

EN BANC

G.R. No. 225973 – OCAMPO et al., Petitioners, v. ENRIQUEZ et al., Respondents; G.R. No. 225984 – LAGMAN, et al., Petitioners, v. MEDIALDEA, et al., Respondents; G.R. No. 226097 – PARAGAS ROSALES, et al., Petitioners, v. MEDIALDEA, et al., Respondents; G.R. No. 226116 – ALVAREZ, et al., Petitioners, v. MEDIALDEA, et al., Respondents; G.R. No. 226117 – BANIAGA, et al., Petitioners v. LORENZANA, et al., Respondents; G.R. No. 226120 – LATIPH, et al., Petitioners, v. LORENZANA, et al., Respondents; G.R. No. 226294 – DE LIMA, et al., Petitioners, v. MEDIALDEA, et al., Respondents.

Promulgated:

November 8, 2016

X

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DISSENTING OPINION

“ . . . They tore my dress and then eventually they let me lay down to sleep but then early in the morning the two soldiers who stayed near me started torturing me again and by today’s definition, it is rape because they fondled my breast and they inserted a long object into my vagina and although I screamed and screamed with all my might, no one seemed to hear except that I heard the train pass by. . . ”

*– Ma. Cristina Pargas Bawagan,
Petitioner and Human Rights Victim
of the Marcos Regime*

“My mother is still alive but she was also . . . she also undergone . . . she underwent torture and sexual abuse and I hope my sister is not listening right now because she does not know this.”

*– Liwayway Arce,
Petitioner and Human Rights Victim
of the Marcos Regime*

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LEONEN, J:

I dissent.

Under our constitutional order, Presidents, unlike kings, earn their honors. As Presidents are public servants, their position in itself should not be the basis to glorify them. Neither should their place in history be determined by a succeeding President. Only the sovereign Filipino People deserve to determine a President's place in history.

Given the present state of our Constitution, our laws, and our jurisprudence, it is illegal for the remains of Ferdinand E. Marcos to be interred at the Libingan ng mga Bayani. The Filipino People do not deserve such a symbolism.

Former President Ferdinand E. Marcos presided over a regime that caused untold sufferings for millions of Filipinos. Gross violations of human rights were suffered by thousands. The public coffers contributed to by impoverished Filipinos were raided. Ferdinand E. Marcos stood by as his family, associates, and cronies engaged in systematic plunder. The national debt ballooned during his regime.

He was eventually ousted by a public uprising. His regime and the abuses he committed during that time led to a complete rethinking of our constitutional order. The 1987 Constitution embeds most of our experiences during Martial Law. It was a reaction to the failures of governance of Ferdinand E. Marcos and his cohorts.

Ferdinand E. Marcos is no hero. He was not even an exemplary public officer. He is not worthy of emulation and inspiration by those who suffer poverty as a result of the opportunity lost during his administration, by those who continue to suffer the trauma of the violations to the human dignity of their persons and of their families. He is certainly not worthy of emulation and inspiration by those in public service, including the lawyers, judges, and justices who simply want to do what is right, protect others, and conscientiously and diligently protect public funds entrusted to them.

If we are true to the text and spirit of our Constitution and our laws as well as our history, Ferdinand E. Marcos cannot be buried at the Libingan ng mga Bayani. The proposal that he be accorded public honor is contrary to law. It is a betrayal of the Filipino spirit.



Rodrigo Roa Duterte's discretion as President is "not unconfined and vagrant" but always "canalized within banks that keep it from overflowing."¹ His alleged verbal orders to cause the interment of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani were whimsical, capricious, a grave abuse of discretion, and issued only to please a single family. Ferdinand E. Marcos invented most of his medals as a soldier. He was one of our worst Presidents.

National healing cannot simply come when the President pronounces it. It can only come through a process that leads to social justice. Justice requires accountability. Justice does not come with just forgetting. Accountability involves the recognition of the place of the perpetrator and the victim.

The victims of Martial Law, who stood by their principles and spoke to power, who were detained, made to disappear, tortured, killed, molested, and raped, were the heroes. They are the "bayani." By law, they are our heroes.

Ferdinand E. Marcos was the perpetrator. He is not the "bayani." The perpetrator cannot be a hero at the same time that his victims are heroes. This is cruel and illogical. This is impunity. This is an assurance that our People will suffer the same gross violations of human rights and plunder.

Our laws are not illogical. If they are, then they will be the cause of injustice. If our laws are unreasonable, then they will violate the "due process of law." Certainly, this Court cannot be party to an illogical and unreasonable interpretation of the law.

Our laws do not allow the burial of the remains of the perpetrator at the Libingan ng mga Bayani for any or all of the following reasons:

First, the President's verbal orders, which were the basis for the issuance of the questioned orders of public respondents, are invalid because they violate Republic Act No. 289. Republic Act No. 289 was never repealed. The law covers the subject of AFP Regulations No. 161-373 (1986),² AFP Regulations No. 161-374 (1998),³ and AFP Regulations No. 161-375 (2000) (collectively, AFP Regulations).⁴ Yet, these AFP Regulations ignore the requirements of Republic Act No. 289. Therefore,

¹ *Almario v Executive Secretary*, 714 Phil. 127, 163 (2013) citing the dissent of J. Cardozo in *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935) [Per J. Leonardo-de Castro, En Banc].

² OSG Comment, Annex 5.

³ OSG Comment, Annex 6.

⁴ OSG Comment, Annex 7.

the basis of the Memorandum⁵ of Secretary of National Defense Delfin Lorenzana (Lorenzana Memorandum) and the Directive⁶ of Rear Admiral Ernesto Enriquez (Enriquez Orders) are ultra vires and, therefore, are null, void, and inexistent.

Second, assuming without accepting that AFP Regulations were valid when issued, still President's verbal orders, the Lorenzana Memorandum, and the Enriquez Orders all violate the requirement in Section 1 of Republic Act No. 289 that those buried must have led lives worthy of "inspiration and emulation."

Third, assuming without accepting that the AFP Regulations were valid when issued, public respondents gravely abused their discretion when they failed to show that there was an examination of the sufficiency of the facts that would reasonably lead them to believe that the burial of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani would be in accordance with Republic Act No. 289 or the various Proclamations that identified the location of the Libingan, considering the findings of the National Historical Commission of the Philippines (National Historical Commission), the provisions of our laws including Republic Act No. 10368, and this Court's jurisprudence.

The President's verbal orders do not provide for a definite and complete reason for transferring the remains of Former President Ferdinand E. Marcos from its originally intended site as shown in the agreement signed by Former Secretary Rafael Alunan III (Former Secretary Alunan) and Imelda Marcos to the Libingan ng mga Bayani. It was whimsical, capricious, and an abuse of discretion, and could have been done only to accommodate the private interest of the Heirs of Marcos.

Fourth, the President's verbal orders, the Lorenzana Memorandum, and the Enriquez Orders were issued with grave abuse of discretion because they violate Republic Act No. 10368, otherwise known as the Human Rights Victims Reparation and Recognition Act of 2013.

Fifth, the President's verbal orders, the Lorenzana Memorandum, and the Enriquez Orders cannot be justified even under the provisions of the Administrative Code of 1987. Given the established circumstances of the Marcos regime and the participation of Ferdinand E. Marcos, there remains no public purpose to the interment of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani.

⁵ OSG Memorandum, p. 20.

⁶ Id.

Sixth, the actions of public respondents are contrary to the President's oath of office because they encourage impunity. Impunity is the result of rewarding the person who presided over human rights violations and who personally participated in the plunder of the public treasury.

I

This case resolves Petitions for certiorari,⁷ prohibition,⁸ and mandamus:⁹ (i) questioning the validity of the verbal orders of President Rodrigo Roa Duterte (President Duterte) to bury Ferdinand E. Marcos at the Libingan ng mga Bayani; (ii) seeking to nullify the Memorandum dated August 7, 2016 issued by Secretary of National Defense Delfin Lorenzana (Secretary Lorenzana) and the Directive dated August 9, 2016 of Rear Admiral Ernesto Enriquez (Rear Admiral Enriquez) implementing President Duterte's verbal orders; and (iii) praying for the issuance of a temporary restraining order and/or preliminary injunction.

The facts that frame these consolidated cases are as follows:

After World War II, the Republic Memorial Cemetery was established in Fort William McKinley¹⁰ as a burial place for Filipino soldiers who died during the war.¹¹ On October 23, 1954, Executive Order No. 77¹² was issued by Former President Ramon Magsaysay (Former President Magsaysay). The Executive Order directed the remains of all Filipino soldiers who died in the war be removed from their places of burial and transferred to the Republic Memorial Cemetery, since "in the national observance of the occasion honoring the memory of those war dead, it is fitting and proper that their remains be interred in one national cemetery."¹³

On October 27, 1954, through Proclamation No. 86, Former President Magsaysay renamed the Republic Memorial Cemetery to Libingan ng mga Bayani as the name "Republic Memorial Cemetery . . . is not symbolic of the cause for which our soldiers have died, and does not truly express the nation's esteem and reverence for her war dead."¹⁴

⁷ Petition (G.R. No. 225973), Petition (G.R. No. 226117) and Petition (G.R. No. 226120).

⁸ Petition (G.R. No. 225973), Petition (G.R. No. 225984), Petition (G.R. No. 226097), Petition (G.R. No. 226116), Petition (G.R. No. 226117) and Petition (G.R. No. 226120).

⁹ Petition (G.R. No. 226116).

¹⁰ OSG Memorandum, p. 10.

¹¹ Memorandum (G.R. No. 226097), p. 8.

¹² Transferring the Remains of War Dead Interred at Bataan Memorial Cemetery, Bataan Province and at Other Places in the Philippines to the Republic Memorial Cemetery at Fort WM McKinley, Rizal Province (1954).

¹³ Exec. Order No. 77 (1954), 4th whereas clause.

¹⁴ Proc. No. 86 (1954).

On May 28, 1967, Former President Ferdinand E. Marcos issued Proclamation No. 208, reserving a portion of land in the Fort Bonifacio Military Reservation for national shrine purposes.¹⁵

On January 24, 1973, Ferdinand E. Marcos issued Presidential Decree No. 105, declaring national shrines to be hallowed places and punishing their desecration, which included the acts of “disturbing their peace and serenity by digging, excavating, defacing, causing unnecessary noise and committing unbecoming acts within the premises of said National Shrines[.]”¹⁶

On April 9, 1986, the Armed Forces of the Philippines issued AFP Regulations No. 161-373,¹⁷ which prescribed the allocation of cemetery plots at the Libingan ng mga Bayani. This was amended on March 27, 1998 by AFP Regulations No. 161-374,¹⁸ and then again on September 11, 2000 by AFP Regulations No. 161-375.¹⁹ Both amendments were issued by the Former Secretaries of National Defense.²⁰

In 1989, Ferdinand E. Marcos passed away in Hawaii while in exile.²¹ Thereafter, in 1992, Former President Fidel V. Ramos (Former President Ramos), on behalf of government, signed an agreement with the Marcos Family pertaining to the return of Ferdinand E. Marcos’ remains.²² Under this agreement, the Marcos Family was allowed to fly Ferdinand E. Marcos’ remains to the Philippines from Hawaii, subject to the following conditions: (1) that Ferdinand E. Marcos’ remains would be flown straight from Hawaii to Ilocos Norte; (2) that Ferdinand E. Marcos would only be given honors befitting a major of the Armed Forces of the Philippines; (3) that his remains would not be permitted to be paraded around Metro Manila; and (4) that the burial would be done in Ilocos Norte, and not at the Libingan ng mga Bayani.²³

However, before signing the agreement, and without informing any representative of government, Imelda R. Marcos crossed out the word “buried” and replaced it with the words “temporarily interred.”²⁴ Former Secretary Alunan, during the Oral Arguments on August 31, 2016, stated that this was viewed by Former President Ramos as a sign of bad faith:

¹⁵ Proc. No. 208 (1967).

¹⁶ Pres. Decree No. 105 (1973).

¹⁷ OSG Comment, Annex 5.

¹⁸ OSG Comment, Annex 6.

¹⁹ OSG Comment, Annex 7.

²⁰ Memorandum (G.R. No. 226097), p. 10.

²¹ Id. at 11.

²² Id.

²³ Id. at 11–12.

²⁴ Id. at 12.

SECRETARY ALUNAN:

The official agreement is what I personally, I officially submitted to the President of the Philippines on August 19 which was altered by Imelda Marcos. The following day, she sent her version of the Memorandum of Agreement that she signed without my signature but which was disregarded by the President. In fact, if I may share, the comment of the President when he saw the words temporarily interred was that, this was a sign of bad faith.²⁵

During a press conference in May 2016, then President-elect Duterte stated he would allow the burial of Marcos at the Libingan ng mga Bayani:

Look, there is the courts. Pumunta kayo ng korte kasi ‘yung taong hinahabol niyo, cadaver na (Go to the courts because the person you’re after is already a cadaver). What do you want more from the guy? Patay nga (He’s already dead). . . . Sabi niyo si Marcos, hindi dapat diyan (ilibing) (You said that Marcos should not be buried there). That is (on) the question of his abuses. It is something that is attached to his persona forever. Marcos might not really be a hero, I accept that proposition, maybe. But certainly he was a soldier,” Duterte said.

....

In addition to being a president, he was a soldier. So ‘yung sinabi mo noong dinakip ng martial law, nandiyan ang korte (So those who were arrested during the martial law, the courts are there for you). It’s just a matter of distributing the award. So anong problema? Patay na ‘yung tao. Anong gusto niyo? (So what is the problem? The guy is already dead. What do you want?) You want the cadaver to be burned? Will that satisfy your hate?” he added.

....

Alam mo kapag nagbitaw ako ng salita, ‘yun na ‘yun. Magpakamatay na ako diyan (If I have already uttered the words, that’s it already. I am willing to stake my life on it). I will do things that I promised to do. I will not die if I do not become President. I will stake my honor, my life, and the presidency itself. Bantayan niyo ang salita ko (Pay attention to my words),” Duterte said.²⁶

President Duterte reiterated his position on Ferdinand E. Marcos’ burial sometime in August 2016, stating that “[a]s a former soldier and former [P]resident of the Philippines, [he] [saw] nothing wrong in having Marcos buried at the Libingan ng mga Bayani.”²⁷

²⁵ Id. at 13.

²⁶ Id. at 13-14.

²⁷ Id. at 14.

On July 11, 2016, President Duterte gave verbal orders to respondent Secretary Lorenzana to carry out the interment of Ferdinand E. Marcos at the Libingan ng mga Bayani.²⁸

In response to President Duterte's pronouncements, the National Historical Commission published a study entitled "Why Ferdinand Marcos Should Not Be Buried at the Libingan ng mga Bayani"²⁹ on July 12, 2016.³⁰ The National Historical Commission reported that Ferdinand E. Marcos' military records were not deserving of the honors that would be bestowed upon him should he be buried at the Libingan ng mga Bayani as they were "fraught with myths, factual inconsistencies, and lies." In particular, the National Historical Commission found that:

1. Mr. Marcos lied about receiving U.S. medals: Distinguished Service Cross, Silver Star, and Order of the Purple Heart, which he claimed as early as about 1945.
2. His guerilla unit, the Ang Mga Maharlika, was never officially recognized and neither was his leadership of it.
3. U.S. officials did not recognize Mr. Marcos's rank promotion from Major in 1944 to Lt. Col. By 1947.
4. Some of Mr. Marcos's actions as a soldier were officially called into question by upper echelons of the U.S. military, such as his command over the Alias Intelligence Unit (described as usurpation), his commissioning of officers (without authority), his abandonment of USAFIP-NL presumably to build an airfield for Gen. Roxas, his collection of money for the airfield (described as "illegal"), and his listing of his name on the roster of different units (called a "malicious criminal act").³¹

Despite the National Historical Commission's report, on August 7, 2016, Secretary Lorenzana issued the Lorenzana Memorandum directing respondent Armed Forces of the Philippines Chief of Staff General Ricardo R. Visaya (General Visaya) "to undertake the necessary planning and preparations to facilitate the coordination of all agencies concerned" and to "coordinate closely with the Marcos family" as to the transfer of Marcos' remains to the Libingan ng mga Bayani.³² Secretary Lorenzana designated the Philippine Veterans Affairs Office as the office of primary responsibility for the Marcos burial.³³ Reportedly, under this directive, General Visaya

²⁸ OSG Memorandum, p. 20.

