 16, 2015, 758 SCRA 1, 56.

[85] Tañada v. Yulo, 61 Phil. 515, 519 (1935), as cited in Malaloan v. Court of Appeals, GR. No. 104879, May 6, 1994, 232 SCRA 249, 259; and Fetalino, et al. v. Commission on Elections, 700 Phil. 129, 153 (2012).

[86] Chavez v. Judicial and Bar Council, et al. 709 Phil. 478, 496 (2013).

[87] See Lacson v. Roque, etc., et al., 92 Phil. 456, 464 (1953) and Hebron v. Reyes, 104 Phil. 175, 215 (1958).

[88] De Villa v. Court of Appeals (273 Phil. 89, 96 [1991]), citing Palanca v. City of Manila (41 Phil. 125 [1920]) and Arenas v. City of San Carlos (82 SCRA 318 [1978]).

[89] 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" and co-authored by Sergio R. Osmena III, Teofisto D. Guingona III, Francis G. Escudero, and Franklin M. Drilon.

[90] 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" and co-sponsored by Lorenzo R. Tañada III, Edcel C. Lagman, Rene L. Relampagos, Joseph Emilio A. Abaya, Walden F. Bello, Arlene 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.

[91] Entitled "An Act Providing For Compensation To The Victims Of Human Rights Violations During The Regime Of Former President Ferdinand Marcos, Documentation Of Said Violations, Appropriating Funds Therefor, And For Other Purposes" and introduced by Senator Sergio Osmeña, III.

[92] Entitled "An Act Providing For Compensation To The Victims Of Human Rights Violations During The Regime Of Former President Ferdinand Marcos, Documentation Of Said Violations, Appropriating Funds Therefor, And For Other Purposes" and introduced by Senator Teofisto Guingona, III.

[93] However, one of the substituted bills, S.B. No. 3330, proposed the inclusion of non-monetary compensation to HRVVs such as, but not limited to, psychotherapy, counseling, social amelioration, and honorific recognition.

[94] This bill substituted H.B. Nos. 54, 97, 302, 954 and 1693, which were referred to and considered by the Committees on Human Rights and Appropriations of the House of Representatives. H.B. No 54 ("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 introduced by Representative Lorenzo R. Tañada III; H.B. No. 97 ("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 introduced by Representative Edcel C. Lagman; H.B. No. 302 ("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 introduced by Representatives Walden F. Bello and Arlene J. Bag-ao; H.B. No. 954 ("An Act Mandating Compensation To The 9,539 Class Suit Plaintiffs And The 24 Direct Action Plaintiffs Who Filed and Won The Landmark Human Rights Case Against The Estate Of Ferdinand Marcos In The US Federal Court System In Honolulu, Hawaii and Appropriating Funds Therefor") was

introduced by Representatives Teodoro A. Casiño, Neri Javier Colmenares, Rafael V. Mariano, Luzviminda C. Ilagan, Antonio L. Tinio, Emerenciana A. De Jesus, and Raymond V. Palatino; and H.B. No. 1693 ("An Act Mandating Compensation To Victims of Human Rights Violations During The Marcos Dictatorship From 1972 To 1986 And Appropriating Funds Therefor") was introduced by Representatives Teodoro A. Casifio, Neri Javier Colmenares, Rafael V. Mariano, Luzviminda C. Ilagan, Raymond V. Palatino, Emerenciana A. De Jesus, and Antonio L. Tinio.

[95] Senate Journal No. 50, January 28, 2013, pp, 1611-1612.

[96] The definition was substantially lifted from H.B. Nos. 54, 97, and 302 and similar to what was provided in S.B. No. 3330.

[97] See *People v. Quijada*, 328 Phil. 505, 555 (1996) and *Barcellano v. Bañas*, 673 Phil. 177, 187 (2011).

[98] See *People, v. Quijada*, supra; *Barcellano v. Bañas*, supra, and the dissenting opinion of Justice Claro M. Recto in *Pascual v. Santos*, 62 Phil. 148, 160 (1935).

[99] *Hidalgo, et al. v. Hidalgo, et al.*, 144 Phil. 312, 323 (1970); *People v. Judge Purisima*, supra note 80, at 206; *Pobre v. Mendieta*, G.R. No. 106677, 106696, July 23, 1993; *Matuguina Integrated Wood Products, Inc. v. CA*, 331 Phil. 795, 818 (1996); *Pangandaman v. COMELEC*, 377 Phil. 297, 312 (1999); *Thornton v. Thornton*, 480 Phil. 224, 233 (2004); *Republic of the Phils. v. Orbecido III*, 509 Phil. 108, 115 (2005); *Rural Bank of San Miguel Inc. v. Monetary Board*, 545 Phil 62, 72 (2007); *League of Cities of the Phils., et al. v. COMELEC, et al.*, 623 Phil. 531, 564-565 (2009); and *Barcellano v. Bañas*, supra note 97, at 187.

[100] Re: Letter Of Court Of Appeals Justice Vicente S.E. Veloso For Entitlement To Longevity Pay For His Services As Commission Member III Of The National Labor Relations Commission, supra note 84, at 52-53.

[101] *Id.* at 53.

[102] See *Uson v. Diosomito*, 61 Phil. 535 (1935) and *Office of the Court Administrator v. Judge Pascual*, 328 Phil. 978, 979 (1996).

[103] See *Silverio v. Rep. of the Phils.* 562 Phil. 953, 973 (2007) and *Kida, et al. v. Senate of the Philippines, et al.*, 675 Phil. 316, 372, 383 (2011).

[104] *Corpuz v. People*, 734 Phil. 353, 416 (2014),

[105] *Bernas v. Court of Appeals*, G.R. No. 85041, August 5, 1993, 225 SCRA 119, 138.

[106] *Phil. Deposit Insurance Corp. v. Bureau of Internal Revenue*, 540 Phil. 142, 165 (2006); *Commissioner of Internal Revenue v. BPI*, 549 Phil. 886, 897 (2007); and *Fort Bonifacio Dev't Corp. v. Commissioner of Internal Revenue, et al.*, 617 Phil. 358, 371 (2009).

[107] *Commissioner of Internal Revenue v. Fortune Tobacco Corp.*, 581 Phil. 146, 166 (2008).

[108] See *Mendoza v. People*, 675 Phil. 759, 766 (2011) and *Kida, et al. v. Senate of the Philippines, et al.*, supra note 103.

[109] See *People v. Reyes*, G.R. Nos. 101127-31. August 7, 1992, 212 SCRA 402, 410; *Kida, et al. v. Senate of the Philippines, et al.*, supra note 103, at 368 and *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council, et al.* 676 Phil. 518, 603 (2011) citing Justice Renato C. Corona's dissenting opinion in *Ang Ladlad LGBT Party v. COMELEC*, 632 Phil. 32 (2010).

[110] See *Silverio v. Rep. of the Phils.*, 562 Phil 953, 973 (2007); Re: Entitlement to Hazard Pay of SC Medical

and Dental Clinic Personnel, 592 Phil. 389, 403 (2003); Kida, et al. v. Senate of the Philippines, et al., supra note 103; Giron v. COMELEC, 702 Phil. 30, 39 (2013); Re: Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement to Longevity Pay for His Services as Commission Member III of the National Labor Relations Commission, supra note 84, 55; and Banco De Oro v. Republic, G.R. No. 198756, August 16, 2016 (Resolution).

[111] See the concurring and dissenting opinion of Chief Justice Marcelo B. Fernan in In the Matter of the Petition for Habeas Corpus of Umil v. Ramos, 279 Phil. 266, 317 (1991).

[112] Chavez v. Judicial and Bar Council, et al. supra note 86, at 497.

[113] Philacor Credit Corp. v. Commissioner of Internal Revenue, 703 Phil. 26, 42 (2013).

[114] Corpuz v. People, 734 Phil. 353, 425 (2014).

[115] Chavez v. Judicial and Bar Council, et al., supra note 86, at 497.

[116] Gonzaga v. The Secretary of Labor, 254 Phil. 528, 545 (1989).

[117] 561 Phil. 386 (2007). See also Ang LadLad LGBT Party v. COMELEC, 632 Phil. 32 (2010).

[118] 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized, by civilized nations;
- d. subject 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.

[119] Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

[120] 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.

[121] 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.

[122] See Dissenting Opinion of Justice Hugo E. Gutierrez, Jr. in *Marcos v. Sec. Manglapus*, 258 Phil. 479, 513-514 (1989).

[123] Administrative Discharge Prior to Expiration of Term of Enlistment.

[124] GR. No. 96073, January 23, 1995, 240 SCRA 376.

[125] 453 Phil. 1059 (2003).

[126] 686 Phil. 980 (2012).

[127] 258 Phil. 479 (1989).

[128] 242 Phil. 200 (1988).

[129] 495 Phil. 372 (2005).

[130] 243 Phil. 93 (1988).

[131] G.R. No. 105090, September 16, 1993 226 SCRA 499.

[132] 228 Phil. 42 (1986).

[133] 910 F. Supp. 1460 (1995),

[134] 103 F.3d 762 (1996).

[135] AN ACT DECLARING FORFEITURE IN FAVOR OF THE STATE ANY PROPERTY FOUND TO HAVE BEEN UNLAWFULLY ACQUIRED BY ANY PUBLIC OFFICER OR EMPLOYEE AND PROVIDING FOR THE PROCEEDINGS THEREFOR.

[136] *Bautista, et al. v. Atty. Ydia*, 161 Phil. 511 (1976); *Acosta v. Atty. Serrano*, 166 Phil. 257 (1977); *Uytengsu III v. Atty. Baduel*, 514 Phil. 1 (2005); *St. Louis University Laboratory High School (SLU-LHS) Faculty and Staff v. Atty. Dela Cruz*, 531 Phil. 213 (2006); *Salmingo v. Atty. Rubica*, 553 Phil. 676 (2007); *Aba, et al. v. Attys. De Guzman, Jr., et al.*, 678 Phil. 588 (2011); *Rodica v. Atty. Lazaro, et al.*, 693 Phil. 174 (2012); *Rodica v. Atty. Lazaro, et al.*, 706 Phil. 279 (2013); *Samonte v. Atty. Abellana*, 736 Phil. 718 (2014); *Sultan v. Macabanding*, A.C. No. 7919, October 8, 2014, 737 SCRA 530; *Jimenez v. Francisco*, A.C. No. 10548, December 10, 2014, 744 SCRA 215; *Villamor, Jr. v. Santos*, A.C. No. 9868, April 22, 2015, 757 SCRA 1; *Ecraela v. Pangalangan*, A.C. No. 10676, September 8, 2015; *Vda. de Robosa v. Mendoza*, A.C. No. 6056, September 9, 2015; *Rafanan v. Gambe*, A.C. No. 10948 (Notice), January 18, 2016; *Kim Yung Gu v. Rueda*, A.C. No. 10964 (Notice), January 20, 2016; *Rustia v. Jarder*, A.C. No. 10869 (Notice), January 27, 2016; and *Militante v. Batingana*, A.C. No. 9199 (Notice), June 1, 2016. See, however, *Cruz v. Jacinto*, 385 Phil. 359 (2000).

[137] *Atty. Geocadin v. Hon. Peña*, 195 Phil. 344 (1981); *Tan v. Usman*, A.M. No. RTJ-14-2390, August 13, 2014; and *Re: Conviction of Judge Angeles*, RTC, Br. 121, Caloocan City, in Criminal Case No. Q-97-69655 to 56 for Child Abuse, 567 Phil. 189 (2008).

[138] *Son v. Salvador, et. al.*, 584 Phil. 10 (2008).

[139] *Go v. Gen. Olivas*, 165 Phil. 830 (1976); *Romero v. Hon. Ponce Enrile*, 166 Phil. 416 (1977); and Concurring and Dissenting Opinion of Chief Justice Enrique M. Fernando in *Buscayno, et al. v. Military Commissions Nos. 1, 2, 6 & 25, et al.*, 196 Phil. 41 (1981).

[140] Castillo v. Filtext International Corp. 209 Phil. 728 (1983); Gubac v. National Labor Relations Commission, 265 Phil. 451 (1990); and Gargoles v. Del Rosario, G.R. No. 158583, September 10, 2014, 734 SCRA 558.

[141] 1987 CONSTITUTION, Sec. 14 (1) Art III.

[142] 75 Phil. 634 (1945). See also Herras Teehankee v. Director of Prisons, 76 Phil. 756, 766-767 (1946); Concurring and Dissenting of Justice Vicente Abad Santos in Morales, Jr. v. Minister Enrile, et al., 206 Phil. 466, 529-530 (1983); and Separate Opinion of Justice Jose C. Vitug in Gov't of the United States of America v. Hon. Purganan, 438 Phil 417, 503 (2002).

[143] 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.

[144] REVISED PENAL CODE, Art. 89 (1).

[145] 754 Phil. 590 (2015).

[146] See Lawyers Against Monopoly and Poverty (LAMP), et al. v. The Secretary of Budget and Management, et al. 686 Phil. 357, 374 (2012).

[147] City of Davao v. RTC, Branch XII, Davao City, 504 Phil. 543, 558-559 (2005).

[148] Marcos v. Sec. Manglapus, 258 Phil. 479, 502 (1989).

[149] See U.S. ex rel. Goodrich v. Guthrie, 58 U.S. 284, 314, 15 L. Ed. 102 (1854).

[150] Chavez v. National Housing Authority, 557 Phil. 29, 90 (2007).

[151] See B/Gen. (Ret.) Gudani v. Lt./Gen. Senga, 530 Phil. 398, 417-418 (2006).

[152] See Garcia v. Executive Secretary, 281 Phil. 572, 579 (1991).

[153] November 8, 2016 Decision, pp. 28-29 (Citations omitted) (Rollo [G.R. No. 225973], pp. 2617-2618).

[154] The Court held in Guy et al. v. Ignacio (636 Phil. 689, 703-704 [2010]):

x x x In cases where the doctrine of primary jurisdiction is clearly applicable, the court cannot arrogate unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence.

Above all else, this Court stii! upholds the doctrine of primary jurisdiction. As enunciated in Republic v. Lacap:

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.

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.

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, ars 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 x x x (citations omitted)

[155] Sections 5 (e) and 7 (h), R.A. No. 10086.

[156] *Rural Bank of Parañaque, Inc. v. Remolado, et al.* 220 Phil. 95, 98 (1985). See also *Esconde v. Hon. Barlongay*, 236 Phil. 644, 654 (1987); *Sps. Manzanilla v. Court of Appeals*, 262 Phil. 228, 236 (1990); *Sps. Serrano v. Court of Appeals*, 463 Phil. 77, 93 (2003); and *Pepsi Cola Products (Phils.) v. Patan, Jr.*, 464 Phil. 517, 524 (2004).