²⁹ National Historical Commission of the Philippines, *Why Ferdinand Marcos Should Not Be Buried at the Libingan ng mga Bayani*, July 12, 2016 <<https://drive.google.com/file/d/0B9c6mrxI4zoYS2I0UWFENEp6TkU/view>> (visited November 7, 2016).

³⁰ Memorandum (G.R. No. 226097), p. 14.

³¹ Id. at 15.

³² Memorandum (G.R. No. 225973), p. 7; OSG Memorandum, p. 20.

³³ OSG Memorandum, p. 20.

gave instructions to Rear Admiral Enriquez, Deputy Chief of Staff for Reservist and Retiree Affairs, pertaining to the Marcos burial.³⁴

Thus, on August 12, 2016, the Armed Forces of the Philippines, through its Army Chief of Public Affairs, issued a press release entitled “Army receives interment directive for former Pres. Marcos.” The press release stated that the Philippine Army had received a directive from Rear Admiral Enriquez under the command of General Visaya for the Marcos burial at the Libingan ng mga Bayani.³⁵ It stated that under this directive, the Army was required to provide vigil, bugler/drummer, firing party, military host/pallbearers, escort and transportation, as well as arrival and departure honors.³⁶ It also stated that the Army had designated a protocol officer to coordinate laterally with the Marcos Family regarding the details of the Marcos burial.³⁷

President Duterte confirmed in various interviews that he had allowed Ferdinand E. Marcos’ interment at the Libingan ng mga Bayani, as this was a promise he had made during his campaign for the presidency.³⁸

Thus, petitioners separately filed the present Petitions for certiorari, prohibition, and mandamus, mainly seeking that the execution of the Executive Department’s decision to allow the burial of Ferdinand E. Marcos at the Libingan ng mga Bayani be reversed, set aside, and enjoined.³⁹ After respondents filed their respective Comments, oral arguments were held on August 31 and September 7, 2016. The parties then filed their respective Memoranda.

II

The AFP Regulations are ultra vires. They violate Republic Act No. 289, which is still an existing law. Therefore, the verbal orders of the President, the Lorenzana Memorandum, and the Enriquez Orders based on the AFP Regulations are null and void.

Republic Act No. 289⁴⁰ creates a National Pantheon “to perpetuate the memory of all the Presidents of the Philippines, national heroes and patriots for the inspiration and emulation of this generation and of generations still

³⁴ Memorandum (G.R. No. 225973), p. 8.

³⁵ Id. at 7.

³⁶ Id. at 8.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ An Act Providing for the Construction of a National Pantheon for Presidents of the Philippines, National Heroes and Patriots of the Country.

unborn[.]”⁴¹ The National Pantheon is, by law, intended to be the “burial place of their mortal remains.”⁴² Thus:

SECTION 1. To perpetuate the memory of all the Presidents of the Philippines, national heroes and patriots for the inspiration and emulation of this generation and of generations still unborn, there shall be constructed a National Pantheon which shall be the burial place of their mortal remains.

The clear intention of the legislature in enacting Republic Act No. 289 was to create a burial place to perpetuate the memory of the Presidents of the Philippines, national heroes, and patriots, for the inspiration and emulation of generations of the Filipino People.⁴³ An examination of the evolution of what is now known as the Libingan ng mga Bayani shows that it is precisely the burial ground covered by Republic Act No. 289.

The Libingan ng mga Bayani, similar to the National Pantheon, is there to hold the remains and “perpetuate the memory of all the Presidents of the Philippines, national heroes and patriots for the inspiration and emulation of this generation and generations still unborn.”

Republic Act No. 289 does not specify what the name of the National Pantheon shall be. The Libingan ng mga Bayani may not be called the “National Pantheon,” but nothing in Republic Act No. 289 prohibits naming the National Pantheon as the Libingan ng mga Bayani.

Republic Act No. 289 does not specify where the National Pantheon is to be located. Under Republic Act No. 289, the suitable site is yet to be determined by a Board, who has the duty:

- (a) *To determine the location of a suitable site for the construction of the said National Pantheon, and to have such site acquired, surveyed and fenced for this purpose and to delimit and set aside a portion thereof wherein shall be interred the remains of all Presidents of the Philippines and another portion wherein the remains of heroes, patriots and other great men of the country shall likewise be interred[.]*⁴⁴ (Emphasis supplied)

Wherever the mortal remains of Presidents of the Philippines, national heroes, and patriots are buried is, thus, the burial place envisioned by the legislature, subject to the provisions of Republic Act No. 289.

⁴¹ Rep. Act No. 289, sec. 1.

⁴² Rep. Act No. 289, sec. 1.

⁴³ Rep. Act No. 289, sec. 1.

⁴⁴ Rep. Act No. 289, sec. 2(a).

The space where the Libingan ng mga Bayani is now located was once the Republic Memorial Cemetery, which initially served as burial grounds for the war dead.⁴⁵

Prior to the law's enactment, in 1947, the Republic Memorial Cemetery was established as a burial ground for soldiers who died during World War II.

While Republic Act No. 289 was effective and apparently without the action of the Board of National Pantheon, Former President Magsaysay issued Executive Order No. 77, transferring the remains of the war dead to the Republic Memorial Cemetery:

WHEREAS, the Armed Forces of the Philippines is maintaining the Bataan Memorial Cemetery in the province of Bataan and the Republic Memorial Cemetery in Fort Wm McKinley, Rizal province, thereby splitting the expenses of maintenance and upkeep therefor;

WHEREAS, there are other remains of our war dead interred at other places throughout the Philippines which are not classified as cemeteries;

WHEREAS, the said cemetery in Bataan province and the other places in the Philippines where our dead war heroes are interred are not easily accessible to their widows, parents, children, relatives and friends; and

WHEREAS, in the national observance of the occasion honoring the memory of those war dead, it is fitting and proper that their remains be interred in one national cemetery;

NOW, THEREFORE, I, RAMON MAGSAYSAY, President of the Philippines, by virtue of the powers vested in me by law, do hereby order that the remains of the war dead interred at the Bataan Memorial Cemetery, Bataan province, and at other places in the Philippines, be transferred to, and reinterred at, the Republic Memorial Cemetery at Fort Wm McKinley, Rizal Province.

This change—relocating the nation's war dead to one national cemetery—created a burial ground that, by its express purpose, necessarily glorifies and honors those buried as war heroes. This re-interment of all of the dead war heroes to the Republic Memorial Cemetery transformed it the National Pantheon, covered by Republic Act No. 289.

On October 27, 1954, Former President Magsaysay issued Proclamation No. 86, changing the name of the Republic Memorial Cemetery to express the nation's esteem and reverence for those buried in the cemetery, the war dead:

⁴⁵ OSG Memorandum, p. 10.

WHEREAS, the name “Republic Memorial Cemetery” at Fort Wm McKinley, Rizal province, is not symbolic of the cause for which our soldiers have died, and does not truly express the nation’s esteem and reverence for her war dead;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare that the “Republic Memorial Cemetery” shall henceforth be called “LIBINGAN NG MGA BAYANI”.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Proclamation No. 86 purposefully and expressly altered the nature of the Republic Memorial Cemetery. The name was changed specifically to honor those who died in the war, as “bayani,” the heroes of war.

On July 12, 1957, Former President Carlos P. Garcia issued Proclamation No. 423, which reserved for military purposes, under the administration of the Chief of Staff of the Armed Forces of the Philippines, certain parcels of land in Pasig, Taguig, Parañaque, Province of Rizal, and Pasay City.⁴⁶ Under this Proclamation, the Armed Forces of the Philippines issued various regulations expanding the scope of the types of individuals who could be buried at the Libingan ng mga Bayani. Thus, the nature of what once was the Republic Memorial Cemetery changed further. The most recent AFP Regulations, AFP Regulations No. 161-375 (2000), invoked by public respondents, reads:

1. General: This regulation prescribes the allocation of cemetery plots and construction of grave markers at the Libingan Ng Mga Bayani (LNMB).

.....

3. Who are qualified to be interred in the Libingan Ng Mga Bayani: The remains of the following deceased persons are qualified and, therefore, authorized to be interred in the Libingan Ng Mga Bayani:

- a. Medal of Valor Awardees
- b. Presidents of Commander-in-Chief, AFP
- c. Secretaries of National Defense
- d. Chiefs of Staff, AFP
- e. Generals/Flag Officers of the AFP
- f. Active and retired military personnel of the AFP to include active draftees and trainees who died in line of duty, active reservists and CAFGU Active Auxiliary (CAA) who died in combat operations or combat related activities.

⁴⁶ Proc. No. 423 (1957).

- g. Former members of the AFP who laterally entered or joined the Philippine Coast Guard (PCG) and the Philippine National Police (PNP)
- h. Veterans of Philippine Revolution of 1890, WWI, WWII and recognized guerrillas
- i. Government Dignitaries, Statesmen, National Artists and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, Congress or the Secretary of National Defense
- j. Former Presidents, Secretaries of Defense, Dignitaries, Statesmen, National Artists, widows of Former Presidents, Secretaries of National Defense and Chief of Staff are authorized to be interred at the LNMB.⁴⁷

Again, the Republic Memorial Cemetery was created specifically as a burial place for the war dead,⁴⁸ and then renamed to Libingan ng mga Bayani with the express purpose of revering the nation's war dead.⁴⁹ Now, progressing from the renaming, and under AFP Regulations, the cemetery is no longer primarily a cemetery for the nation's war dead. Remains of individuals who have nothing to do with the military—much less any war—have been interred there. This includes, among others, three (3) former Chief Justices of this Court,⁵⁰ as well as Former Presidents Elpidio R. Quirino and Diosdado P. Macapagal.⁵¹

As admitted by the Solicitor General, the Armed Forces of the Philippines has determined that those who have contributed to society, despite not having served as soldiers, may be buried at the Libingan ng mga Bayani:

JUSTICE LEONEN:

If the Libingan ng mga Bayani is a military cemetery, why is it that there is “national artist” also included in the order?

SOLICITOR GENERAL CALIDA:

Because they fall under the classification of probably dignitaries, Your Honors.

JUSTICE LEONEN:

Why single out national artists?

SOLICITOR GENERAL CALIDA:

Because they have contributed something to society, Your Honor.

⁴⁷ OSG Comment, Annex 7.

⁴⁸ Exec. Order No. 77 (1954).

⁴⁹ Proc. No. 86 (1954).

⁵⁰ TSN, Oral Arguments, September 7, 2016, p. 142.

⁵¹ Id. at 57.

JUSTICE LEONEN:

Maybe I will tell you because there is a law that actually allows national artists to be interred in the Libingan ng mga Bayani, is that not correct?⁵²

Unlike for national artists, the expansion of the coverage of the Libingan ng mga Bayani is without cover of law and, in some cases, contrary to Republic Act No. 289. For instance, the inclusion of widows of Former Presidents or widows of Former Secretaries of National Defense at the Libingan ng mga Bayani has no purpose and is contrary to the nature of the Libingan.

The change of its name from Republic Memorial Cemetery to Libingan ng mga Bayani and the scope of individuals that could be buried through subsequent AFP Regulations are operative facts that put the cemetery under the coverage of Republic Act No. 289. What once may have been a military cemetery has been converted, over time, into what is the National Pantheon envisioned by the legislature when it passed Republic Act No. 289.

It is true that in 1953, Proclamation No. 431, entitled Reserving as Site for the National Pantheon a Certain Parcel of Land Situated in Quezon City, reserved a parcel of land in Quezon City for the construction of the National Pantheon. However, this was subsequently revoked by Proclamation No. 42, entitled Revoking Proclamation Nos. 422 and 431, Both Series of 1953, and Reserving the Parcels of Land Embraced Therein Situated in Quezon City for National Park Purposes to be Known as Quezon Memorial Park. There is no National Pantheon in Quezon City.

The revoked attempt to locate the National Pantheon in Quezon City does not amend Republic Act No. 289. Quezon City is not a definitive part of the National Pantheon, and Proclamation No. 431 is wholly irrelevant to the validity of Republic Act No. 289.

The ponencia suggests that the lack of appropriation from Congress for the creation of a National Pantheon shows a “legislative will not to pursue” the establishment of a National Pantheon. It further suggests that “[p]erhaps, the Manila North Cemetery, the Manila South Cemetery, and other equally distinguished private cemeteries already serve the noble purpose but without cost to the limited funds of the government.”⁵³

The failure to provide appropriation for a law does not repeal the law. Moreover, the failure to provide the appropriate budget for the execution of

⁵² Id. at 152.

⁵³ Ponencia, p. 19.

a law is a violation of the President's duty to faithfully execute all laws. Certainly, the lack of appropriation does not suspend standards laid down by the legislature in a valid and subsisting law.

The legislative policy in Republic Act No. 289 includes delegating the powers related to the National Pantheon to a specially constituted board composed of the Secretary of the Interior, the Secretary of Public Works and Communications, the Secretary of Education, and two (2) private citizens appointed by the President, with the consent of the Commission on Appointments (Board).⁵⁴ Under Republic Act No. 289, it is the Board—not the President directly nor the Secretary of National Defense—that has the power to perform all the functions necessary to carry out the purposes of the law.⁵⁵

The Board is statutorily empowered to, among others:

- (a) To determine the location of a suitable site. . . .
- (b) To order and supervise the construction thereon of uniform monuments, mausoleums, or tombs. . . . [and]
- (c) To cause to be interred therein the mortal remains of all Presidents of the Philippines, the national heroes and patriots[.]

However, the Lorenzana Memorandum and the Enriquez Orders to have the remains of Ferdinand E. Marcos transferred to the Libingan ng mga Bayani, today's National Pantheon, were made without the authority of the Board. Consequently, the Lorenzana Memorandum and the Enriquez Orders are void for being ultra vires. There is no showing that the Board recommended to the President the burial of the remains of Ferdinand E. Marcos at the Libingan. The issuances of public respondents are ultra vires and have no effect whatsoever. The continued implementation of these issuances would be an act beyond their jurisdiction, or grave abuse of discretion, because they violate existing law.

In public respondents' opening statement, the Solicitor General argues that the provisions of Republic Act No. 289 do not apply to the Libingan ng mga Bayani because Republic Act No. 289 is a "defunct law," established by the clear expressions of the legislative and executive will to abandon Republic Act No. 289 altogether, namely: (1) the inaction on the part of Congress, (2) the withdrawal of the reservation of land for the Pantheon by President Magsaysay.⁵⁶

⁵⁴ Rep. Act No. 289, sec. 2.

⁵⁵ Rep. Act No. 289, sec. 2.

⁵⁶ TSN, Oral Arguments, September 7, 2016, p. 14.

This is not a valid legal argument.

A law cannot be repealed by inaction or tradition. Neither can a law be repealed by a President. A President who does not follow a law is a President that violates his or her duties under the Constitution.

Article 7 of the Civil Code provides that laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, custom, or practice to the contrary. This Court has repeatedly held that only a law can repeal another law,⁵⁷ and a law subsists when it has not been repealed nor expressly amended by any other law.⁵⁸ Likewise, “repeals by implication are not favored and will not be decreed, unless it is manifest that the legislature so intended.”⁵⁹

No law has been passed amending or repealing Republic Act No. 289, and no manifest intention on the part of the legislature to repeal Republic Act No. 289 has been shown. It cannot be disputed; therefore, Republic Act No. 289 is a valid and binding law.

Further, the effectivity of a law cannot be made to depend on a future event or act. Otherwise, it would “rob the Legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know.” In *Securities and Exchange Commission v. Interport Resources Corporation*:⁶⁰

It is well settled that every law has in its favor the presumption of validity. Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes. The mere absence of implementing rules cannot effectively invalidate provisions of law, where a reasonable construction that will support the law may be given. In *People v. Rosenthal*, this Court ruled that:

In this connection we cannot pretermitt reference to the rule that “legislation should not be held invalid on the ground of uncertainty if susceptible of any reasonable construction that will support and give it effect. An Act will not be declared inoperative and ineffectual on the ground that it furnishes no adequate means to secure the purpose for which it is passed, if men of common sense and reason can devise and provide the means, and all the instrumentalities

⁵⁷ *Palanca v. Court of Appeals*, G.R. No. 106685, December 2, 1994, 238 SCRA 593, 600–601 [Per J. Quiason, En Banc].