[157] *Sps. Alvendia v. Intermediate Appellate Court*, 260 Phil. 265, 278 (1990).

[158] See *Sps. Alvendia v. Intermediate Appellate Court*, 260 Phil. 265, 278 (1990).

[159] *Marcos v. Sec. Manglapus*, 258 Phil. 479, 528 (1989).

DISSENTING OPINION

SERENO, CJ:

On 18 November 2016, former President Ferdinand E. Marcos was interred at the Libingan ng mga Bayani (Libingan) with burial rites and ceremonies conducted by the Armed Forces of the Philippines.[1] Respondents held the ceremony just 10 days after the Decision of this Court was released, notwithstanding the fact that the ruling had not yet attained finality, in his draft Resolution, however, the ponente proposes to take no action against respondents in connection with their premature implementation of the Decision. He also recommends the denial of the Motions for Reconsideration filed by petitioners.

I maintain my dissent.

I disagreed with the majority ruling issued on 8 November 2016 for many reasons, as explained in my Dissenting Opinion. My views on most of the arguments raised by petitioners have already been elucidated in my discussion therein, and my position has not changed.

It must continuously be emphasized that the absence of an express prohibition against the burial of former President Marcos should not be considered the primary determinant of the merits of this case. Our laws and jurisprudence provide more than sufficient guidance on what must be done with respect to his burial, and it is the duty of this Court to utilize these texts to arrive at a conclusion that allows right and justice to prevail.

As extensively explained in my Dissent, our Constitution,[2] statutes, and jurisprudence clearly denounced the massive plunder and the countless abuses committed by Marcos and his cronies during his tenure as President. The legislature and the courts not only condemned him as a thief; they equally recognized his legal liability for the human rights violations suffered by innumerable victims while he was in power.[3] Taking all these things into account, Marcos is clearly not worthy of commendation from the state, and no public purpose would be served by his interment in the Libingan. Furthermore, his burial in that cemetery ran counter to the obligations of the Philippines under international human rights law; in particular, the duty to combat impunity and hold

perpetrators of human rights violations accountable.

It is thus evident that 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. His act was in direct contravention of both the policy and the spirit of domestic and international law, and for the Court to sanction this decision would be to endorse an egregious act of impunity. It would effectively be allowing the government to bestow undue honor upon a corrupt public official and perpetrator of human rights violations. This question is far from being purely political in nature. In fact, it goes into the very heart of the duty of this Court as the protector of the Constitution.

I believe that my position on the various issues raised by the parties has been adequately explained in my dissent from the Decision dated 8 November 2016. Nevertheless, I am compelled to write the present opinion to record my observations on two crucial questions brought up in the Motions for Reconsideration: (1) the precipitate burial of Marcos in the Libingan before the Decision of this Court attained finality; and (2) the invalidity of AFP Regulations G 161-375 for noncompliance with the requirement of filing copies thereof with the Office of the National Administrative Register (ONAR).

Given that the Decision dated 8 November 2016 had not yet attained finality, respondents had no right to proceed with the burial of Marcos at the Libingan.

As previously stated, Marcos was interred at the Libingan and accorded military honors on 18 November 2016, or 10 days after the Decision of this Court was released. Petitioners objected to the allegedly premature execution of the Decision citing their unexpired period to seek reconsideration of the ruling. They argue that the Decision had not attained finality and therefore could not be executed without impairing their right to due process.

I find merit in the foregoing arguments.

Respondents had no authority to execute the Decision pending its finality.

Rule 52, Sections 1 and 4 of the 1997 Rules of Court, provides the guidelines for the finality and execution of judgments of the Supreme Court:

RULE 52
MOTION FOR RECONSIDERATION

Section 1. Period for filing.

A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party.

x x x x

Sec. 4. Stay of execution.

The pendency of a motion for reconsideration filed on time and by the proper party shall stay the execution of the judgment or final resolution sought to be reconsidered unless the court, for good reasons, shall otherwise direct. (Emphasis supplied)

These provisions apply to all original actions before this Court.[4] In *Perez v. Falcatan*,^[5] the Court explained:

[U]nder Section 3, Rule 52 ("Section 3") of the Rules of Court "[a] motion for . . . reconsideration filed [on] time shall stay the final order . . . sought to be examined." Thus, respondents' timely filing of their motion for reconsideration of the 3 March 1997 Resolution prevented that Resolution (and consequently the RTC

Decision) from attaining finality. Indeed, to uphold petitioner's contention would be to ignore Section 3 and correspondingly deny respondents their right to seek reconsideration under Section 1, Rule 52.[6] (Citations omitted and emphasis supplied)

Indeed, while there are certain judgments that may be executed immediately or even pending appeal, these remain specific exceptions to the general rule that a pending motion for reconsideration results in a stay of execution of the judgment. In *Engineering Construction Inc. v. National Power Corp.*, this Court stated:

The point that the Court wishes to emphasize is this: Courts look with disfavor upon any attempt to execute a judgment which has not acquired a final character. Section 2, Rule 39, authorizing the premature execution of judgments, being an exception to the general rule, must be restrictively construed. It would not be a sound rule to allow indiscriminately the execution of a money judgment, even if there is a sufficient bond. "The reasons allowing execution must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment." [7] (Emphasis supplied)

I must emphasize that execution pending appeal is discretionary and may issue only upon good reasons in cases covered by Rule 39, Section 2 of the Rules of Court. On the other hand, immediate execution is permitted only in very specific cases as provided by law,[8] the rules,[9] or jurisprudence.[10]

A petition for prohibition clearly does not fall within any of the above-mentioned exceptions. Contrary to the position taken by the ponente, the fact that the remedy of prohibition is in the nature of an injunction does not mean that immediate execution is automatically warranted. Following Rule 52, Section 4, the Court must first order the immediate execution of a decision for good reasons, in order to warrant an exception to the general rule on the stay of execution. In *Florendo v. Paramount Insurance Corp.*, [11] we declared:

Normally, execution will issue as a matter of right only (a) when the judgment has become final and executory; (b) when the judgment debtor has renounced or waived his right of appeal; (c) when the period for appeal has lapsed without an appeal having been filed; or (d) when, having been filed, the appeal has been resolved and the records of the case have been returned to the court of origin. Execution pending appeal is the exception to the general rule.

As such exception, the court's discretion in allowing it must be strictly construed and firmly grounded on the existence of good reasons. "Good reasons," it has been held, consist of compelling circumstances that justify immediate execution lest the judgment becomes illusory. The circumstances must be superior, outweighing the injury or damages that might result should the losing party secure a reversal of the judgment. Lesser reasons would make of execution pending appeal, instead of an instrument of solicitude and justice, a tool of oppression and inequity.[12] (Emphases supplied)

Here, no order for the immediate execution of the Decision dated 8 November 2016 was made.[13] Accordingly, the general principle applies – the execution of the ruling must be considered deferred until its finality. This was how it should have been in this case, since there were no "good reasons" to justify the immediate execution of the ruling. Based on the records, there was neither allegation nor proof of any urgent need to proceed with the burial.

The lack of urgency notwithstanding, respondents facilitated the burial of Marcos at the Libingan prior to the expiration of the 15-day reglementary period for filing a motion for reconsideration. Their act was clearly in violation of the Rules of Court, because it amounted to the premature execution of a judgment that had not yet attained finality.