⁵⁸ See *United States v. Chan*, 37 Phil. 78, 84 (1917) [Per J. Torres, En Banc].

⁵⁹ *National Power Corporation v. Province of Lanao del Sur*, 332 Phil. 303, 323 (1996) [Per J. Panganiban, En Banc].

⁶⁰ 588 Phil. 651 (2008) [Per J. Chico-Nazario, En Banc].

necessary for its execution are within the reach of those intrusted therewith.”

In *Garcia v. Executive Secretary*, the Court underlined the importance of the presumption of validity of laws and the careful consideration with which the judiciary strikes down as invalid acts of the legislature:

The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied and determined to be in accordance with the fundamental law before it was finally enacted.

The necessity for vesting administrative authorities with power to make rules and regulations is based on the impracticability of lawmakers' providing general regulations for various and varying details of management. To rule that the absence of implementing rules can render ineffective an act of Congress, such as the Revised Securities Act, would empower the administrative bodies to defeat the legislative will by delaying the implementing rules. *To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the Legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know. It is well established that administrative authorities have the power to promulgate rules and regulations to implement a given statute and to effectuate its policies, provided such rules and regulations conform to the terms and standards prescribed by the statute as well as purport to carry into effect its general policies.* Nevertheless, it is undisputable that the rules and regulations cannot assert for themselves a more extensive prerogative or deviate from the mandate of the statute. Moreover, where the statute contains sufficient standards and an unmistakable intent, as in the case of Sections 30 and 36 of the Revised Securities Act, there should be no impediment to its implementation.⁶¹ (Emphasis supplied)

The effectivity of Republic Act No. 289 does not depend on a Board being constituted or on the naming of a plot of land as the “National Pantheon.” If a government agency creates a burial place that clearly and factually comprises the burial place contemplated in Republic Act No. 289, the legislative policy must still govern.

The majority's position is that Republic Act No. 289 can be simply ignored by the President. The President, however, will gravely abuse his discretion when he does.

⁶¹ Id. at 673–675, citing 25 R.C.L., pp. 810, 811.

The Solicitor General insists that the disparate histories of the site of the Libingan ng mga Bayani and Republic Act No. 289 reveal that the two are unrelated. Hence, the provisions of Republic Act No. 289 do not apply to the Libingan ng mga Bayani.⁶²

The Solicitor General starts with a narration of the history of the land where the Libingan ng mga Bayani, as nothing but a renamed Republic Memorial Cemetery,⁶³ intended only to be a national military cemetery for the interment of those who died during the war.⁶⁴ He then proceeds to insist that the Libingan ng mga Bayani has been operating as a military shrine and cemetery.⁶⁵ In his view, the National Pantheon, on the other hand, was never constructed.⁶⁶ Its intended site was in Quezon City under Proclamation No. 431.⁶⁷ However, in 1954, this site was later withdrawn under Proclamation No. 42.⁶⁸

The Solicitor General implies that simply because Proclamation No. 431 was later withdrawn by another presidential proclamation, the law has ceased to become effective.

The Solicitor General then argues that the standards laid down in Republic Act No. 289 do not apply to the Libingan ng mga Bayani. Public respondents point out that the standards under Republic Act No. 289 are not stated in any of the issuances pertinent to the Libingan ng mga Bayani, namely: Proclamation No. 208, Presidential Decree No. 1076, or Executive Order No. 292.⁶⁹ Thus, as the National Pantheon was never constructed, public respondents claim that “the clear inference is that former President Marcos and President Corazon Aquino did not intend to adopt said standards for those to be interred at the Libingan ng mga Bayani.”⁷⁰

The position of the Solicitor General is legally untenable and logically unsound. Presidents who do not follow the law do not repeal that law. Laws can only be repealed by a subsequent law. Again, that Republic Act No. 289 was ignored in the past does not give legal justification for the present administration to likewise violate the law.

⁶² OSG Memorandum, p. 54.

⁶³ Id.

⁶⁴ Id. at 55.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id. at 54.

⁶⁸ Id.

⁶⁹ OSG Memorandum, p. 56.

⁷⁰ Id.

Republic Act No. 289 does not specify the location of the National Pantheon. It could be anywhere. The defining characteristic of the National Pantheon is that it shall be the burial place of the Presidents of the Philippines, national heroes, and patriots.⁷¹

The AFP Regulations, on the other hand, provide that the remains of the following may be buried at the Libingan ng mga Bayani: (1) Medal of Valor Awardees; (2) Presidents or Commanders-in-Chief of the Armed Forces of the Philippines; (3) Secretaries of National Defense; (4) Chiefs of Staff of the Armed Forces of the Philippines; (5) General flag officers of the Armed Forces of the Philippines; (6) Active and retired military personnel of the Armed Forces of the Philippines; (7) Veterans of the Philippine Revolution of 1896, World War I, World War II, and recognized guerrillas; (8) government dignitaries, statesmen, national artists, and other deceased persons whose interment or re-interment has been approved by the Commander-in-Chief, Congress, or the Secretary of National Defense; and (9) Former Presidents, Secretaries of Defense, CSAFP, generals/flag officers, dignitaries, statesmen, national artists, widows of former Presidents, Secretaries of National Defense, and Chiefs of Staff.⁷²

A plain reading of the AFP Regulations reveals that although it does not refer to Republic Act No. 289, it nonetheless provides for the burial of individuals who would properly be covered by Republic Act No. 289. The AFP Regulations define a burial place, which is the burial place provided for under Republic Act No. 289.

The executive cannot avoid carrying out a valid and subsisting law by passing regulations substantially covering a matter that is already a law and excuse itself from complying with the law on the premise that it—a law that the executive never implemented—is now defunct.

Under Republic Act No. 289, only the Board is authorized to set aside portions of the National Pantheon where the remains of the Presidents of the Philippines, national heroes, and patriots shall be interred,⁷³ to cause to be interred in the National Pantheon the mortal remains of Presidents of the Philippines, national heroes, and patriots,⁷⁴ and to perform such other functions as may be necessary to carry out the purposes of this law.⁷⁵

Having been issued by Secretary Lorenzana, General Visaya, and Rear Admiral Enriquez without the authority of the Board, the General

⁷¹ Rep. Act No. 289, sec. 1.

⁷² OSG Comment, Annex 7.

⁷³ Rep. Act No. 289, sec. 2(a).

⁷⁴ Rep. Act No. 289, sec. 2(c).

⁷⁵ Rep. Act No. 289, sec. 2(e).

Lorenzana Memorandum and the Enriquez Orders are void for being ultra vires.

III

Assuming without accepting that respondents Secretary Lorenzana, General Visaya, and Rear Admiral Enriquez had the authority to determine who may be interred at Libingan ng mga Bayani, the Lorenzana Memorandum and the Enriquez Orders are nonetheless invalid.

Under Section 1 of Republic Act No. 289, those buried at the Libingan ng mga Bayani must have led lives worthy of “inspiration and emulation.”

Ferdinand E. Marcos does not meet this standard.

Our jurisprudence clearly shows that Ferdinand E. Marcos does not even come close to being one who will inspire. His example should not be emulated by this generation, or by generations yet to come.

Ferdinand E. Marcos has been characterized as an **authoritarian** by this Court in nine (9) Decisions⁷⁶ and 9 Separate Opinions.⁷⁷ He was called a **dictator** in 19 Decisions⁷⁸ and 16 Separate Opinions.⁷⁹ That he was

⁷⁶ *Marcos v. Manglapus*, 258 Phil. 479 (1989) [Per J. Cortes, En Banc]; *Galman v. Sandiganbayan*, 228 Phil. 42 (1986) [Per J. Quisimbing, En Banc]; *Fortun v. Macapagal-Arroyo*, 684 Phil. 526 (2012) [Per J. Abad, En Banc]; *People v. Pacificador*, 406 Phil. 774 (2001) [Per J. de Leon, Jr., Second Division]; *Buscayno v. Enrile*, 190 Phil. 7 (1981) [Per C.J. Fernando, En Banc]; *Republic v. Sandiganbayan*, 453 Phil. 1059 (2013) [Per J. Puno, En Banc]; *Republic v. Villarama*, 344 Phil. 288 (1997) [Per J. Davide Jr., Third Division]; *Salazar v. Achacoso*, 262 Phil. 160 (1990) [Per J. Sarmiento, En Banc]; *Biraogo v. Philippine Truth Commission*, 651 Phil. 374 (2010) [Per J. Mendoza, En Banc].

⁷⁷ J. Gutierrez, Jr., Dissenting Opinion in *Marcos v. Manglapus* 258 Phil. 479, 513–526 (1989) [Per J. Cortes, En Banc]; J. Francisco, Concurring and Dissenting Opinion in *Dans v. People*, 349 Phil. 434, 477–513 (1998) [Per J. Romero, Third Division]; J. Puno, Concurring and Dissenting Opinion in *Presidential Ad Hoc Fact-Finding Committee v. Desierto*, 375 Phil. 697, 748–754 (1999) [Per C.J. Davide, Jr., En Banc]; J. Vitug, Dissenting Opinion in *Ang Bagong Bayani v. Commission on Elections*, 412 Phil. 308, 347–356 (2001) [Per J. Panganiban, En Banc]; J. Sarmiento, Dissenting Opinion in *In re Umil v. Ramos*, 279 Phil. 266, 332–344 (1991) [Per Curiam, En Banc]; J. Davide, Separate Opinion in *People's Initiative for Reform, Modernization and Action v. Commission on Elections*, G.R. No. 129754, September 23, 1997 [Unsigned Resolution, En Banc]; J. Puno, Separate Opinion in *Republic v. Sandiganbayan*, 454 Phil. 504, 551–630 (2003) [Per J. Carpio, En Banc]; J. Sarmiento, Dissenting Opinion in *Baylosis v. Chavez*, 279 Phil. 448, 470–483 (1991) [J. Narvasa, En Banc]; J. Teehankee, Concurring Opinion in *Tan v. Commission on Elections*, 226 Phil. 624, 648–651 (1986) [Per J. Alampay, En Banc].

⁷⁸ *Marcos v. Manglapus* 258 Phil. 479 (1989) [Per J. Cortes, En Banc]; *Republic v. Sandiganbayan*, 565 Phil. 172 (2007) [Per J. Quisimbing, Second Division]; *Republic v. Estate of Hans Merzi*, 512 Phil. 425 (2005) [Per J. Tinga, En Banc]; *Fortun v. Macapagal Arroyo*, 684 Phil. 526 (2012) [Per J. Abad, En Banc]; *Frialdo v. Commission on Elections*, 255 Phil. 934 (1989) [Per J. Cruz, En Banc]; *First Phil. Holdings Corp. v. Trans Middle East Equities Inc.*, 623 Phil. 623 (2009) [Per J. Chico-Nazario, Third Division]; *Associated Bank v. Spouses Montano*, 619 Phil. 128 (2009) [Per J. Nachura, Third Division]; *National Development Co. v. Philippine Veteran's Bank*, 270 Phil. 349 (1990) [Per J. Cruz, En Banc]; *Dizon v. Eduardo*, 242 Phil. 200 (1988) [Per J. Teehankee, En Banc]; *People v. Pacificador*, 406 Phil. 774 (2001) [Per J. de Leon, Jr., Second Division]; *PNCC v. Pabion*, 377 Phil. 1019 (1999)

unceremoniously deposed as President or dictator by a direct act of the People was stressed in 16 Decisions⁸⁰ and six (6) Separate Opinions.⁸¹ This Court has also declared that the amount of US\$658,175,373.60, in Swiss deposits under the name of the Marcoses, was ill-gotten wealth that should be forfeited in favor of the State.⁸²

[Per J. Panganiban, Third Division]; *Frialdo v. Commission on Elections*, 327 Phil. 521 (1996) [Per J. Panganiban, En Banc]; *Carpio Morales v. Court of Appeals*, G.R. No. 217126, November 10, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/217126-27.pdf>> [Per J. Perlas-Bernabe, En Banc]; *Heirs of Licaros v. Sandiganbayan*, 483 Phil. 510 (2004) [Per J. Panganiban, Third Division]; *Philippine Free Press Inc. v. Court of Appeals*, 510 Phil. 411 (2005) [Per J. Garcia, Third Division]; *Taruc v. Ericta*, 250 Phil. 65 (1988) [Per J. Paras, En Banc]; *Marcos v. Sandiganbayan*, 357 Phil. 762 (1998) [Per J. Purisima, En Banc]; *Republic v. Sandiganbayan* 453 Phil. 1059 (2013) [Per J. Puno, En Banc]; *Biraogo v. Philippine Truth Commission*, 651 Phil. 374 (2010) [Per J. Mendoza, En Banc].

⁷⁹ J. Cruz, Dissenting Opinion in *Marcos v. Manglapus*, 258-A Phil. 547, 555 (1989) [Per Curiam, En Banc]; J. Padilla, Dissenting Opinion in *Marcos v. Manglapus*, 258-A Phil. 547, 556–558 (1989) [Per Curiam, En Banc]; J. Sarmiento, Dissenting Opinion in *Marcos v. Manglapus*, 258-A Phil. 547, 559–560 (1989) [Per Curiam, En Banc]; C.J. Teehankee, Concurring Opinion in *Olaguer v. Military Commission. No. 34*, 234 Phil. 144, 164–179 (1987) [J. Gancayco, En Banc]; J. David, Dissenting Opinion in *Tabuena v. Sandiganbayan*, 335 Phil. 795, 878–886 (1997) [J. Francisco, En Banc]; J. Panganiban, Dissenting Opinion in *Tabuena v. Sandiganbayan*, 335 Phil. 795, 911–913 (1997) [J. Francisco, En Banc]; J. Kapunan, Dissenting Opinion in *Lacson v. Perez*, 410 Phil. 78, 95–107 (2001) [J. Melo, En Banc]; J. Cruz, Separate Opinion in *In Re Umil v. Ramos*, 279 Phil. 266, 306–311 (1991) [Per Curiam, En Banc]; J. Sarmiento, Dissenting Opinion in *In Re Umil v. Ramos*, 279 Phil. 266, 332–344 (1991) [Per Curiam, En Banc]; J. Sandoval, Dissenting Opinion in *Sanlakas v. Reyes* 466 Phil. 482, 534–548 (2004) [Per J. Tinga, En Banc]; J. Sandoval, Concurring Opinion in *Lambino v. Commission on Elections*, 536 Phil. 1, 154–186 (2006) [Per J. Carpio, En Banc]; J. Puno, Separate Opinion in *Republic v. Sandiganbayan*, 454 Phil. 504, 551–630 (2003) [Per J. Carpio, En Banc]; J. Cruz, Dissenting and Concurring Opinion in *In Re Umil v. Ramos*, 265 Phil. 325, 355 (1990) [Per Curiam, En Banc] J. Sarmiento, Dissenting Opinion in *In Re Umil v. Ramos*, 265 Phil. 325, 355–365 (1990) [Per Curiam, En Banc]; C.J. Panganiban, Concurring Opinion in *David v. Macapagal-Arroyo*, 522 Phil. 705, 812–813 (2006) [Per J. Sandoval-Gutierrez, En Banc]; J. Cruz, Dissenting Opinion in *Sarmiento v. Mison*, 240 Phil. 505, 541–546 (1987) [J. Padilla, En Banc].