The expiration of the Status Quo Ante Order (SQA) cannot justify the premature execution of the Decision.

I note that great significance has been given to the fact that the SQAQO had expired on 8 November 2016, the same day the petitions were dismissed. The expiration of the order was taken to mean that there was nothing to prevent respondents from proceeding with the burial, even if the Decision had not yet become final.

I disagree.

The mere expiration of the period specified in the SQAQO cannot justify the premature execution of the Decision. While it may be true that the SQAQO had been lifted, the non-finality of the ruling prohibited the parties from implementing the judgment by proceeding with the burial. As explained above, execution may issue only after the decision in any particular case has become final, unless immediate execution or execution pending appeal is allowed. To reiterate, no such permission was granted by the Court in this case.

Furthermore, the Court clearly stated the particular reason for the issuance of the SQAQO – to prevent the parties from doing anything that would render the petitions moot and academic. The Order states in relevant part:

NOW, THEREFORE, You, Petitioners and Respondents, your agents, representatives, or persons acting in your place or stead, are hereby directed to maintain the status quo prior to the issuance of the assailed Memorandum dated August 7, 2016 of Secretary of National Defense Delfin N. Lorenza, for a period of twenty (20) days from notice hereof so as not to render moot and academic the resolution of these consolidated petitions.[14] (Emphases supplied)

In my view, this stated reason was just as important as the period specified therein, as that reason reflected the purpose behind the directive of the Court. We wanted to ensure that the dispute was resolved properly – and thus with finality – without the parties interfering with our exercise of jurisdiction. By prematurely executing the Decision, respondents failed to respect the rationale for the ruling.

For the Court to approve the conduct of respondents would be to support a blatant disregard for the rules. It would allow parties to consider every decision immediately executory and permit them to render a dispute moot by means of execution.

Based on the submissions of respondents themselves, that appears to be their precise intent in this case. After prematurely implementing the Decision by proceeding with the burial, they came to this Court and argued that the interment constituted a supervening event that rendered the Motions for Reconsideration moot and academic.[15] They even insisted that the exhumation of the body was not a viable remedy should the original ruling be overturned later on, because that course of action would amount to disrespect for the dead.[16] These circumstances clearly betrayed the deplorable attempt of respondents to render these cases moot to their own advantage. For obvious reasons, the Court should not allow them to distort the principles of finality and execution in this manner and then to benefit from their own disregard of the rules.

Noncompliance with the ONAR filing requirement rendered AFP Regulations G 171-375 invalid and ineffective.

I likewise take a different view as regards the applicability of the ONAR filing requirement to the AFP Regulations in this case. While the ponente contends that the requirement does not apply to AFP Regulations G 171-375, I believe that these regulations are covered by Section 3, Chapter 2, Book VII of the Administrative Code of 1987. Having failed to comply with that requirement, that particular issuance must be deemed invalid.

It is argued by the ponente that Section 1, Chapter 1, Book VII of the Administrative Code of 1987, exempts military establishments from this requirement in all matters relating exclusively to armed forces personnel. Since the regulations were supposedly internal in nature, as they were issued only for the guidance of the AFP units

tasked to administer the Libingan, it is contended that the exemption applies.[17] Furthermore, since the Libingan is a military cemetery, the regulations allegedly do not affect the citizenry, and registration in the ONAR cannot be considered a dictate of due process.[18]

I beg to differ.

Section 3, Chapter 2, Book VII of the Administrative Code of 1987, requires every agency to submit to the ONAR three certified copies of every rule it adopts. As defined by the Administrative Code, the term "agency" includes "any department, bureau, office, commission, authority or officer of the National Government authorized by law or executive order to make rules, issue licenses, grant rights or privileges, and adjudicate cases." [19] The AFP is clearly within the scope of this comprehensive definition; accordingly, it is bound to comply with the ONAR requirement.

It is true that a narrow exception to the foregoing general rule is provided in Section 1, Chapter 1, Book VII of the same Code, for issuances of military establishments on "matters relating exclusively to Armed Forces personnel." [20] AFP Regulations G 161-375, however, does not fall within the exception.

AFP Regulations G 161-375 does not
pertain exclusively to armed forces
personnel.

It is a basic principle of statutory construction that the words used in a statute are to be understood in their natural, plain, and ordinary acceptation, and according to the signification that they have in common use. They are to be given their ordinary meaning, unless otherwise specifically provided. [21] This interpretation is consistent with the basic precept of *verba legis*. [22]

The word exclusively means "apart from all others," "only," "solely," or "to the exclusion of all others." [23] Therefore, in order for the exemption under the Administrative Code to apply, the subject regulations issued by military establishments must deal with matters that affect only AFP personnel, to the exclusion of any other group or member of the populace.

Contrary to the position of the ponente that only matters relating exclusively to personnel of the AFP are implicated in the subject rules, a plain reading of the regulations reveals that the exception is not applicable to this case.

Section 3 of AFP Regulations G 161-375 provides:

- 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:
- Medal of Valor Awardees
- Presidents or Commanders-in-chief, AFP
- Secretaries of National Defense
- Chiefs of Staff, AFP
- General/Flag Officers of the AFP
- 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

- Former members of the AFP who laterally entered or joined the Philippine Coast Guard (PCG) and the Philippine National Police (PNP).
- Veterans of Philippine Revolution of 1890, WWI, WWII and recognized guerillas.
- 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.
- Former Presidents, Secretaries of Defense, Dignitaries, Statesmen, National Artists, widows of former Presidents, Secretaries of National Defense and Chief of Staff xxx.

It cannot be denied that the preceding enumeration includes persons who are not members of the armed forces – government dignitaries, statesmen, national artists, former dignitaries, widows of former Presidents, secretaries of national defense, chiefs of staff, and even other deceased persons whose interment or re-interment has been approved by the Commander-in-Chief, Congress, or the defense secretary. It is therefore clear that while the regulations are addressed to officials tasked to administer the Libingan, the subject matter of the issuance is not confined to matters relating exclusively to AFP personnel. As such, the regulations cannot be considered exempt from the ONAR requirement.

It must be emphasized that the requirements of publication and filing of administrative issuances with the ONAR were put in place as safeguards against abuses on the part of lawmakers and as guarantees to the constitutional right to due process and to information on matters of public concern; therefore, these requirements call for strict compliance.[24] Here, petitioners have sufficiently proven that the regulations were never submitted to the ONAR.[25] Accordingly, these issuances must be deemed ineffective.[26]

The doctrine of prospectivity cannot be used to circumvent the ONAR filing requirement under the Administrative Code.

The ponente also advances a novel position regarding the possible outcome of this case, if we were to assume the invalidity of AFP Regulations G 161-375 for noncompliance with the ONAR filing requirement. He contends that even in that scenario, there would still be sufficient justification for the interment of Marcos at the Libingan, because the President could still apply AFP Regulations G 161-373 issued on 9 April 1986.[27] The Administrative Code of 1987 is supposedly not applicable to that earlier issuance, because the code can only be prospectively applied.

I cannot subscribe to this position.

To begin with, AFP Regulations G 161-373 has already been superseded by AFP Regulations G 161-374, as clearly specified in the latter's last paragraph on supersession.[28] In turn, the latter regulations have been superseded by AFP Regulations G 161-375. Consequently, AFP Regulations G 161-373 cannot be the source of any legal right. It cannot be used as the basis of the current directives of the President.

Just as important is the flaw in the manner of reasoning employed. The doctrine of prospectivity cannot be exploited to allow the utilization of past issuances for the purpose of evading the application of the Administrative Code. That distorted application of the principle would do nothing but circumvent the provisions of the law and subvert its very purpose.

As I expressed in my Dissenting Opinion on the Decision dated 8 November 2016, it is the enduring duty of the Court to ensure that right and justice prevail. In this case, that duty would have meant preventing a whitewash of

the sins of Marcos against the Filipino people. In denying the Motions for Reconsideration, I believe that the majority has countenanced a step in the opposite direction.

Nonetheless, the ruling in this case may be taken as an opportunity to remember the significance of the nation's historical truth. It is a moment to be reminded that opposing the distortion of our collective memory should go beyond resisting the burial of a dictator in a cemetery for heroes. The defense of history, truth, and justice must motivate every Filipino to ensure that the government fulfills its responsibility to provide an effective remedy for victims of human rights violations during the Marcos regime. It must also provide an impetus for citizens to demand justice for the economic plunder endured by the country during that period.

Based on the information obtained by the Court throughout these proceedings, the task of obtaining justice for the nation and for the individual victims of the Martial Law regime is far from complete.

Reports from the Human Rights Victims' Claims Board reveals that more than 44,000 of the 75,000 applications it has received from victims of martial law abuses have still not been adjudicated.[29] Needless to state, these claims should be settled as soon as possible, if the state were to truly fulfill its acknowledged moral and legal obligation to recognize and/or provide reparation to victims of human rights abuses during the Marcos regime.[30]

The pending cases against the Marcos family and their cronies must also be closely scrutinized and monitored. While assets in the form of corporate shares,[31] paintings,[32] jewelry,[33] and deposits in overseas bank accounts[34] valued in billions of pesos have been recovered through litigation or compromise agreements, the PCGG has yet to accomplish its full mandate. Records submitted to this Court reveal that 118 cases – 51 civil and 67 criminal suits – filed by the PCGG against the Marcos family and their cronies remain pending.[35] Evidently, the "herculean task of recovering the ill-gotten wealth accumulated by the deposed President Ferdinand E. Marcos, his family, relatives, subordinates and close associates"[36] to be a crucial undertaking.

On a final note, I must emphasize the importance of these remaining tasks. It is imperative for the nation to remember the unfinished duty of the government to obtain justice for those who suffered under the Marcos regime. Now more than ever, it is the only way to truly protect our collective history from the implications of allowing the dictator to be buried at the Libingan.

WHEREFORE, I maintain my DISSENT from the Decision dated 8 November 2016 and vote to GRANT the Motions for Reconsideration.

[1] Manifestation dated 23 November 2016 filed by the Office of the Solicitor General.

[2] Proclamation No. 3, Provisional Constitution of the Republic of the Philippines, First Whereas Clause (1986).

[3] For a discussion on the statutes and jurisprudence denouncing the economic plunder and human rights abuses committed by Marcos, his family and cronies during the Martial Law regime, see my Dissenting Opinion, pp. 20-29, in *Ocampo v. Enriquez*, G.R. Nos. 225973, 225984, 226097, 226116, 226117, 226120 & 226294, 8 November 2016.

[4] Rule 56-A, Section 2 of the 1997 Rules of Court, provides:

Sec. 2. Rules applicable.

The procedure in original cases for certiorari, prohibition, mandamus, quo warranto and habeas corpus shall be in accordance with the applicable provisions of the Constitution, laws, and Rules 46, 48, 49, 51, 52 and this Rule, subject to the following provisions:

- a) All references in said Rules to the Court of Appeals shall be understood to also apply to the Supreme Court;
- b) The portions of said Rules dealing strictly with and specifically intended for appealed cases in the Court of Appeals shall not be applicable; and
- c) Eighteen (18) clearly legible copies of the petition shall be filed, together with proof of service on all adverse parties.

The proceedings for disciplinary action against members of the judiciary shall be governed by the laws and Rules prescribed therefor, and those against attorneys by Rule 139-B, as amended.

[5] 508 Phil. 21 (2005)

[6] Id. at 31.

[7] 246 Phil. 8, 15 (1988).

[8] See, for instance, section 44 of Republic Act No. (R.A.) 7875, as amended by R.A. 10606 (2013) on violations of the law requiring payment of fines, reimbursement of paid claim or denial of payment; section 7(c) of R.A. 9335 (2005) on termination of personnel of the Bureau of Internal Revenue and the Bureau of Customs; section 66 of R.A. 8293 (1997) on cancellation of patents; article 223, R.A. 6715 (1989) on decisions of the Labor Arbiter reinstating an employee; article 225(d), P.D. 442, as amended, on decisions of the National Labor Relations Commission on indirect contempt; Administrative Code of 1987 on decisions of the Civil Service Commission; sections 61, 67 and 68, R.A. 7160 (1991) on disciplinary actions against elective local officials.

[9] See, for instance, Rule 1, Section 3, Financial Liquidation and Suspension of Payments Rules of Procedure for Insolvent Debtors (A.M. No. 15-04-06-SC, s. 2015) on orders issued under those rules; Section 4, Financial Rehabilitation Rules of Procedure (A.M. No. 12-12-11-SC, s. 2013) on orders issued under those rules (Rule 1, Section 4), judgments in an action to implement or enforce a standstill agreement (Rule 1, Section 16), and any action involving an out-of-court or informal restructuring/workout agreement or rehabilitation plan (Rule 4, Section 16); Rule 1, Section 4, Rules of Procedure for Intellectual Property Rights Cases (A.M. No. 10-3-10-SC, s. 2011), on orders issued under those rules in connection with actions for violation of intellectual property rights; Rule 3, Section 5, Rules of Procedure on Corporate Rehabilitation (A.M. No. 00-8-10-SC, s. 2008) on orders issued under those rules in relation to petitions for rehabilitation of corporations, partnerships and associations; Section 5, Rule on DNA Evidence (A.M. No. 06-11-5-SC, s. 2007) on orders granting the DNA testing; Section 30, Rule on Violence Against Women and Their Children (A.N. No. 04-10-11-SC, s. 2004) on orders issued under those rules in connection with petitions for protection orders in cases of violence against women and their children under R.A. No. 9262; Section 21, Revised Rule on Summary Procedure (Resolution of the Court En Banc, 15 October 1991), on judgments issued under the rules, including ejectment and unlawful detainer; Rule 39, Section 4 on actions for injunction, receivership, accounting and support; Rule 67, Section 11 on expropriation cases; Rule 70, Sections 19 and 21 on ejectment cases; Rule 71, Section 2 on judgments for direct contempt.

[10] See, for instance, *Boac, et al v. Cadapan, et al.*, 665 Phil. 84 (2011) on writs of amparo; *Abayon v. House of Representatives Electoral Tribunal* G.R. Nos. 222236 & 223032, 3 May 2016, on urgent election cases; *Malabed v. Asis*, 612 Phil. 336 (2009) and *Barcenas v. Alvero*, 633 Phil. 25 (2010) on disciplinary cases against judges and lawyers;

[11] 624 Phil. 373 (2010).

[12] Id. at 381.

[13] The fallo of the Decision dated 8 November 2016 states:

"WHEREFORE, PREMISES CONSIDERED, the petitions are DISMISSED. Necessarily, the Status Quo Ante Order is hereby LIFTED."

[14] Resolution dated 23 August 2016, p. 8.

[15] Consolidated Comment of the Office of the Solicitor General, pp. 92-95.