⁸⁰ *Marcos v. Manglapus*, 258-A Phil. 547 (1989) [Per Curiam, En Banc]; *Republic v. Marcos-Manotok*, 681 Phil. 380 (2012) [Per J. Sereno, Second Division]; *E. Razon, Inc. v. Philippine Ports Authority*, 235 Phil. 223 (1987) [Per J. Fernan, En Banc]; *Presidential Commission on Good Government v. Peña*, 243 Phil. 93 (1988) [Per C.J. Teehankee, En Banc]; *Liwayway Publishing v. Presidential Commission on Good Governance*, 243 Phil. 864 (1988) [Per C.J. Teehankee, En Banc]; *Quisimbing v. Sandiganbayan*, 591 Phil. 633 (2008) [Per J. Carpio-Morales, Second Division]; *Samahang Manggawang Rizal Park v. National Labor Relations Commission* (1991) [Per J. Cruz, First Division]; *Republic v. Sandiganbayan*, 499 Phil. 138 (2005) [Per Sandoval-Gutierrez, Third Division]; *Phil. Coconut Producers Federation Inc. v. Presidential Commission on Good Governance*, 258-A Phil. 1 (1989) [Per J. Narvasa, En Banc]; *Cuenca v. Presidential Commission on Good Government*, 561 Phil. 235 (2007) [Per J. Velasco Jr., Second Division]; *Romualdez v. Regional Trial Court*, G.R. No. 104960, September 14, 1993, 226 SCRA 408 [Per J. Vitug, En Banc]; *Sison v. People*, 320 Phil. 112 (1995) [Per J. Puno, Second Division]; *Phil. Overseas Telecom. Corp. v. Africa* (2013) [Per J. Bersamin, First Division]; *Vinzons-Masagana v. Estrella*, 278 Phil. 544 (1991) [Per J. Paras, En Banc]; *Republic v. Sandiganbayan*, 310 Phil. 402 (1995) [Per C.J. Narvasa, En Banc]; *Secretary of Finance v. Ilarde*, 497 Phil. 544 (2005) [Per J. Chico-Nazario, En Banc].

⁸¹ C.J. Teehankee, Concurring Opinion in *Bataan Shipyard v. Presidential Commission on Good Government*, 234 Phil. 180, 238–249 (1987) [Per J. Narvasa, En Banc]; J. Bersamin, Concurring Opinion in *Republic v. Cojuanco*, 689 Phil. 149, 173–179 (2012) [Per J. Abad, En Banc]; C.J. Teehankee, Concurring Opinion in *Tuason v. Register of Deeds*, 241 Phil. 650, 663–665 (1988) [Per J. Narvasa, En Banc]; J. Kapunan, Dissenting Opinion in *Lacson v. Perez*, 410 Phil. 78, 95–107 (2001) [Per J. Melo, En Banc]; J. Teehankee, Concurring Opinion in *In re Agcaoili v. Enrile*, 226 Phil. 611, 622–624 (1986) [Per J. Narvasa, En Banc]; J. Cruz, Dissenting Opinion in *DBP v. Judge Pundogar*, G.R. No. 96921, January 29, 1993, 218 SCRA 118 [Per J. Romero, En Banc].

⁸² Memorandum (G.R. No. 225973), p. 98, citing *Republic v. Sandiganbayan*, 454 Phil. 504 (2003) [Per J. Carpio, En Banc].

For instance, a powerful portrait of the despotic power exercised by Marcos during Martial Law was presented in *Dizon v. Eduardo*.⁸³

Senator Diokno passed away a year ago last February 27th. He, together with the martyred Senator Benigno “Ninoy” Aquino Jr. were the first victims of martial law imposed in September 1972 by then President Ferdinand E. Marcos, destroying in one fell swoop the Philippines’ 75 years of stable democratic traditions and established reputation as the showcase of democracy in Asia. They were the first to be arrested in the dark of the night of September 22, 1972, as the military authorities spread out through the metropolis upon orders of the President-turned-dictator to lock up the opposition together with newspaper editors, journalists and columnists and detain them at various army camps. What was the martial law government’s justification for the arrest and detention of Diokno and Aquino? The government’s return to their petitions for *habeas corpus* claimed that they were “regarded as participants or as having given aid and comfort ‘in the conspiracy to seize political and state power and to take over the government by force.’” The fact is that they just happened to be the foremost contenders for the Presidency of the Republic in the scheduled November 1973 presidential elections, at which time Mr. Marcos would have finished his second 4-year term and barred under the prevailing 1935 Constitution from running for a third term. . . .

....

Senator Ninoy Aquino underwent an even more tortuous ordeal. He was charged on August 11, 1973 with murder, subversion and illegal possession of firearms and found guilty and sentenced to death by a military commission, notwithstanding his being a civilian and the fact that said general offenses were allegedly committed before the imposition of martial law, and could not fall within the jurisdiction of military commissions, which are not courts but mere adjuncts of the Commander-in-Chief to enforce military discipline. Mr. Marcos had publicly pronounced the evidence against Ninoy as “not only strong but overwhelming” in a nation-wide press conference on August 24, 1971 following the Plaza Miranda bombing three days earlier of the LP proclamation meeting, yet had not charged him before the civil courts. Ninoy had contended correctly but in vain that he had been publicly indicted and his guilt prejudged by Mr. Marcos, and he could not possibly get due process and a fair trial before a group of Mr. Marcos’ military subordinates[.]⁸⁴

In *Mijares v. Ranada*,⁸⁵ despite the passing of years, this Court acknowledged the continuing difficulties caused by the dark years of the Marcos regime:

Our martial law experience bore strange unwanted fruits, and we have yet to finish weeding out its bitter crop. While the restoration of freedom and the fundamental structures and processes of democracy have

⁸³ 242 Phil. 200 (1988) [Per J. Teehankee, En Banc].

⁸⁴ Id. at 202–204.

⁸⁵ 495 Phil. 372 (2005) [Per J. Tinga, Second Division].

been much lauded, according to a significant number, the changes, however, have not sufficiently healed the colossal damage wrought under the oppressive conditions of the martial law period. The cries of justice for the tortured, the murdered, and the *desaparecidos* arouse outrage and sympathy in the hearts of the fairminded, yet the dispensation of the appropriate relief due them cannot be extended through the same caprice or whim that characterized the ill-wind of martial rule. The damage done was not merely personal but institutional, and the proper rebuke to the iniquitous past has to involve the award of reparations due within the confines of the restored rule of law.

The petitioners in this case are prominent victims of human rights violations who, deprived of the opportunity to directly confront the man who once held absolute rule over this country, have chosen to do battle instead with the earthly representative, his estate[.]⁸⁶

In *Presidential Commission on Good Governance v. Peña*,⁸⁷ this Court recognized the gargantuan task of the Philippine Commission on Good Governance in recovering the ill-gotten wealth of the Marcoses and the “organized pillage” of his regime:

Having been charged with the herculean task of bailing the country out of the financial bankruptcy and morass of the previous regime and returning to the people what is rightfully theirs, the Commission could ill-afford to be impeded or restrained in the performance of its functions by writs or injunctions emanating from tribunals co-equal to it and inferior to this Court. Public policy dictates that the Commission be not embroiled in and swamped by legal suits before inferior courts all over the land, since the loss of time and energy required to defend against such suits would defeat the very purpose of its creation.

....

The rationale of the exclusivity of such jurisdiction is readily understood. Given the magnitude of the past regime’s ‘organized pillage’ and the ingenuity of the plunderers and pillagers with the assistance of the experts and best legal minds available in the market, it is a matter of sheer necessity to restrict access to the lower courts, which would have tied into knots and made impossible the Commission’s gigantic task of recovering the plundered wealth of the nation, whom the past regime in the process had saddled and laid prostrate with a huge \$27 billion foreign debt that has since ballooned to \$28.5 billion.⁸⁸

The many martyrs produced by Martial Law were recognized in *Bisign Manggagawa sa Concrete Aggregates, Inc v. National Labor Relations Commission*:⁸⁹

⁸⁶ Id. at 375.

⁸⁷ 243 Phil. 93 (1988) [Per C.J. Teehankee, En Banc].

⁸⁸ Id. at 106–107.

⁸⁹ G.R. No. 105090, September 16, 1993, 226 SCRA 499 [Per J. Puno, Second Division].

Hence, on June 17, 1953, Congress gave statutory recognition to the right to strike when it enacted RA 875, otherwise known as the Industrial Peace Act. For nearly two (2) decades, labor enjoyed the right to strike until it was prohibited on September 12, 1972 upon the declaration of martial law in the country. The 14-year battle to end martial rule produced many martyrs and foremost among them were the radicals of the labor movement. It was not a mere happenstance, therefore, that after the final battle against martial rule was fought at EDSA in 1986, the new government treated labor with a favored eye. Among those chosen by then President Corazon C. Aquino to draft the 1987 Constitution were recognized labor leaders like Eulogio Lerum, Jose D. Calderon, Blas D. Ople and Jaime S. L. Tadeo. These delegates helped craft into the 1987 Constitution its Article XIII entitled Social Justice and Human Rights. For the first time in our constitutional history, the fundamental law of our land mandated the State to “. . . guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.” This Constitutional imprimatur given to the right to strike constitutes signal victory for labor. Our Constitutions of 1935 and 1973 did not accord constitutional status to the right to strike. Even the liberal US Federal Constitution did not elevate the right to strike to a constitutional level[.]⁹⁰

Widespread “acts of torture, summary execution, disappearance, arbitrary detention, and numerous other atrocities” were also recognized in other jurisdictions. In a class action suit that served as a serious precedent for other jurisdictions, the United States District Court of Hawaii in *In Re Estate of Marcos Human Rights Litigation*⁹¹ pronounced:

“Proclamation 1081 not only declared martial law, but also set the stage for what plaintiffs alleged, and the jury found, to be acts of torture, summary execution, disappearance, arbitrary detention, and numerous other atrocities for which the jury found MARCOS personally responsible.

MARCOS gradually increased his own power to such an extent that there were no limits to his orders of the human rights violations suffered by plaintiffs in this action. MARCOS promulgated General Order No. 1 which stated he was the Commander in Chief of the Armed Forces of the Philippines. The order also stated that MARCOS was to govern the nation and direct the operation of the entire Government, including all its agencies and instrumentalities. By General Orders 2 and 2-A, signed by MARCOS immediately after proclaiming martial law, MARCOS authorized the arrest, by the military, of a long list of dissidents. By General Order 3, MARCOS maintained, as captive, the executive and judicial branches of all political entities in the Philippines until otherwise ordered by himself personally.

....

⁹⁰ Id. at 511–512.

⁹¹ 910 F. Supp. 1460 (D. Haw. 1995).

Immediately after the declaration of martial law the issuance of General Orders 1, 2, 2A, 3 and 3A caused arrests of persons accused of subversion, apparently because of their real or apparent opposition to the MARCOS government. These arrests were made pursuant to orders issued by the Secretary of defense Juan Ponce Enrile ('ENRILE') or MARCOS himself.

The arrest orders were means for detention of each of the representatives of the plaintiff class as well as each of the individual plaintiffs. During those detentions the plaintiffs experienced human rights violations including, but not limited to the following:

1. Beatings while blindfolded by punching, kicking and hitting with the butts of rifles;
2. The 'telephone' where a detainee's ears were clapped simultaneously, producing a ringing sound in the head;
3. Insertion of bullets between the fingers of a detainee and squeezing the hand;
4. The 'wet submarine', where a detainee's head was submerged in a toilet bowl full of excrement;
5. The 'water cure' where a cloth was placed over the detainee's mouth and nose, and water poured over it producing a drowning sensation;
6. The 'dry submarine', where a plastic bag was placed over the detainee's head producing suffocation;
7. Use of a detainee's hands for putting out lighted cigarettes;
8. Use of flat-irons on the soles of a detainee's feet;
9. Forcing a detainee while wet and naked to sit before an air conditioner often while sitting on a block of ice;
10. Injection of a clear substance into the body of a detainee believed to be truth serum;
11. Stripping, sexually molesting and raping female detainees; one male plaintiff testified he was threatened with rape;
12. Electric shock where one electrode is attached to the genitals of males or the breast of females and another electrode to some other part of the body, usually a finger, and electrical energy produced from a military field telephone is sent through the body;
13. Russian roulette; and
14. Solitary confinement while handcuffed or tied to a bed.

All these forms of torture were used during 'tactical interrogation', attempting to elicit information from detainees concerning opposition to the MARCOS government. The more the detainees resisted, whether purposefully or out of lack of knowledge, the more serious the torture used.⁹²

US\$1.2 billion in exemplary damages, as well as US\$770 million in compensatory damages, was awarded to the victims of the Marcos regime.⁹³ The federal appeals court upheld the Decision of the Honolulu court and

⁹² Id. at 4-5.

⁹³ Rosales Memorandum, p. 104.

held the estate of Marcos liable for the gross and massive human rights abuses committed. In *Hilao v. Marcos*,⁹⁴ the United States 9th Circuit Court of Appeals used the principle of “command responsibility” for the violations committed by the agents of a political leader, thus:

“The district court had jurisdiction over Hilao’s cause of action. Hilao’s claims were neither barred by the statute of limitations nor abated by Marcos’ death. The district court did not abuse its discretion in certifying the class. The challenged evidentiary rulings of the district court were not in error. The district court properly held Marcos liable for human rights abuses which occurred and which he knew about and failed to use his power to prevent. The jury instructions on the Torture Victim Protection Act and on proximate cause were not erroneous. The award of exemplary damages against the Estate was allowed under Philippine law and the Estate’s due process rights were not violated in either the determination of those damages or of compensatory damages.”⁹⁵

The Federal Supreme Court of Switzerland, through the Decision dated December 10, 1997,⁹⁶ affirmed the ruling of the District Attorney of Zurich granting the Philippine government’s request for transfer of funds held in multiple accounts by various foreign foundations in Swiss banks. This was transferred to an escrow account.

Then, in *Republic v. Sandiganbayan*,⁹⁷ this Court declared that the funds were proven to belong to the Marcos Family and were consequently ill-gotten wealth:

We agree with petitioner that respondent Marcoses made judicial admissions of their ownership of the subject Swiss bank deposits in their answer, the General/Supplemental Agreements, Mrs. Marcos’ Manifestation and Constancia dated May 5, 1999, and the Undertaking dated February 10, 1999. We take note of the fact that the Associate Justices of the Sandiganbayan were unanimous in holding that respondents had made judicial admissions of their ownership of the Swiss funds.

In their answer, aside from admitting the existence of the subject funds, respondent likewise admitted ownership thereof. Paragraph 22 of respondents’ answer stated:

22. Respondents specifically DENY PARAGRAPH 23 insofar as it alleges that respondents clandestinely stashed the country’s wealth in Switzerland and hid the same under layers and layers of foundations and corporate entities for being false, the truth being that *respondents’ aforesaid properties were lawfully acquired.*”

⁹⁴ 103 F. 3d 762 (9th Cir. 1996).

⁹⁵ Id. as cited in Memorandum (G.R. No. 225973), p. 105.

⁹⁶ *Federal Office for Police Matters v. Aguamina Corp.*, 1A.87/1994/err (Swiss Federal Court, 10 December 1997), cited in Memorandum (G.R. No. 225973), p. 106.

⁹⁷ 453 Phil. 1059 (2003) [Per J. Corona, En Banc].

By qualifying their acquisition of the Swiss bank deposits as lawful, respondents unwittingly admitted their ownership thereof.

....

Petitioner Republic presented not only a schedule indicating the lawful income of the Marcos spouses during their incumbency but also evidence that they had huge deposits beyond such lawful income in Swiss banks under the names of five different foundations. We believe petitioner was able to establish the *prima facie* presumption that the assets and properties acquired by the Marcoses were manifestly and patently disproportionate to their aggregate salaries as public officials. Otherwise stated, petitioner presented enough evidence to convince us that the Marcoses had dollar deposits amounting to US \$356 million representing the balance of the Swiss accounts of the five foundations, an amount way, way beyond their aggregate legitimate income of only \$304,372.43 during their incumbency as government officials.

Considering, therefore, that the total amount of the Swiss deposits was considerably out of proportion to the known lawful income of the Marcoses, the presumption that said dollar deposits were unlawfully acquired was duly established.⁹⁸ (Emphasis supplied)

This cursory review of our jurisprudence relating to the consequences of the Marcos regime establishes a climate of gross human rights violations and unabated pillage of the public coffers. It also reveals his direct participation, leadership, and complicity.

IV

In Republic Act No. 10368, a legislative determination was made regarding the gross human rights violations committed during the Marcos regime:

Section 2. Declaration of Policy. -

Consistent with the foregoing, it is hereby declared the policy of the State to recognize the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986 and restore the victims' honor and dignity. The State hereby acknowledges its moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime.

Similarly, it is the obligation of the State to acknowledge the sufferings and damages inflicted upon persons whose properties or

⁹⁸ Id. at 1131-1143.

businesses were forcibly taken over, sequestered or used, or those whose professions were damaged and/or impaired, or those whose freedom of movement was restricted, and/or such other victims of the violations of the Bill of Rights.

Section 17 even declares a conclusive presumption as to particular victims and, at the same time, recognizes the complicity of Ferdinand E. Marcos:

Sec. 17. Conclusive Presumption That One is an HRVV Under This Act. — The claimants in the class suit and direct action plaintiffs in the Human Rights Litigation Against the Estate of Ferdinand E. Marcos (MDL No. 840, CA No. 88-0390) in the US Federal District Court of Honolulu, Hawaii wherein a favorable judgment has been rendered, shall be extended the conclusive presumption that they are [victims of human rights violations]: *Provided*, That the [victims of human rights violations] recognized by the Bantayog Ng Mga Bayani Foundation shall also be accorded the same conclusive presumption[.]

Conclusive presumptions are “inferences which the law makes so peremptory that it will not allow them to be overturned by any contrary proof however strong.”⁹⁹ Thus, the existence of human rights violations committed during the Marcos regime and the recognition of victims explicitly stated in the provision cannot be denied.

The human rights victims and the violations under the Marcos regime are so numerous that the legislature created a Human Rights Victims’ Claims Board, dedicated to effectively attain the objectives of Republic Act No. 10368. The Board is now adjudicating 75,730 claims of human rights victims for reparation and/or recognition under Republic Act No. 10368.¹⁰⁰

V

Petitioner Algamar A. Latiph points out that among the many gross human rights violations perpetrated under the Marcos regime were those inflicted on the Moro civilian population. These atrocities were committed by government forces, as well as by state-affiliated armed groups. The more infamous of these are: (1) the Jabidah Massacre, where government forces allegedly executed at least 23 Muslim recruits;¹⁰¹ (2) the Burning of Jolo, where the massive aerial and naval bombardments and a ground offensive against the MNLF forces resulted in the destruction of two-thirds of Jolo

⁹⁹ *Mercado v. Santos*, 66 Phil. 215, 222 (1938) [Per J. Laurel, En Banc].

¹⁰⁰ TSN, Oral Arguments, August 31, 2016, p. 206, Statement of Chairperson Lina Castillo Sarmiento of the Human Rights Victims’ Claims Board.

¹⁰¹ *Report of the Transitional Justice and Reconciliation Commission*, 31 <http://www.tjrc.ph/skin/vii_tjrc/pdfs/report.pdf> (visited November 7, 2016).

and, thus, thousands of refugees;¹⁰² (3) the Malisbong Massacre, where paramilitary forces were responsible for killing about 1,500 Moro men and boys who were held in a local mosque and killed, an unknown number of women and girls were raped offshore on a naval vessel, and around 300 houses were burned.¹⁰³

Lesser known but equally deplorable atrocities alleged to have been committed by government forces during the Marcos regime included the Tran Incident and the Tong Umapuy Massacre. These were reported by the Transitional Justice and Reconciliation Commission:¹⁰⁴

The “Tran Incident” refers to a large-scale military campaign against the MNLF in central Mindanao in June-August 1973. In the Listening Process session, participants spoke of the massacre of Moro civilians from the Barangay Populacion in the town of Kalamansig, Sultan Kudarat province by military forces during that campaign. The soldiers separated the men and women; the men were confined in a military camp, interrogated, and tortured, while the women with their children were taken aboard naval vessels and raped. In the end, the men as well as the women and children were killed. At a Listening Process session in Tawi-Tawi, participants shared their memory of what they called the “Tong Umapuy massacre.” In 1983, a Philippine Navy ship allegedly opened fire on a passenger boat and killed 57 persons on board. The passengers were reportedly on their way to an athletic event in Bongao.¹⁰⁵

As regards the atrocities committed by groups that maintained ties with the government under Marcos, the Transitional Justice and Reconciliation Commission reports:

The campaign of the Ilaga in Mindanao in 1970-1971 involved indiscriminate killings and burning of houses with the intention of terrorizing and expelling the Moro and indigenous population from their homes and ancestral territories. Violent incidents took place chronologically in a progressive fashion over a widespread area, occurring among other places in Upi, Maguindanao (March and September 1970); Polomok, South Cotabato (August 1970); Alamada, Midsayap, and Datu Piang, Cotabato (December 1970); Bagumbayan and Alamada, Cotabato (January 1971); Wao, Lanao del Sur (July and August 1971); Ampatuan, Cotabato (August 1971); Kisolán, Bukidnon (October 1971); Siay, Zamboanga del Sur (November 1971); Ipil, Zamboanga del Sur (December 1971); and Palembang, South Cotabato (January 1972).

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id. The Transitional Justice and Reconciliation Commission was created through the GPH-MILF negotiation process. It was mandated to undertake a study and, among others, propose appropriate mechanism to address legitimate grievances of the Bangsamoro People, as well as address human rights violations.

¹⁰⁵ Id. at 32.



The armed bands of Christian paramilitaries, primarily Ilongga settlers, that comprised the Ilaga, maintained ties with state authorities, including local and national politicians, the Philippine Constabulary, and the military. In most cases, the paramilitaries acted on their own initiative; on other occasions, however, it is believed that their attacks were conducted in close coordination with government authorities. This was allegedly the circumstance in the case of the mass killings of Moro villagers that took place in a mosque and outlying houses in a rural Barangay of Carmen, (North) Cotabato on June 19, 1971. Known as the “Manili massacre,” this event spurred the Moro armed resistance and was one of the few incidents that received attention in international media.

....

. . . During the height of Ilaga atrocities, women’s bodies were mutilated by cutting off their nipples and breasts, ripping babies out of pregnant women’s wombs, and disfiguring their reproductive organs. . . .

. . . [D]uring the TJRC Listening Process, there were accounts of women being raped by Ilaga and soldiers in front of their families or of women forced to have sex with their husbands in front of and for the amusement of soldiers. Many Moro women and young girls who were abducted and raped were never seen again; others were allowed to return home. According to the TJRC Listening Process report, incidents of sexual violence took place during the period of Martial Law that amount to military sexual slavery:

. . . [B]etween 1972 and 1974, Ilaga and soldiers alike made Bangsamoro women in Labangan and Ipil, Sibugay become “sex slaves” of navy men, whose boat was docked at Labangan and Ipil ports. For more than a week, soldiers rounded up a group of at least ten women from Labangan and forced them to the naval boats to serve the “sexual needs” of the navy men. The following day, they were released; only to be replaced with another group of women, and so on. . . . More than 200 women were [believed to be] enslaved in this way.¹⁰⁶

Petitioners also gave this Court their first-hand accounts of the human rights violations they suffered under the Marcos regime. Petitioner Loretta Ann P. Rosales recounted that she was raped and tortured with the Russian roulette and a modified water cure, among others:

MRS. ROSALES:

My name is Loretta Ann P. Rosales. I am a torture victim under the Marcos regime. I was sexually molested and according to the latest Rape Act, I was actually raped, that is the definition. I had electric shock; I suffered from Russian roulette, modified water cure and several other ways of harassing me. So I’m a torture victim and so I applied before the Claims Board compensation for the violations committed by the Marcos regime during my time.

¹⁰⁶ Id. at 31–37.

CHIEF JUSTICE SERENO:

By Russian roulette, what is it, Ms. Rosales?

MRS. ROSALES:

They had a gun and they threatened me to answer the questions otherwise they would shoot. So that was a psywar. So I said if I would give in to them, they'll shoot me then they won't . . . then they won't be able to get confession from me 'cause I'll be dead by then. So that was all psywar so I just kept on with my position and they finally gave up. So they went into other methods of torture in order to try to draw confession, exact confession from me. And the worst part, of course, was that sexual molestation and electric shock and the modified water cure.

CHIEF JUSTICE SERENO:

How long did these incidents transpire, the entire duration? You don't have to count the number of days . . . (interrupted)

MRS. ROSALES:

No, no, in fact, I don't know. I mean it was just a continuing thing like twenty-four (24) hours continuing torture. There was no sleeping, there was no eating. It just went on and on because until . . . such time, it was after the electric shock I suffered . . . I was traumatized, physically traumatized so I couldn't control the tremor in my body and they finally stop[ped]. I pretended I was dying but they knew I wasn't dying. So that's all psywar throughout. Anyway, after the electric part, which was the worst part, that was the last part, they finally pushed me and put me somewhere and I don't know how long that took.¹⁰⁷

Her sister, petitioner Ma. Cristina Pargas Bawagan, testified that she was beaten, raped, and sexually abused:

MS. BAWAGAN:

I am Ma. Cristina Pargas Bawagan. I am the sister of Etta. I was arrested May 27, 1981 in Munoz, Nueva Ecija on charges of possession of subversive documents. There was no arrest order; I was simply arrested, handcuffed and blindfolded, my mouth gagged then they brought me to a safe house. And in the safe house they started interrogating and torturing me and they hit on my thighs until my thighs turned black and blue; and they also threatened me with so many things, *pinompyang ako*, that's what they call sa ears and then they put a sharp object over my breast, etcetera. They tore my dress and then eventually they let me lay down to sleep but then early in the morning the two soldiers who stayed near me started torturing me again and by today's definition, it is rape because they fondled my breast and they inserted a long object into my vagina and although I screamed and screamed with all my might, no one seemed to hear except that I heard the train pass by . . .¹⁰⁸

Petitioner Hilda Narciso testified that she was raped and sexually abused:

¹⁰⁷ TSN, Oral Arguments, August 31, 2016, pp. 200–201.

¹⁰⁸ Id. at 203–204.

MS. NARCISO:

I am Hilda Narciso. I was incarcerated in Davao City in 1983. It was a rape, multiple rape that I have undergone through my captures. I was placed in a safe house where the militaries are safe and I was actually being sexually abused for about two days. It's quite difficult to me in the hands of the militaries because I was handcuffed, blindfolded and actually they have mashed all my body. And . . . (At this juncture, Ms. Narciso is already in tears) they handcuffed me and then a lot of hands were all over my body and they also put their penises one at a time on my mouth, finger your vagina and all that for several hours without . . . you have been even taken your food. Actually it was quite a long period of time under the safe house for about two days with all those kinds of process that I have gone through . . . ¹⁰⁹

Petitioner Liwayway Arce testified that during the Marcos regime, her father was killed, and her mother was tortured and sexually abused:

MS. ARCE:

I'm Liwayway Arce, Your Honors. I'm the daughter of Merardo Tuazon-Arce; he was a UP student and he founded *Panday Sining*, which was a cultural group. Later on he fought for his beliefs and on February 5, 1985, he was gunned down in Mabolo Street in Cebu City. In 2005, he was heralded as one of the martyrs at the *Bantayog ng mga Bayani* Foundation and his name is inscribed also together with two hundred sixty plus martyrs and heroes in *Bantayog ng mga Bayani*. I am a claimant-beneficiary under the Republic Act 10368. And my mother is also a claimant; she was incarcerated also in a camp in Fort Bonifacio. I don't really know much details about my parents because I was not raised by them and there are many other beneficiaries like me who were orphaned. My mother is still alive but she was also . . . she also undergone . . . she underwent torture and sexual abuse and I hope my sister is not listening right now because she does not know this. Thank you. ¹¹⁰

Petitioner Atty. Neri Colmenares recounted having lost four (4) years of his life as a young student leader to imprisonment, during which various forms of torture were used on him:

ATTY. COLMENARES:

And for the record, Your Honor, I'm also conclusively presumed under the law as a human rights victim being in the Hawaii case for my torture of seven days and four years of imprisonment when I was eighteen years old, Your Honor. Thank You.

CHIEF JUSTICE SERENO:

You were eighteen years old. You were a student leader at that time, Congressman . . . ?

¹⁰⁹ Id. at 203.

¹¹⁰ Id.



ATTY. COLMENARES:

Yes, I was the chairman of the student catholic action and we were demanding the return of student council and student papers when I was arrested. And I was tortured, Your Honor, the usual, they . . . cigarette butts, the electric shocks, the M16 bullets in between your fingers, the Russian roulette and so on, Your Honor. So under the law, human rights victims who are in Hawaii, the Hawaii case are conclusively presumed to be human rights violation victims, Your Honor.¹¹¹

Petitioner Trinidad Herrera Repuno testified that she was a member of the informal settlers' sector and was also a victim of torture:

Magandang hapon po sa inyong lahat mga Justices. Ako po si Trinidad Herrera Repuno. Ako ay isang biktima ng kapanahunan ng martial law. Ako po ay isang leader ng organisasyon ng mga mahirap sa Tondo. Ang pinaglalaman po namin ay merong batas para doon sa magkaroon kami ng lupa at yung iba pang mga karapatan namin. Subalit noong nagdeklara si Marcos ng martial law, nawala ho lahat ng saysay iyon. . . . Ako po'y isa sa mga judges na pupunta sana sa international competition para architectural competition sa Vancouver para doon sa pabahayan na gagawin dito sa Pilipinas. Subalit hindi po ako binigyan nang pagkakataon na makaalis. Sa halip na ako'y makaalis, ako po ay hinuli noong April 27, 1977 at ako'y dinala doon sa . . . ang humuli ho sa akin intelligence ng Manila Police. At ako'y kinahapunan tinurn-over sa Crame sa pangunguna po ni Eduardo Matillano. Nang ako'y napasok doon sa maliit na kuwarto, ako'y tinanong kung ano ang pangalan ko, sinabi ko ang pangalan ko at ako'y . . . pinaalis ang aking sapatos, pinaalis lahat iyong aking bag at sinabi sa akin na tumayo ako. Merong parang telepono doon sa may lamesa na meroong kuryente. Iyon po ang inilagay dito sa aking dalawang daliri at inumpisahan ho nila akong tinatanong kung sinu-sino ang nalalaman ko. Ang alam ko lang ho ang pinaglalaman namin, na karapatan namin para sa aming mga maralita. Subalit hindi naniniwala si Matillano at sinasabi nya na meron akong kinalaman sa mga kumunista na wala naman akong kinalaman. Iyon ang pinipilit po nila hanggang dumudugo na po ang dalawang daliri ko dito sa . . . iyong mga malalaking daliri ko, tumutulo na po ang dugo, hindi pa ho nila tinatantanan. Mamaya-maya nang hindi na po nila naamuhan, pinaalis ho ang aking blusa at iyong wire po inilagay po dito sa aking dalawang suso at muli inulit-ulit pagtuturn po nang parang telepono pumapasok po ang kuryente sa katawan ko na hindi ko na ho nakakayanan hanggang sa ako'y sumigaw nang sumigaw subalit wala naman hong nakakarinig sapagkat maliit na kwarto, nilagyan pa ho ng tubig iyong sahig para iyong kuryente lalong pumasok sa aking katawan. . . . Nairelease po ako subalit naghina po ako hanggang sa ngayon. Nang ako'y medyo may edad na nararamdaman ko na ho iyong mga pampahirap, iyong pukpok dito sa likod ko habang ako'y inaano, lagi po nilang . . . pagkatapos nang pagpaikot ng kuryente, pukpukin ho ako dito sa likod. Sabi nya pampalakas daw iyon. Pero masakit na masakit po talaga hanggang sa ngayon nararamdaman po namin ngayon ang ano.

¹¹¹ Id. at 208-209.