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

[17] Draft Resolution, p. 21-22.

[18] *Id.* at 22.

[19] Book VII, Chapter 1, Section 2(1).

[20] Sec. 1, Chapter 2, Book VII, provides: "This Book shall be applicable to all agencies as defined in the next succeeding section, except the Congress, the Judiciary, the Constitutional Commissions, military establishments in all matters relating exclusively to Armed Forces personnel, the Board of Pardons and Parole, and state universities and colleges."

[21] *Aquino v. Commission on Elections*, 756 Phil. 80 (2015).

[22] *David v. Senate Electoral Tribunal*, G.R. No. 221538, 20 September 2016.

[23] *Black's Law Dictionary* (Sixth Edition), p. 565.

[24] *Republic v. Pilipinas Shell Petroleum Corp.*, 574 Phil. 134 (2008).

[25] See Certification dated 21 November 2016 issued by the Office of the National Administrative Register; Annex C of the Motion for Reconsideration filed by petitioners Lagman et al.

[26] *Republic v. Pilipinas Shell Petroleum Corp.*, *supra* note 24.

[27] Draft Resolution, p. 22.

[28] Paragraph 7 of AFP Regulations G 161-374 states: "Supersession – AFPR G 161-373 dtd 9 Apr 86 is hereby superseded."

[29] See Human Rights Claims Board, HRVCB Released the Names of First 4,000 Eligible Claimants, < <http://www.hrvclaimsboard.gov.ph/index.php/hrvcb-released-the-names-of-the-initial-list-of-4-000-eligible-claimants> > (visited 16 June 2017).

[30] Republic Act 10368 (2013), Section 2.

[31] See *Yuchengco v. Sandiganbayan*, 515 Phil. 1 (2006), on the reconveyance of 111,415 shares of the Philippine Telecommunications Investment Corporation to the Republic of the Philippines; *Republic v. Estate of Hans Menzi*, 512 Phil. 425 (2005), on the forfeiture of the Bulletin Publishing Co. shares.

[32] *Imelda Romualdez, et al. v. Republic of the Philippines*, G.R. No. 217901, 15 March 2017.

[33] See *Estate of Marcos v. Republic*, G.R. Nos. 213027 & 213253 (Resolution), 18 January 2017, on the forfeiture of jewelry known as the Malacañang Collection, valued at US\$110,055 (low estimate) to USD 153,089 (high estimate).

[34] See *Marcos, Jr. v. Republic*, 686 Phil. 980 (2012), on the forfeiture of the ARELMA assets worth US\$3,369,975.00; *Republic v. Sandiganbayan*, 453 Phil. 1059 (2003), on the forfeiture of deposits in Swiss Banks

valued at USD 658 million.

[35] Based on the Overview of PCGG Pending Cases (As of June 2016), Annex A of the submission of the PCGG to the Court on 2 September 2016, the following cases remain pending:

Civil (filed before the Sandiganbayan only)

Forfeiture

9

Reconveyance, Restitution, Accounting and Damages

38

Other Cases

4

Total Civil Cases

51

Criminal (pending with the OMB, Sandiganbayan and SC)

Behest Loans

38

Other Cases

29

Total Criminal Cases

67

Total Number of Cases Filed

118

This tabulation does not include civil cases filed in the lower courts and incidents elevated to the Court of Appeals and the Supreme Court. It also does not include cases filed against the PCGG.

[36] Miguel v. Gordon, 535 Phil. 687, 694 (2006).

DISSENTING OPINION

CAGUIOA, J.:

When the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments — it only asserts the solemn and sacred obligation assigned to it by the Constitution to determine the conflicting claims under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them.[1]

Anchoring the dismissal of the petitions on the alleged absence of constitutional limitations on the powers conferred upon the Executive in determining who are worthy of being interred at the Libingan ng Mga Bayani

(LNMB), the Court ruled, in the November 8, 2016 Decision, that, substantively, President Rodrigo Duterte did not act with grave abuse of discretion in issuing a verbal order to inter the remains of the late President Ferdinand E. Marcos at the LNMB, considering that the burial is in accordance with the Constitution, laws, and jurisprudence.

I maintain my dissent.

The very provision that codifies this Court's expanded power of judicial review in Article VIII, Section 1, paragraph 2 of the 1987 Constitution, is a direct product of the collective experience of the Filipino people during martial law under then President Marcos.[2] Inevitably, when the Court is called upon to discharge its duty[3] to determine whether a branch of government or any of its officials acted with grave abuse of discretion, the Court cannot, by any means, divorce the specific text of the Constitution from its spirit as a post-dictatorship charter. Even in a situation where the legal basis for the assailed action is itself constitutional, the power of judicial review vested upon the Court includes the power to declare unconstitutional the "application, or operation of presidential decrees, proclamations, x x x instructions, x x x and other regulations." [4]

Mindful of this duty, I submit the following observations in addition to those elucidated in my Dissenting Opinion dated November 8, 2016.

The ponencia holds, among others, that Petitioners' view that they sustained or will sustain direct injury "is founded on the wrong premise that Marcos' burial at the LNMB contravenes the provisions of the Constitution; P.D. 105, R.A. Nos. 289, 10066, 10086 and 10368 and international laws," [5] considering that the LNMB is an active military cemetery/grave site over which the President has certain discretionary authority, pursuant to his control and commander-in-chief powers, which is beyond the Court's power of judicial review.

I disagree.

I maintain my position that the directive of President Duterte to bury or inter the remains of former President Marcos in the LNMB presents a justiciable, not political, issue. The wisdom of his oral directive is not being questioned. Rather, the question is whether the issuance of the directive is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction because, among others, it runs counter to the Constitution, national and international law, public policy on national shrines and national historic shrines, and jurisprudence.

The Court is not called upon to determine former President Marcos' rightful place in Philippine history. Rather, it is called upon to determine whether LNMB, given LNMB's history, nature, purpose and the public policy behind its establishment, administration and development, should be the rightful resting place of former President Marcos.

It is beyond question that while it has an active military cemetery/grave site component, LNMB is foremost a military shrine or memorial declared as a national shrine. Being a national shrine, it is the government's duty "to hold and keep x x x [LNMB] as sacred and hallowed place" [6] pursuant to the policy mandated by Presidential Decree No. (PD) 105 dated January 24, 1973.[7] Also, the administration, maintenance and development of LNMB must be always in keeping with Proclamation No. 86[8] dated October 27, 1954, which renamed the Republic Memorial Cemetery to "Libingan ng mga Bayani" (Cemetery of the Heroes[9]), so that LNMB is "symbolic of the cause for which our soldiers have died, and x x x truly express[ive of] the nation's ESTEEM and REVERENCE for her war dead." [10] Further, the preservation, protection and conservation of LNMB's physical, cultural and historical significance and integrity are mandated by Republic Act No. (R.A.) 10066[11] and R.A. 10086.[12]

The very presence in LNMB of the remains of former President Marcos – a dictator and authoritarian; perpetrator

of numerous and gross human rights abuses involving summary execution, torture, enforced or involuntary disappearance, arbitrary detention and other atrocities; plunderer of the Philippine economy with enormous ill-gotten wealth and kleptocrat; dishonorably separated and evicted President by People Power, dishonorably discharged Commander-in-Chief; fabricator of allegedly received U.S. medals and allegedly committed "heroic" actions while being a soldier – is an affront to LNMB's sacredness and hallowedness as the legally designated and recognized Philippine heroes' burial site or cemetery. It does not further the esteem and reverence that LNMB rightly deserves as the memorial in honor of the heroism, patriotism, gallantry and nationalism of our war dead and fallen soldiers and military personnel. Its positive cultural and historical significance and integrity are grossly violated.