*Kaya ako, sumama ako sa U.S. para ako'y tumestigo laban kay Marcos[.]*¹¹²

Petitioner Carmencita Florentino, also from the informal settlers' sector, testified as to her forcible abduction, torture, and detention:

*Magandang hapon po sa inyo. Ako po si Carmencita Florentino. Isa po akong leader ng urban poor. Ipinaglalaman naming iyong karapatan namin sa paninirahan doon na expropriation law. April 1977 po dumating po iyong mga Metrocom may mga kasamang pulis ng Quezon City may mga armalite po sila, sapilitan po nila . . . marami po sila, siguro hindi lang isang daan. Pinasok po nang sapilitan iyong bahay naming, kasalukuyan po alas syete ng gabi. . . . Niransack po iyong bahay naming pagkatapos kinaladkad po iyong asawa ko. Iyong anak ko po na siyam na taong babae na nag iisa. Ako po, halos nahubaran na ako dahil pinipilit po akong arestuhin, kaming mag-asawa . . . At sinasabing ako'y leader ng komunista na hindi ko naman po naiintindihan iyon. Ang alam ko po pinaglalaman lang namin karapatan namin sa paninirahan sa Barangay Tatalon. Sapilitan po halos napunit na po iyong damit ko. Ibinalibag ako doon sa . . . palabas po ng pinto dahil hinahabol ko iyong asawa ko na hinampas po ng armalite nung mga Metrocom na iyon. Tumama po ang likod ko sa pintuan namin, iyong kanto namin na halos mapilay na po ako. Pagkatapos po dinala kami sa Camp Crame, iyong asawa ko hindi ko na po nakita. Iyong anak ko nasa custody daw ng mga sundalo. Ako pinaglipat-lipat kung saan-saan doon 'di ko na matandaan e, may ESV, JAGO, na iniinterrogate ako, tinatanong sino iyong pinuno, sino iyong pinuno namin. Hindi ko po alam, wala akong maisagot. Kaya po sa pagkakataon na iyon, tumutulo na po iyong, akala ko po sipon lang, dugo na pala ang lumalabas sa bibig ko saka sa ilong ko po dahil, hindi ko alam kung anong nangyari doon sa siyam na taong anak ko na babae, nahiwalay sa akin. Masyado po ang pahirap na ginawa nila doon, na kulang na lang na ma-rape ako. Inaasa ko na lang po ang aking sarili sa Panginoong Diyos kung anuman ang mangyari sa akin, tatanggapin ko na. Pero iyong anak ko, iyong babae, hindi ko siya makita, dahil ako nakabukod, bukod-bukod kami. Natawanan ko iyong aking mga officer, buntis ho, ikinulong din pala. Kaya sobra ho ang hirap na inabot naming noong panahon ng martial law, na masyado na kaming . . . hanggang ngayon taglay ko pa rin po . . . sa baga ko may pilat, hindi nawawala, sinusumpong po paminsan-minsan lalo pa nga pag naalala ko ang ganito na iniinterview kami kung maaari ayaw ko nang magpainterview dahil ano po e mahirap, napakasakit pong tanggapin. Pinalaya po kami pansamantala ng anak ko, nagkita kami ng anak ko. Isang buwan po kami sa Camp Crame, pansamantala pinalaya kaming mag-ina dahil sa humanitarian daw po pero binabantayan pa rin kami sa bahay namin, hindi kami makalayong mag-ina. At tuwing Sabado nagrereport po kami dyan sa Camp Crame. Ang asawa ko po nakakulong sa Bicutan kasama po nila Ka Trining. Hanggang ngayon po trauma na rin po iyong anak ko kahit nga po may pamilya na ayaw nang tumira dito sa Pilipinas dahil baka po makulong uli kami. Iyon lang po.*¹¹³

¹¹² Id. at 209–211.

¹¹³ Id. at 208–212.

Petitioner Felix Dalisay testified as to the lifelong trauma of the Martial Law years:

Magandang hapon po sa ating lahat. Felix Dalisay po, 64 years old. Sapilitan po akong hinuli, kinulong ng mga panahon ng Martial Law sometime '73, '74. Almost, kung tututalin po lahat nang pagkakakulong ko hindi naman tuloy-tuloy, almost three years po. . . . Sa Kampo Crame po sa panahon ng interrogation, nakaranas po ako nang ibat-ibang klase nang pagmaltrato. Nandyan po iyong pagka hindi maganda ang sagot mo sa mga tanong nila, nakakatanggap po ako ng karate chop, mga suntok po sa tagiliran na alam nyo naman ang katawan ko maliit lang noong araw, ang pakiramdam ko e bale na ata iyong tadyang ko rito e. Andyan rin po iyong ipitan nang bala ng 45 ang kamay mo, didiinan ng ganyan po. Meron din pong mga suntok sa iba't ibang parte ng katawan. May pagkakataon po na minsan natadyakan po ako, tinadyakan po ako, bumagsak sa isang parting mabato kaya hanggang ngayon po may pilat po ako dito. Ang pinakamabigat po kasi na nangyari sa akin sa panahon nang interrogation, kung minsan kasi kami pag ka iniinterrogate hindi na ho naming matiis ang mga sakit so nakakapagsalita kami nang mga taong nakasama namin. So, noong panahon po na iyon, gabi noon, so may mga nabanggit ako during interrogation ng mga tao na mga nakasama ko so niraid po namin iyon, sinamahan ko sila. E marahil siguro iyong mga dati kong kasama e nabalitaang nahuli na ako, nagtakbuhan na po siguro so wala kaming inabot. Ang mabigat na parte po noon galit nag alit ang mga sundalo ng FIFSEC po iyon. Ang FIFSEC po Fifth Constabulary Security iyon e pinaka notorious na torturer noong panahon ng Martial Law, marami po iyan. So ang pinakamabigat po roon kasi sa totoo po ngayon mabuti pa iyong LALU victim may mga counseling pero kami po ang mga biktima (crying) hanggang ngayon po wala pa ho kaming natatanggap (sniffing) maski hustisya, mga counseling na yan. At ang masakit sa akin ako po nagiging emotional po ako hindi lang po sa sarili ko. . . . Marami pa pong mga biktima dyan ma'am na talagang maaawa ka. Grabe po. Iyong sa akin po ang pinaka matindi po akala ko isasalvage na po ako. Dinala po ako sa isang madilim na lugar dyan sa Libis, Quezon City sa Eastwood, noong panahon pong iyun medyo gubatan po iyun pinaihi kami sabi naihi ako nakarinig na lang po ako ng putok sa kaliwang bahagi ng tenga ko. Akala ko patay na ako. Tapos mga pompyang, pompyang po na iyan pag sinabi pong pompyang na mga ganyan. Hanggang ngayon po sa totoo po humina po ang aking pandinig. Hindi naman ako tuluyang nabingi, mahina po kaya pagka may tumatawag sa akin sa cellphone sabi ko pakitext mo na lang, naulinigan ko ang boses nyo pero ahhh hindi ko maintindihan. So pakiusap lang sana sa totoo lang po Ma'am dito maaring nagsasabi ang iba forget about the past ilibing na natin yan dyan. Sa amin pong mga naging biktima. Hindi po ganun kadali iyon. Ang trauma po hanggang ngayon dala-dala namin. Tuwing maaalala naming ang sinapit namin, naiiyak kami, naaawa kami sa sarili namin. Tapos ngayon sasabihin nila forget about the past. Paano kaming mga naging biktima. Hanggang ngayon nga wala pa kaming katarungan e. Andyan nga may Ten Billion, ang human rights . . . mga nauna naman yan e. Hindi ba nirecover natin yan. Tapos ngayon ang sasabihin nila Marcos is a hero. No, hindi po. Hindi po matatapos yan. So hanggang doon na lang po, sana. Sana po pagbigyan nyo kami. Dahil kami sa parte ng mga biktima payagan man ng Supreme Court na

*ilibing yan diyan, di po kami titigil sa pakikipaglaban namin sapagkat kami nagkaranas nang lupit ng Martial Law hanggang, habang buhay po naming dala yan. Salamat po.*¹¹⁴

All these accounts occurred during the Marcos regime. By no stretch of the imagination, then, can Ferdinand E. Marcos' memory serve as an inspiration, to be emulated by generations of Filipinos.

VI

Contemporarily, even the National Historical Commission took a clear position against the interment of Ferdinand E. Marcos at the Libingan ng mga Bayani.

The National Historical Commission was established by law as “the primary government agency responsible for history”¹¹⁵ given the mandate “to determine all factual matters relating to official Philippine history.”¹¹⁶

Among others, it is given the task to:

- (a) conduct and support all kinds of research relating to Philippine national and local history;
- (b) develop educational materials in various media, implement historical educational activities for the popularization of Philippine history, and disseminate information regarding Philippine historical events, dates, places and personages;
- (c) undertake and prescribe the manner of restoration, conservation and protection of the country's historical movable and immovable objects;
- (d) manage, maintain and administer national shrines, monuments, historical sites, edifices and landmarks of significant historico-cultural value; and
- (e) actively engage in the settlement or resolution of controversies or issues relative to historical personages, places, dates and events.¹¹⁷

The National Historical Commission's Board is given the power to “discuss and resolve, with finality, issues or conflicts on Philippine History.”¹¹⁸ The Chair of the National Historical Commission is mandated

¹¹⁴ Id. at 214–215.

¹¹⁵ Rep. Act No. 10386, sec. 5.

¹¹⁶ Rep. Act No. 10386, sec. 5.

¹¹⁷ Rep. Act No. 10386, sec. 5.

¹¹⁸ Rep. Act No. 10386, sec. 7(h).

to “advise the President and Congress on matters relating to Philippine history.”¹¹⁹

In these statutory capacities, the National Historical Commission published its study entitled “Why Ferdinand Marcos Should not be Buried at the Libingan ng mga Bayani” on July 12, 2016.¹²⁰

The study was based on the declassified documents in the Philippine Archives Collection of the United States National Archives/National Archives and Records Administration and the websites of pertinent United States government agencies and some officially sanctioned biographies of Ferdinand E. Marcos. It concluded that:

“With regard to Mr. Marcos’ war medals, we have established that Mr. Marcos did not receive, as the wartime history of the Ang Mga Maharlika and Marcos’ authorized biography claim, the Distinguished Service Cross, the Silver Medal, and the Order of the Purple Heart. In the hierarchy of primary sources, official biographies and memoirs do not rank at the top and are never taken at face value because of their self serving orientation, as it is abundantly palpable in Mr. Marcos’ sanctioned biographies. In a leader’s earnestness to project himself to present and succeeding generations as strong and heroic, personally authorized accounts tend to suffer from a shortage of facts and a bounty of embellishment.”

“With respect to Mr. Marcos’ guerilla unit, the Ang Mga Maharlika was never recognized during the war and neither was Mr. Marcos’ leadership of it. Note that other guerilla units in northern Luzon were recognized, such as:

103rd Regiment, East Central Luzon

Pangasinan Anti-Crime Service, Pangasinan Military Area, LGAF

100th Bn/100th Inf. Regiment LGAFA

Southern Pangasinan Guerilla Forces (Gonzalo C. Mendoza Commander).

“Furthermore, grave doubts expressed in the military records about Mr. Marcos’ actions and character as a soldier do not provide sound, unassailable basis for the recognition of a soldier who deserves to be buried at the LNMB.

“On these grounds, coupled with Mr. Marcos’ lies about his medals, the NATIONAL HISTORICAL COMMISSION OF THE PHILIPPINES opposes the plan to bury Mr. Marcos at the Libingan ng mga Bayani.”¹²¹

¹¹⁹ Rep. Act No. 10386, sec. 13.

¹²⁰ National Historical Commission of the Philippines, *Why Ferdinand Marcos Should Not Be Buried at the Libingan ng mga Bayani*, July 12, 2016 <<https://drive.google.com/file/d/0B9c6mrxI4zoYS2I0UWFENEp6TkU/view>> (visited November 7, 2016).

The Court's findings in a catena of cases in its jurisprudence, a legislative determination in Republic Act No. 10368, the findings of the National Historical Commission, and the actual testimony of petitioners during the Oral Arguments clearly show that the life of Ferdinand E. Marcos either as President or as a soldier is bereft of inspiration. Ferdinand E. Marcos should not be the subject of emulation of this generation, or of generations yet to come.

VII

Assuming without accepting that Republic Act No. 289 authorized public respondents to determine who has led a life worthy of "inspiration and emulation," and assuming further that it was under this authority that they directed Ferdinand E. Marcos' interment, the President's verbal orders, the Lorenzana Memorandum, and the Enriquez Orders were still issued with grave abuse of discretion because they were whimsical and capricious.

Considering the state of existing law and jurisprudence as well as the findings of the National Historical Commission, there was no showing that respondents conducted any evaluation process to determine whether Ferdinand E. Marcos deserved to be buried at the Libingan ng mga Bayani.

Respondents' actions were based upon the President's verbal orders, devoid of any assessment of fact that would overcome what had already been established by law and jurisprudence.

The Solicitor General can only state that:

41. During the campaign period leading to the May 2016 elections, President Duterte, then only a candidate to the highest executive post in the land, openly expressed his desire to have the remains of former President Marcos interred at the Libingan.

42. On 9 May 2016, more than 16 million voters elected President Duterte to the position.

43. True to his campaign promise of unifying the nation, President Duterte gave verbal orders on 11 July 2016 to Defense Secretary Lorenzana to effect the interment of the remains of former President Marcos at the Libingan.

44. On 7 August 2016, and pursuant to the verbal orders of the President, Defense Secretary Lorenzana issued a Memorandum addressed to AFP Chief of Staff General Ricardo R. Visaya informing him of the

¹²¹ Id. at 24.

verbal orders of the President, and for this purpose, to “undertake the necessary planning and preparations to facilitate the coordination of all agencies concerned specially the provisions for ceremonial and security requirements.”

45. In the same Memorandum, Defense Secretary Lorenzana tasked the PVAO as the “OPR” (Office of Primary Responsibility) for the interment of the remains of former President Marcos, as the Libingan is under the PVAO’s supervision and administration. Defense Secretary Lorenzana likewise directed the Administrator of the PVAO to designate the focal person for and overseer of the event.

46. On 9 August 2016, Rear Admiral Ernesto Enriquez, by command of General Visaya, issued a Directive to the Commanding General of the Philippine Army to prepare a grave for former President Marcos at the Libingan.¹²²

President Duterte himself publicly admitted that Ferdinand E. Marcos was no hero.¹²³ This much was also admitted by the Solicitor General:¹²⁴

SOLICITOR GENERAL CALIDA:

Honorable Chief Justice and Associate Justices: At this moment in our history, I recall a scene from Julius Caesar where Marc Anthony spoke to his countrymen: “I come to bury Caesar, not to praise him, The evil that men do lives after them, the good is oft interred in their bones.” Inspired by these lines, I now come to your honors to allow the State to bury the remains of former President Ferdinand Marcos at the Libingan ng Mga Bayani, not to honor him as a hero even if by military standards he is. But to accord him the simple mortuary rites befitting a former president, commander-in-chief, war veteran and soldier.¹²⁵

The capriciousness of the decision to have him buried at the Libingan ng mga Bayani is obvious, considering how abhorrent the atrocities during Martial Law had been. Likewise, the effects of the Marcos regime on modern Philippine history are likewise too pervasive to be overlooked.

The Filipino People themselves deemed Marcos an unfit President and discharged him from office through a direct exercise of their sovereign power. This has been repeatedly recognized by this Court.

¹²² OSG Memorandum, pp. 19–20.

¹²³ Aries Joseph Hegina, *Duterte won't change mind on hero's burial for Marcos*, Inquirer.Net, May 26, 2016 <<http://newsinfo.inquirer.net/787590/duterte-wont-change-mind-on-heros-burialfor-marcos#ixzz4IQcNtc8X>> (visited November 7, 2016).

Fiona Nicolas, *Duterte defends hero's burial for Marcos: A matter of enforcing the law*, CNN Philippines, August 18, 2016 <<http://cnnphilippines.com/news/2016/08/18/duterte-defends-marcos-heros-burial-libingan-ng-mga-bayani-enforcing-law.html>> (visited November 7, 2016).

¹²⁴ TSN, Oral Arguments, September 7, 2016, pp. 8 and 93.

¹²⁵ *Id.* at 8.

In *Lawyers League for a Better Philippines v. Aquino*:¹²⁶

The three petitions obviously are not impressed with merit. Petitioners have no personality to sue and their petitions state no cause of action. For the legitimacy of the Aquino government is not a justiciable matter. It belongs to the realm of politics where only the people of the Philippines are the judge. And the people have made the judgment; they have accepted the government of President Corazon C. Aquino which is in effective control of the entire country so that it is not merely a de facto government but is in fact and law a de jure government. Moreover, the community of nations has recognized the legitimacy of the present government. All the eleven members of this Court, as reorganized, have sworn to uphold the fundamental law of the Republic under her government.

Moreover, the sentiment of the sovereign People, reacting to the blight that was the Marcos dictatorship, was enunciated in Proclamation No. 3:

WHEREAS, the new government was installed through a direct exercise of the power of the Filipino people assisted by units of the New Armed Forces of the Philippines;

WHEREAS, the heroic action of the people was done in defiance of the provisions of the 1973 Constitution, as amended;

WHEREAS, the direct mandate of the people as manifested by their extraordinary action demands the complete reorganization of the government, restoration of democracy, protection of basic rights, rebuilding of confidence in the entire governmental system, eradication of graft and corruption, restoration of peace and order, maintenance of the supremacy of civilian authority over the military, and the transition to a government under a New Constitution in the shortest time possible;

Further, in articulating the mandate of the People, Article 2, Section 1 of Proclamation No. 3 enumerated the many evils perpetuated during the Marcos regime, which the new government would be charged to dismantle:

Article II

The President, the Vice-President, and the Cabinet

SECTION 1. Until a legislature is elected and convened under a new Constitution, the President shall continue to exercise legislative power.

¹²⁶ G.R. No. 73748, May 22, 1986
<<http://elibrary.judiciary.gov.ph/dtSearch/dtisapi6.dll?cmd=getdoc&DocId=142363&Index=%2aaa1de0751c9cff7439815a4b27e3ab58&HitCount=5&hits=4+d+38+71+e1+&SearchForm=C%3a%5celibre v%5celibsearch%5cdtform>>, as cited in *Saturnino V. Bermudez*, 229 Phil. 185, 188 (1986) [Per Curiam, En Banc].



The President shall give priority to measures to achieve the mandate of the people to:

- a) Completely reorganize the government and eradicate unjust and oppressive structures, and all iniquitous vestiges of the previous regime;
- b) Make effective the guarantees of civil, political, human, social, economic and cultural rights and freedoms of the Filipino people, and provide remedies against violations thereof;
- c) Rehabilitate the economy and promote the nationalist aspirations of the people;
- d) Recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets of accounts;
- e) Eradicate graft and corruption in government and punish those guilty thereof; and,
- f) Restore peace and order, settle the problem of insurgency, and pursue national reconciliation based on justice.

Public respondents neglect to examine the entirety of Ferdinand E. Marcos' life, despite the notoriety of his latter years. The willful ignorance of the pronouncements from all three branches of government and of the judgment of the People themselves can only be characterized as so arbitrary and whimsical as to constitute grave abuse of discretion.

VIII

Republic Act No. 10368, otherwise known as the Human Rights Victims Reparation and Recognition Act of 2013, contains a legislative finding that gross human rights violations were committed during the Marcos regime. It provides for both the recognition of the sufferings of human rights victims as well as the provision for effective remedies.

Recognition of human rights and of the goal of achieving social justice is a primordial shift in our constitutional order. This shift was occasioned by the experiences of our society during Martial Law. This is evident in some discussions in the Constitutional Convention.

Commissioner Edmundo Garcia, speaking on the necessity of a Commission on Human Rights, emphasized:

Precisely, one of the reasons why it is important for this body to be constitutionalized is the fact that regardless of who is the President or who holds the executive power, the human rights issue is of such importance that it should be safeguarded and it should be independent of political parties or power that are actually holding the reins of government. Our



experience during the martial law period made us realize how precious those rights are and, therefore, these must be safeguarded at all times.

Hence, Section 11, Article II of the 1987 Constitution thus reads, “(t)he State values the dignity of every human person and guarantees full respect for human rights.” To breathe life into this State policy, the Commission on Human Rights was created and was envisioned as an independent office, free from political interference.¹²⁷

Commissioner Jose Nolleto, sponsoring the provision that declares an independent foreign policy for the Philippines, also stated:

The Marcos regime has wrought great havoc to our country. It has intensified insurgency and is guilty of rampant violations of human rights and and injustices it has committed. It has brought about economic turmoil. It has institutionalized widespread graft and corruption in all levels of government and it has bled the National treasury, resulting in great financial hemorrhage of our country.¹²⁸

Former Associate Justice Cecilia Muñoz Palma, the 1986 Constitutional Commission President, in her closing speech, alluded to the experience during Martial Law as a motivating force operating in the background of the crafting of the new Constitution:

A beautiful irony which cannot be overlooked is the fact that this new Constitution was discussed, debated, and finally written within the walls of this hall which saw the emergence of what was called by its author a “constitutional authoritarianism”, but which, in effect, was a dictatorship, pure and simple. This hall was the seat of a combined executive and legislative power skillfully placed in the hands of one man for more than a decade. However, the miracle of prayer and of a people’s faith and determined struggle to break the shackles of dictatorship toppled down the structure of despotism and converted this hall into hallowed grounds where the seeds of a newly found freedom have been sown and have borne fruit.

My countrymen, we open the new Charter with a Preamble which is the beacon light that shines and brightens the path in building a new structure of government for our people. In that Preamble is expounded in positive terms our goals and aspirations. Thus, imploring the aid of Almighty God, we shall establish a just and humane society, a social order that upholds the dignity of man, for as a Christian nation, we adhere to the principle that, and I quote: “the dignity of man and the common good of society demand that society must be based on justice.” We uphold our independence and a democratic way of life and, abhorring despotism and tyranny, we bind ourselves to live under the rule of law where no man is above the law, and where truth, justice, freedom, equality, love and peace will prevail.

¹²⁷ Rosales et al., Memorandum (G.R. No. 225973), p. 109.

¹²⁸ Id.

For the first time in the history of constitution making in this country, the word “love” is enshrined in the fundamental law. This is most significant at this period in our national life when the nation is bleeding under the forces of hatred and violence. Love which begets understanding is necessary if reconciliation is to be achieved among the warring factions and conflicting ideologies now gripping the country. Love is imperative if peace is to be restored in our naveland, for without love there can be no peace.

We have established a republican democratic form of government where sovereignty resides in the people and civilian supremacy over the military is upheld.

For the first time, the Charter contains an all-embracing expanded Bill of Rights which constitutes the cornerstone of the structure of government. Traditional rights and freedoms which are hallmarks of our democratic way of life are reaffirmed. The right to life, liberty and property, due process, equal protection of the laws, freedom of religion, speech, the press, peaceful assembly, among others, are reasserted and guaranteed. The Marcos provision that search warrants or warrants of arrest may [be] issued not only by a judge but by any responsible officer authorized by law is discarded. Never again will the Filipino people be victims of the much-condemned presidential detention action or PDA or presidential commitment orders, the PCOs, which desecrate the rights to life and liberty, for under the new provision a search warrant or warrant of arrest may be issued only by a judge. Mention must be made of some new features in the Bill of Rights, such as: the privilege of the writ of habeas corpus can be suspended only in cases of invasion or rebellion, and the right to bail is not impaired during such suspension, thereby discarding jurisprudence laid down by the Supreme Court under the Marcos dispensation that the suspension of the privilege of the writ carried with it the suspension of the right to bail. The death penalty is abolished, and physical, psychological or degrading punishment against prisoners or detainees, substandard and subhuman conditions in penitentiaries are condemned.

For the first time, the Constitution provides for the creation of a Commission on Human Rights entrusted with the grave responsibility of investigating violations of civil and political rights by any party or groups and recommending remedies therefor.

From the Bill of Rights we proceed to the structure of government established in the new Charter.

We have established the presidential system of government with three branches—the legislative, executive, and judicial—each separate and independent of each other, but affording an effective check and balance of one over the other.

All legislative power is returned and exclusively vested in a bicameral legislature where the Members are elected by the people for a definite term, subject to limitations for reelection, disqualification to hold any other office or employment in the government including government-



owned or controlled corporations and, among others, they may not even appear as counsel before any court of justice.

For the first time in our Constitution, 20 percent of Members the Lower House are to be elected through a party list system and, for three consecutive terms after the ratification of the Constitution, 25 of the seats shall be allocated to sectoral representatives from labor, peasant, urban poor, indigenous cultural communities, women, youth and other sectors as may be provided by law. This innovation is a product of the signs of the times when there is an intensive clamor for expanding the horizons of participatory democracy among the people.

The executive power is vested in the President of the Philippines elected by the people for a six-year term with no reelection for the duration of his/her life. While traditional powers inherent in the office of the President are granted, nonetheless for the first time, there are specific provisions which curtail the extent of such powers. Most significant is the power of the Chief Executive to suspend the privilege of the writ of habeas corpus or proclaim martial law.

The flagrant abuse of that power of the Commander-in-Chief by Mr. Marcos caused the imposition of martial law for more than eight years and the suspension of the privilege of the writ even after the lifting of martial law in 1981. The new Constitution now provides that those powers can be exercised only in two cases, invasion or rebellion when public safety demands it, only for a period not exceeding 60 days, and reserving to Congress the power to revoke such suspension or proclamation of martial law which congressional action may not be revoked by the President. More importantly, the action of the President is made subject to judicial review thereby again discarding jurisprudence which render the executive action a political question and beyond the jurisdiction of the courts to adjudicate.

For the first time, there is a provision that the state of martial law does not suspend the operation of the Constitution nor abolish civil courts or legislative assemblies, or vest jurisdiction to military tribunals over civilians, or suspend the privilege of the writ. Please forgive me if, at this point, I state that this constitutional provision vindicates the dissenting opinions I have written during my tenure in the Supreme Court in the martial law cases.¹²⁹

IX

In part, to implement these safeguards for human rights, Republic Act No. 10368 was passed. Its statement of policy is found in Section 2:

Section 2. *Declaration of Policy.* – Section 11 of Article II of the 1987 Constitution of the Republic of the Philippines declares that the State values the dignity of every human person and guarantees full respect for

¹²⁹ Id., citing *Closing remarks of the President of the Constitutional Commission at the final session*, Official Gazette, October 15, 1986 <<http://www.gov.ph/1986/10/15/closing-remarks-of-the-president-of-the-constitutional-commission-at-the-final-session-october-15-1986>> (visited November 7, 2016).

human rights. Pursuant to this declared policy, Section 12 of Article III of the Constitution prohibits the use of torture, force, violence, threat, intimidation or any other means which vitiate the free will and mandates the compensation and rehabilitation of victims of torture or similar practices and their families.

By virtue of Section 2 of Article II of the Constitution adopting generally accepted principles of international law as part of the law of the land, the Philippines adheres to international human rights laws and conventions, the Universal Declaration of Human Rights, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) and Other Cruel Inhuman or Degrading Treatment or Punishment which imposes on each State party the obligation to enact domestic legislation to give effect to the rights recognized therein and to ensure that any person whose rights or freedoms have been violated shall have an effective remedy, and even if the violation is committed by persons acting in an official capacity. In fact, the right to a remedy is itself guaranteed under existing human rights treaties and/or customary international law, being peremptory in character (*jus cogens*) and as such has been recognized as non-derogable.

Consistent with the foregoing, it is hereby declared the policy of the State to recognize the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986 and restore the victims' honor and dignity. The State hereby acknowledges its moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime.

Similarly, it is the obligation of the State to acknowledge the sufferings and damages inflicted upon persons whose properties or businesses were forcibly taken over, sequestered or used, or those whose professions were damaged and/or impaired, or those whose freedom of movement was restricted and/or impaired, and/or such other victims of the violations of the Bill of Rights.

Thus, Section 2 of Republic Act No. 10368 states (2) two state policies: (i) "to acknowledge "the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations" committed from September 21, 1972 to February 25, 1986 during the Marcos regime; and (ii) to restore their honor and dignity.¹³⁰

¹³⁰ See also Implementing Rules and Regulations of Rep. Act No. 10368, sec. 3(a):
SECTION 3. Declaration of Policy. — Consistent with Sections 2 and 11 of Article II, and Section 12 of Article III of the 1987 Constitution of the Republic of the Philippines, and adhering to international human rights law and conventions, it is the declared policy of the State to:

a) Recognize the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986 and restore the victims' honor and dignity[.]

Section 2 of Republic Act No. 10368 likewise acknowledges the State's moral and legal obligation to recognize and provide reparation to the victims and/or their families for the deaths, injuries, sufferings, deprivations, and damages they suffered under the Marcos regime. The State also expressly acknowledged the sufferings and damages inflicted upon: (i) persons whose properties or businesses were forcibly taken over, sequestered or used; (ii) those whose professions were damaged and/or impaired; (iii) those whose freedom of movement was restricted; and/or (iv) such other victims of the violations of the Bill of Rights.¹³¹

The bases of these policies¹³² are found in the Constitution. Section 11 of Article II of the 1987 Constitution provides:

ARTICLE II

....

State Policies

....

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

Related to Article II, Section 11 is Section 9, which provides:

SECTION 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

Article II, Section 10 goes further:

SECTION 10. The State shall promote social justice in all phases of national development.

¹³¹ See also Implementing Rules and Regulations of Rep. Act No. 10368, sec. 3(b) and (c):
SECTION 3. Declaration of Policy. — Consistent with Sections 2 and 11 of Article II, and Section 12 of Article III of the 1987 Constitution of the Republic of the Philippines, and adhering to international human rights law and conventions, it is the declared policy of the State to:

-
- b) Acknowledge its moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime;
 - c) Acknowledge the sufferings and damages inflicted upon persons whose properties or businesses were forcibly taken over, sequestered or used, or those whose professions were damaged and/or impaired, or those whose freedom of movement was restricted, and/or such other victims of the violations of the Bill of Rights.

¹³² Rep. Act No. 10368, sec. 2.

These enhance the rights that are already enshrined in the Bill of Rights.¹³³

Under the Bill of Rights, Article III, Section 12 (2) and (4) of the Constitution provides:¹³⁴

ARTICLE III
Bill of Rights

....

SECTION 12. . . .

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

....

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

Republic Act No. 10368 provides for both government policy in relation to the treatment of Martial Law victims as well as these victims' reparation and recognition. It creates a Human Rights Victims' Claims Board¹³⁵ and provides for its powers.¹³⁶ Among the powers of the Board is to "approve with finality all eligible claims"¹³⁷ under the law.

¹³³ Article III of the 1987 Constitution provides for the Bill of Rights. The Bill of Rights was also found in Article 4 of the 1973 Constitution, Article III of the 1935 Constitution; also the Title IV, Political Constitution of the Malolos Constitution and the President McKinley's Instructions of April 7, 1900.

¹³⁴ Rep. Act No. 10368, sec. 2.

¹³⁵ Rep. Act No. 10368, secs. 8 to 14 provide:

SECTION 8. Creation and Composition of the Human Rights Victims' Claims Board. — There is hereby created an independent and quasi-judicial body to be known as the Human Rights Victims' Claims Board, hereinafter referred to as the Board. It shall be composed of nine (9) members, who shall possess the following qualifications:

- (a) Must be of known probity, competence and integrity;
- (b) Must have a deep and thorough understanding and knowledge of human rights and involvement in efforts against human rights violations committed during the regime of former President Ferdinand E. Marcos;
- (c) At least three (3) of them must be members of the Philippine Bar who have been engaged in the practice of law for at least ten (10) years; and
- (d) Must have a clear and adequate understanding and commitment to human rights protection, promotion and advocacy.

The Human Rights Victims' Claims Board shall be attached to but shall not be under the Commission on Human Rights (CHR).

The Board shall organize itself within thirty (30) days from the completion of appointment of all nine (9) members and shall thereafter organize its Secretariat.

SECTION 9. Appointment to the Board. — The President shall appoint the Chairperson and the other eight (8) members of the Board: Provided, That human rights organizations such as, but not limited to, the Task Force Detainees of the Philippines (TFDP), the Free Legal Assistance Group (FLAG), the Movement of Attorneys for Brotherhood, Integrity and Nationalism (MABINI), the Families of

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This law provides for the process of recognition of Martial Law victims.¹³⁸ There are victims who are allowed to initiate their petitions,¹³⁹

Victims of Involuntary Disappearance (FIND) and the Samahan ng mga Ex-Detainees Laban sa Detensyon at Aresto (SELDA) may submit nominations to the President.