While we revere our dearly departed, the reverence we accord them is distinctly different from what we are expected to bestow upon our heroes. We do not need a definition of who a hero is or ought to be because we know in our heart and conscience who they really are when the occasion requires our collective decision. As we revere our dearly departed, we must not disparage the living and becloud our collective past.

The ponencia further holds that "the beneficial provisions of R.A. 10368[13] "cannot be extended to construe Marcos' burial at the LNMB as a form of reparation for the [Human Rights Violations Victims] [(HRVVs)]," so much so that the ponencia holds that "[i]t is not the Marcos' burial at the LNMB that would result in 're-traumatization' of HRVVs but the act of requiring them to recount their harrowing experiences in the course of legal proceedings instituted by them or their families to seek justice and reparation for the gross human rights violations." [14]

Once more, this holding is egregious error.

When the Court is called upon to discharge its duty to interpret the nature and extent of reparations owed to HRVVs as in this case, it must do so by interpreting domestic law (i.e., R.A. 10368) in accordance with, and in light of, the very international law obligations underlying, and even compelling, [15] its passage. It is the solemn duty of this Court to ensure that laws are interpreted in a manner consistent with the letter, spirit and intent of the Constitution and the law.

The argument that 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 (U.N. Principles on Reparation) do not in any way bind the Philippines is extremely erroneous, as it is based on the wrong premise that the HRVVs' rights flow solely and directly from the U.N. Principles on Reparation. They do not. Such an isolated reading of HRVVs' rights under international law fails to consider: first, that the obligation to provide reparation is anchored upon customary international law itself — and not the U.N. Principles on Reparation by and of themselves — which, pursuant to Article II, Section 2 [16] of the 1987 Constitution, automatically [17] forms part of the law of the land, and second, that the obligation to provide reparation includes the obligation to provide full and effective remedy, among which is satisfaction. Thus, the HRVVs' right to an effective remedy emanates from customary international law which forms part of the law of the land.

While the U.N. Principles on Reparation in fact do not entail new international or domestic legal obligations, they however identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law. [18] This is precisely because the U.N. Principles on Reparation merely compile international legal obligations already in force, including those embodied in international treaties. [19]

This is supported by the very language of R.A. 10368, categorically recognizing the Constitutional guarantee of full respect for human rights, [20] the Constitutional prohibition on torture, force, violence, threat, intimidation, or

any other means which vitiate the free will,[21] as well as the mandate to compensate and rehabilitate victims of torture.[22]

I wish to emphasize that R.A. 10368 itself flows from the recognition of the State's obligation to enact domestic legislation to give effect to the rights recognized "therein".[23] The word "therein" in Section 2, paragraph 2 of R.A. 10368 refers to various international human rights laws and conventions to which the Philippines is a State Party (i.e., International Covenant on Civil and Political Rights [ICCPR] and the Convention Against Torture [CAT] and the Universal Declaration of Human Rights [UDHR]), which lay down States' erga omnes obligations concerning the basic rights of human persons.[24]

Among the obligations clearly required by international human rights covenants is the non-derogable right to an effective remedy under Article 2(3) of the ICCPR.[25] To be clear, without reparation provided to individuals whose rights have been violated (e.g., those deprived of the right to life,[26] those subjected to torture, cruel, inhuman and degrading treatment,[27] those arbitrarily detained,[28] and the desaparecidos[29]), the obligation to provide an effective remedy is not discharged.

In any event, adopting the ponencia's resort to verba legis, R.A. 10368 lays to rest any doubt as to the status of the HRVVs' right to an effective remedy, viz.:

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.[30]

To my mind, the obligation to uphold the HRVVs' right to an effective remedy, and consequently, the right to all forms of reparation, is beyond question. The only question left to be asked is whether the HRVVs' right to reparation includes the right not to have the perpetrator of the violations of the human rights of these victims interred at the LNMB.

Insofar as the extent of reparation is concerned, even under the pretext of applying the literal meaning of R.A. 10368, it cannot be denied that the obligation to provide reparation to HRVVs is not limited to monetary compensation and non-monetary compensation similar to "psychotherapy, counseling, medical care, social amelioration and honorific recognition,"[31] as the ponencia suggests based on House Bill Nos. 54, 97, and 302 and Senate Bill No. 3330.

Reparation consists of material and symbolic aspects.[32] Inasmuch as R.A. 10368 provides for mechanisms for monetary compensation,[33] it likewise transposes into the domestic sphere the international law obligation to provide non-monetary reparation by recognizing the State's obligation to "acknowledge the sufferings and damages inflicted upon [HRVVs]."[34] To be clear, the obligation to provide reparation refers to a range of measures. In fact, R.A. 10368 is replete with the use of the all-encompassing term "reparation," evincing the legislative intent to refer to all aspects of the entire universe of "reparation" accorded to HRVVs under International Human Rights Laws.

Compensation, as envisioned in Section 4 of R.A. 10368,[35] contemplates economically assessable damage. Section 5,[36] in turn, read vis-à-vis Section 2,[37] refers to the other aspects of reparation, including restitution,[38] rehabilitation,[39] satisfaction,[40] and guarantees of non-repetition.[41] As correctly pointed out by Petitioners, satisfaction, as an aspect of reparation, requires upholding the imprescriptible right to truth, public apologies, and judicial sanctions.[42] By allowing the interment of former President Marcos' remains in no less than the Libingan ng mga Bayani and adopting a selective interpretation of the term "reparation," the Court effectively rendered inutile the very laws passed to give due recognition to the HRVVs' victimhood.

On a final note, as Petitioners correctly pointed out, mere existence of laws does not, by and of itself, constitute sufficient compliance with the obligation to provide reparation. For instance, in *Bautista de Arellano, v. Colombia*,^[43] concerning an individual abducted, tortured and killed by military men dressed as civilians, the United Nations Human Rights Committee (UNHRC) held that despite the institution of a national administrative tribunal and the award of damages to the family's victim, "purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies within the meaning of article 2, paragraph (3) of the [ICCPR]."

All told, the judiciary, as a branch of government, is required^[44] to adopt measures to fulfill its legal obligation to uphold the right to an effective remedy.^[45] Although Article 2, paragraph 2 of the ICCPR allows States Parties to give effect to the ICCPR rights in accordance with domestic constitutional processes, the same principle operates so as to prevent States Parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty.^[46]

To be clear, the actual source of the HRVVs' right to an effective remedy and to reparation must not be confused with the mechanism by which those rights are, in practice, enforced and upheld. The right to an effective remedy and the corollary right to reparation arises from customary international law as codified in international human rights treaties, while the means by which those rights are protected are codified in the U.N. Principles on Reparation.

Petitioners, who are HRVVs, have come to the Court for the enforcement of their internationally recognized right to effective remedy and full reparation for the harrowing human rights abuses they and many more suffered under the Marcos' martial law regime. I cannot, without reneging on our obligations under international law, and in conscience, allow the interment of former President Marcos in the LNMB, the perpetrator of the violations of their human rights, and desecrate its legal status as a sacred and hallowed national shrine.

WHEREFORE, I maintain my DISSENT from the Decision dated November 8, 2016 and vote to GRANT the motions for reconsideration.

[1] *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).

[2] I RECORD OF THE CONSTITUTIONAL COMMISSION 434, 436. In his sponsorship speech of Art. VIII, § 1, ¶2, Former Chief Justice Roberto Concepcion, Chairman of the Committee on the Judiciary of the Constitutional Commission, stated:

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. x x x

x x x x

[T]he powers of government are generally considered divided into three branches: the Legislative, the Executive and the Judiciary. Each one is supreme within its own sphere and independent of the others. Because

of that supremacy power to determine whether a given law is valid or not is vested in courts of justice.

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. (*Italics supplied*).

See also SKARLIT LABASTILLA, DEALING WITH MUTANT JUDICIAL POWER: THE SUPREME COURT AND ITS POLITICAL JURISDICTION, 84 PLJ 1 (2009).

[3] *Id.*

[4] 1987 CONSTITUTION, Article VIII, Section 4(2); see also Bernas, *The 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, 968 (2009).

[5] Resolution, p. 8.

[6] P.D. No. 105, Third Whereas Clause.

[7] DECLARING NATIONAL SHRINES AS SACRED (HALLOWED) PLACES AND PROHIBITING DESECRATION THEREOF, January 24, 1973.

[8] CHANGING THE "REPUBLIC MEMORIAL CEMETERY" AT FORT WM MCKINLEY, RIZAL PROVINCES, TO "LIBINGAN NG MGA BAYANI", October 27, 1954.

[9] <http://corregidorisland.com/bayani/libingan.html>.

[10] Proc. No. 86, Whereas Clause.

[11] NATIONAL CULTURAL HERITAGE ACT OF 2009, approved on March 24, 2010.

[12] STRENGTHENING PEOPLE'S NATIONALISM THROUGH PHILIPPINE HISTORY ACT, approved on May 12, 2010.

[13] AN ACT PROVIDING FOR REPARATION AND RECOGNITION OF VICTIMS OF HUMAN RIGHTS VIOLATIONS DURING THE MARCOS REGIME, DOCUMENTATION OF SAID VIOLATIONS, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES, approved on February 25, 2013.

[14] Resolution, pp. 8-9.

[15] For instance, States have the duty under International Law to translate the ICCPR human rights guarantees into domestic rights. See S. Joseph, *A Rights Analysis of the Covenant on Civil and Political Rights* (1999) 5 *Journal of International Legal Studies* 57; see also S. Joseph, M. Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* 11 (2013).

[16] 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 (*Underscoring supplied*).

[17] See *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, 561 Phil. 386 (2007) (En

Banc), citing *Minucher v. Court of Appeals*, 445 Phil. 250, 269 (2003); see also *Mijares v. Ranada*, 495 Phil. 372 (2005).

[18] 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, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, preamble ¶7. Emphasis supplied.

[19] Theo van Boven, *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* 5 (2010); Carlos Fernández Romani, *International Law of Victims*, 14 *Max Planck Yearbook of United Nations Law*, 226 (2010).

[20] 1987 CONSTITUTION, Art. 2, Sec. 11.

[21] *Id.*, Art. 3, Sec. 12.

[22] R.A. 10368, Sec. 2(1).

[23] *Id.*, Sec. 2(2).

[24] *Id.*, Sec. 2(2); Human Rights Committee, General Comment 31, *Nature of the General Legal Obligation on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004). The Human Rights Committee (HRC) is a treaty-based body of U.N. independent human rights experts, part of whose mandate is to monitor the implementation of the ICCPR.

[25] ICCPR, Art. 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;

(c)

To ensure that the competent authorities shall enforce such remedies when granted."

[26] *Id.*, Art. 6(1). "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

[27] *Id.*, Art. 7. "No one shall be subjected to torture or to cruel, inhuman or degrading treatment x x x."

[28] *Id.*, Art. 9(1). "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."; see also *Universal Declaration of Human Rights*, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at art. 8 (December 10, 1948), which provides: "[n]o one shall be subjected to arbitrary arrest, detention or exile."

[29] According to the HRC, enforced disappearances inherently constitute torture and/or cruel, inhuman, and degrading treatment, and the right to be protected under Article 7 of the ICCPR extends not only to the victim

itself, but to the family of the victim. See: *Sarma v. Sri Lanka*, ¶ 9.3, U.N. Doc. CCPR/C/78/D/950/2000 (July 16, 2003) (providing that "[a]ny act of such disappearance constitutes a violation of many of the rights enshrined in the Covenant, including . . . the right not to be subjected to torture or cruel, inhuman or degrading treatment x x x."); *Bashasha v. Libya*, U.N. Doc. CCPR/C/100/D/1776/2008 (November 2, 2010) at ¶ 7.5 (concluding that "the anguish and distress caused by the disappearance x x x to his close family" is a violation of article 7), Human Rights Committee, Views: *Mojica v. Dominican Republic*, ¶ 5.7, U.N. Doc. CCPR/C/51/D/449/1991 (Aug. 10, 1994) (stating that "the disappearance x x x is inseparably linked to treatment that amounts to a violation" of the right to humane treatment); see also *The Right to a Remedy for Enforced Disappearances in India: A Legal Analysis of International and Domestic Law Relating to Victims of Enforced Disappearances*, 33 (April 2014).

[30] R.A. 10368, Sec. 2 (2).

[31] *Id.*, Sec. 5; Resolution, p. 30.

[32] Theo van Boven, *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* 4 (2010).

[33] R.A. 10368, Sec. 2; Principle 20, U.N. Principles on Reparation.

[34] *Id.*, Sec. 2, par. 2.

[35] SEC 4. Entitlement to Monetary Reparation. — Any HRVV qualified under this Act shall receive reparation from the State, free of tax, as herein prescribed: Provided, That for a deceased or involuntary disappeared HRVV, the legal heirs as provided for in the Civil Code of the Philippines, or such other person named by the executor or administrator of the deceased or involuntary disappeared HRVVs estate in that order, shall be entitled to receive such reparation: Provided, further, That no special power of attorney shall be recognized in the actual disbursement of the award, and only the victim or the aforesated successor(s)-in-interest shall be entitled to personally receive said reparation from the Board, unless the victim involved is shown to be incapacitated to the satisfaction of the Board: Provided, furthermore, That the reparation received under this Act shall be without prejudice to the receipt of any other sum by the HRVV from any other person or entity in any case involving violations of human rights as defined in this Act.

[36] SEC. 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. The amount necessary for this purpose shall be sourced from the budget of the agency concerned in the annual General Appropriations Act (GAA).

[37] "x x x 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."

[38] U.N. Principles on Reparation, Principle 19.

[39] *Id.*, Principle 20.

[40] *Id.*, Principle 22.

[41] *Id.*, Principle 23.

[42] Id., Principle 22.

[43] Communication No. 503/1993, U.N. GAOR, Hum. Rts. Comm., 55[th] Sess. ¶2.1-2.7, U.N. Doc. CCPR/C/55/D/1993 (1995); see also Thomas M. Antkowiak, Truth as Right and Remedy in International Human Rights Experience, 23 Mich. J. Int'l L. 989 (2002).

[44] United Nations, 'General Comment No. 31', Human Rights Committee, CCPR/C/21/Rev.1/Add. 13 (2004) para. 8.

[45] ICCPR, Art. 2(3); CAT, Art. 14.

[46] United Nations, 'General Comment No. 31', Human Rights Committee, CCPR/C/21/Rev.1/Add. 13 (2004) para. 4.

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