....

SECTION 11. Resolution of Claims. — The Board shall be composed of three (3) divisions which shall function simultaneously and independently of each other in the resolution of claims for reparation. Each division shall be composed of one (1) Chairperson, who shall be a member of the Philippine Bar and two (2) members to be appointed by the Board en banc.

SECTION 12. Emoluments. — The Chairperson and members of the Board shall have the rank, salary, emoluments and allowances equivalent to a Presiding Justice and Associate Justice of the Court of Appeals, respectively. cEAIHa

SECTION 13. Secretariat of the Board. — The Board shall be assisted by a Secretariat which may come from the existing personnel of the CHR, without prejudice to the hiring of additional personnel as determined by the Board to accommodate the volume of required work. The following shall be the functions of the Secretariat:

- (a) Receive, evaluate, process and investigate applications for claims under this Act;
- (b) Recommend to the Board the approval of applications for claims;
- (c) Assist the Board in technical functions; and
- (d) Perform other duties that may be assigned by the Board.

The Chairperson of the Board shall appoint a Board Secretary who shall head the Secretariat for the duration of the existence of the Board. There shall be a Technical Staff Head assisted by five (5) Legal Officers and three (3) Paralegal Officers; and an Administrative Staff Head assisted by three (3) Administrative Support Staff.

When necessary, the Board may hire additional contractual employees or contract a service provider to provide services of counselors, psychologists, social workers and public education specialists, among others, to augment the services of the Secretariat: Provided, That the maximum contract amount per year shall not exceed more than fifteen percent (15%) of the total annual operating budget of the Board.

SECTION 14. Operating Budget of the Board. — The operating budget of the Board shall be funded from the Ten billion peso (P10,000,000,000.00) fund, with Ten million pesos (P10,000,000.00) as its initial operating budget: Provided, That it shall not exceed Fifty million pesos (P50,000,000.00) a year. Rep. Act No. 10368, sec. 10 provides:

¹³⁶

SECTION 10. Powers and Functions of the Board. — The Board shall have the following powers and functions:

- (a) Receive, evaluate, process and investigate applications for claims under this Act;
- (b) Issue subpoena/s ad testificandum and subpoena/s duces tecum;
- (c) Conduct independent administrative proceedings and resolve disputes over claims;
- (d) Approve with finality all eligible claims under this Act;
- (e) Deputize appropriate government agencies to assist it in order to effectively perform its functions;
- (f) Promulgate such rules as may be necessary to carry out the purposes of this Act, including rules of procedure in the conduct of its proceedings, with the Revised Rules of Court of the Philippines having supplementary application;
- (g) Exercise administrative control and supervision over its Secretariat;
- (h) The Board, at its discretion, may consult the human rights organizations mentioned in Section 9 herein; and
- (i) Perform such other duties, functions and responsibilities as may be necessary to effectively attain the objectives of this Act.

¹³⁷

Rep. Act No. 10368, sec. 10(d) provides:

SECTION 10. *Powers and Functions of the Board.* — The Board shall have the following powers and functions:

....

(d) Approve with finality all eligible claims under this Act[.]

¹³⁸

Rep. Act No. 10368, secs. 16, 17, 18. A point system is provided in section 19. Section 21 provides for the filing of sworn statements “narrating the circumstances of the pertinent human rights violation/s committed.” Section 23 provides for a period to file claims. Section 24 provides for a system of appeal. Section 25 provides penalties for fraudulent claims, and various misuse of the funds dedicated for the implementation of the law.

SECTION 16. Claimants. — Any person who is an HRVV may file a claim with the Board for reparation and/or recognition in accordance with the provisions of this Act.

SECTION 17. Conclusive Presumption That One is an HRVV Under This Act. — The claimants in the class suit and direct action plaintiffs in the Human Rights Litigation Against the Estate of Ferdinand E.

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those who are conclusively presumed,¹⁴⁰ and those who may be motu proprio be recognized by the Board¹⁴¹ even without an initiatory petition.

Marcos (MDL No. 840, CA No. 86-0390) in the US Federal District Court of Honolulu, Hawaii wherein a favorable judgment has been rendered, shall be extended the conclusive presumption that they are HRVVs: Provided, That the HRVVs recognized by the Bantayog ng mga Bayani Foundation shall also be accorded the same conclusive presumption: Provided, further, That nothing herein shall be construed to deprive the Board of its original jurisdiction and its inherent power to determine the extent of the human rights violations and the corresponding reparation and/or recognition that may be granted.

SECTION 18. Motu Proprio Recognition. — The Board may take judicial notice motu proprio of individual persons who suffered human rights violations as defined herein and grant such persons recognition as HRVVs and included in the Roll of Victims as provided for in Section 26 hereof.

SECTION 19. Determination of Award. — (a) The Board shall follow the point system in the determination of the award. The range shall be one (1) to ten (10) points, as follows:

- (1) Victims who died or who disappeared and are still missing shall be given ten (10) points;
- (2) Victims who were tortured and/or raped or sexually abused shall be given six (6) to nine (9) points;
- (3) Victims who were detained shall be given three (3) to five (5) points; and
- (4) Victims whose rights were violated under Section 3, paragraph (b), nos. (4), (5) and (6) under this Act shall be given one (1) to two (2) points.

SECTION 21. Documentation of Human Rights Violations Committed by the Marcos Regime. — In the implementation of this Act and without prejudice to any other documentary or other evidence that may be required for the award of any reparation, any HRVV seeking reparation shall execute a detailed sworn statement narrating the circumstances of the pertinent human rights violation/s committed.

SECTION 23. Period for Filing of Claims; Waiver. — An HRVV shall file an application for reparation with the Board within six (6) months from the effectivity of the implementing rules and regulations (IRR) of this Act: Provided, That failure to file an application within said period is deemed a waiver of the right to file the same: Provided, further, That for HRVVs who are deceased, incapacitated, or missing due to enforced disappearance, their legal heir/s or representatives, shall be entitled to file an application for reparation on their behalf.

Any opposition to the new application/s pursuant to Section 16 hereof shall only be entertained if such is filed within fifteen (15) days from the date of the last publication of the official list of eligible claimants as may be determined by the Board. The Board shall cause the publication of the official list of eligible claimants once a week for three (3) consecutive weeks in at least two (2) national newspapers of general circulation.

SECTION 24. Appeal. — Any aggrieved claimant or oppositor may file an appeal within ten (10) calendar days from the receipt of the Resolution of the Division, to the Board en banc, whose decision shall then become final and executory.

SECTION 25. Penalties; Applicability of the Revised Penal Code. — Any claimant who is found by the Board, after due hearing, to have filed a fraudulent claim, shall be referred to the appropriate office for prosecution. If convicted, he shall suffer the imprisonment of eight (8) to ten (10) years, shall be disqualified from public office and employment and shall be deprived of the right to vote and be voted for in any national or local election, even after the service of sentence unless granted absolute pardon.

Any member of the Board and its Secretariat, public officer, employee of an agency or any private individual mandated to implement this Act, who shall misuse, embezzle or misappropriate the funds for the reparation of HRVVs or who shall commit fraud in the processing of documents and claims of HRVVs, or shall conspire with any individual to commit the same, shall also be prosecuted.

Any member of the Board and its Secretariat, public officer, employee of an agency or any private individual mandated to implement this Act, who may have been found guilty of committing any or all of the prohibited acts stated in the preceding paragraph, or those acts punishable under the Revised Penal Code, shall be penalized under the pertinent provisions in the Code and relevant special penal laws.

¹³⁹ Rep. Act No. 10368, sec. 16, in relation to the definition of victim in sec. 3 (b), provides:

SECTION 16. Claimants. — Any person who is an HRVV may file a claim with the Board for reparation and/or recognition in accordance with the provisions of this Act.

¹⁴⁰ Rep. Act No. 10368, sec. 17 provides:

SECTION 17. Conclusive Presumption That One is an HRVV Under This Act. — The claimants in the class suit and direct action plaintiffs in the Human Rights Litigation Against the Estate of Ferdinand E. Marcos (MDL No. 840, CA No. 86-0390) in the US Federal District Court of Honolulu, Hawaii wherein a favorable judgment has been rendered, shall be extended the conclusive presumption that they are HRVVs: Provided, That the HRVVs recognized by the Bantayog ng mga Bayani Foundation

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Republic Act No. 10368 codifies four (4) obligations of the State in relation to the Martial Law regime of Ferdinand E. Marcos:

First, to recognize the heroism and sacrifices of victims of summary execution, torture, enforced or involuntary disappearance, and other gross violations of human rights;

Second, to restore the honor and dignity of human rights victims;

Third, to provide reparation to human rights victims and their families; and

Fourth, to ensure that there are effective remedies to these human rights violations.

Based on the text of this law, human rights violations during the “regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986” are recognized. Despite his claim of having won the snap elections for President in 1985, Ferdinand E. Marcos was unceremoniously spirited away from Malacanang to Hawaii as a result of the People’s uprising now known as “People Power.” The legitimacy of his ouster from power was subsequently acknowledged by this Court in *Lawyers’ League for a Better Philippines* and in *In re Saturnino Bernardez*, which were both decided in 1986.

This recognition of human rights violations is even clearer in the law’s definition of terms in Republic Act No. 10368, Section 3(b):

(b) Human rights violation refers to any act or omission committed during the period from September 21, 1972 to February 25, 1986 by persons acting in an official capacity and/or agents of the State, but shall not be limited to the following:

(1) Any search, arrest and/or detention without a valid search warrant or warrant of arrest issued by a civilian court of law, including any warrantless arrest or detention carried out pursuant to the declaration of Martial Law by

shall also be accorded the same conclusive presumption: Provided, further, That nothing herein shall be construed to deprive the Board of its original jurisdiction and its inherent power to determine the extent of the human rights violations and the corresponding reparation and/or recognition that may be granted.

¹⁴¹ Rep. Act No. 10368, sec. 18 provides:

SECTION 18. Motu Proprio Recognition. — The Board may take judicial notice motu proprio of individual persons who suffered human rights violations as defined herein and grant such persons recognition as HRVVs and included in the Roll of Victims as provided for in Section 26 hereof.

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former President Ferdinand E. Marcos as well as any arrest, detention or deprivation of liberty carried out during the covered period on the basis of an Arrest, Search and Seizure Order (ASSO), a Presidential Commitment Order (PCO), or a Preventive Detention Action (PDA) and such other similar executive issuances as defined by decrees of former President Ferdinand E. Marcos, or in any manner that the arrest, detention or deprivation of liberty was effected;

(2) The infliction by a person acting in an official capacity and or an agent of the State of physical injury, torture, killing, or violation of other human rights, of any person exercising civil or political rights, including but not limited to the freedom of speech, assembly or organization; and/or the right to petition the government for redress of grievances, even if such violation took place during or in the course of what the authorities at the time deemed an illegal assembly or demonstration: Provided, That torture in any form or under any circumstance shall be considered a human rights violation;

(3) Any enforced or involuntary disappearance caused upon a person who was arrested, detained or abducted against one's will or otherwise deprived of one's liberty, as defined in Republic Act No. 10350, otherwise known as the 'Anti-Enforced or Involuntary Disappearance Act of 2012.';

(4) Any force or intimidation causing the involuntary exile of a person from the Philippines;

(5) Any act of force, intimidation or deceit causing unjust or illegal takeover of a business, confiscation of property, detention of owner/s and or their families, deprivation of livelihood of a person by agents of the State, including those caused by Ferdinand E. Marcos, his spouse Imelda R. Marcos, their immediate relatives by consanguinity or affinity, as well as those persons considered as among their close relatives, associates, cronies and subordinates under Executive Order No. 1, issued on February 28, 1986 by then President Corazon C. Aquino in the exercise of her legislative powers under the Freedom Constitution;'

(6) Any act or series of acts causing, committing and/or conducting the following:

“(i) Kidnapping or otherwise exploiting children of persons suspected of committing acts against the Marcos regime;

“(ii) Committing sexual offenses against human rights victims who are detained and/or in the course of conducting military and/or police operations; and

“(iii) Other violations and/or abuses similar or analogous to the above, including those recognized by international law.”¹⁴²

Human rights violations during Martial Law were state-sponsored. Thus, Republic Act No. 10368, Section 3(c) defines Human Rights Victims as:

(c) Human Rights Violations Victim (HRVV) refers to a person whose human rights were violated by persons acting in an official capacity and/or agents of the State as defined herein. In order to qualify for reparation under this Act, the human rights violation must have been committed during the period from September 21, 1972 to February 25, 1986: Provided however, That victims of human rights violations that were committed one (1) month before September 21, 1972 and one (1) month after February 25, 1986 shall be entitled to reparation under this Act if they can establish that the violation was committed:

- (1) By agents of the State and/or persons acting in an official capacity as defined hereunder;
- (2) For the purpose of preserving, maintaining, supporting or promoting the said regime; or
- (3) To conceal abuses during the Marcos regime and/or the effects of Martial Law.¹⁴³

Section 3(d) of this law defines the violators to include persons acting in an official capacity and/or agents of the State:

(d) Persons Acting in an Official Capacity and/or Agents of the State. – The following persons shall be deemed persons acting in an official capacity and/or agents of the State under this Act:

- (1) Any member of the former Philippine Constabulary (PC), the former Integrated National Policy (INP), the Armed Forces of the Philippines (AFP) and the Civilian Home Defense Force (CHDF) from September 21, 1972 to February 25, 1986 as well as any civilian agent attached thereto: and any member of a paramilitary group even if one is not organically part of the PC, the INP, the AFP or the CHDF so long as it is shown that the group was organized, funded, supplied with equipment, facilities and/or resources, and/or indoctrinated, controlled and/or supervised by any person acting in an official capacity and/or agent of the State as herein defined;

¹⁴² Rep. Act No. 10368, sec. 3(b).

¹⁴³ Rep. Act No. 10368, sec. 3(c).

(2) Any member of the civil service, including persons who held elective or appointive public office at any time from September 21, 1972 to February 25, 1986;

(3) Persons referred to in Section 2 (a) of Executive Order No. 1, creating the Presidential Commission on Good Government (PCGG), issued on February 28, 1986 and related laws by then President Corazon C. Aquino in the exercise of her legislative powers under the Freedom Constitution, including former President Ferdinand E. Marcos, spouse Imelda R. Marcos, their immediate relatives by consanguinity or affinity, as well as their close relatives, associates, cronies and subordinates; and

(4) Any person or group/s of persons acting with the authorization, support or acquiescence of the State during the Marcos regime.¹⁴⁴

In clear and unmistakable terms, the law recognizes the culpability of Ferdinand E. Marcos for acts of summary execution, torture, enforced or involuntary disappearances, and other gross violations of human rights. The law likewise implies that not only was he the President that presided over those violations, but that he and his spouse, relatives, associates, cronies, and subordinates were active participants.

Burying the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani violates Republic Act No. 10368 as the act may be considered as an effort “to conceal abuses during the Marcos regime” or to “conceal . . . the effects of Martial Law.”¹⁴⁵ Its symbolism is unmistakable. It undermines the recognition of his complicity. Clearly, it is illegal.

X

“Libingan ng mga Bayani” is a label created by a presidential proclamation. The Libingan ng mga Bayani was formerly known as the Republic Memorial Cemetery. In 1954, under Proclamation No. 86, the Republic Memorial Cemetery was renamed to Libingan ng mga Bayani for symbolic purposes, to express esteem and reverence for those buried there:

WHEREAS, the name “Republic Memorial Cemetery” at Fort Wm McKinley, Rizal province, is not symbolic of the cause for which our soldiers have died, and does not truly express the nation’s esteem and reverence for her war dead;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare that the

¹⁴⁴ Rep. Act No. 10368, sec 3(d).

¹⁴⁵ Rep. Act No. 10368, sec. 3(c).

“Republic Memorial Cemetery” shall henceforth be called “LIBINGAN NG MGA BAYANI”.

Thus, Proclamation No. 86 is a recognition of the nation’s intent to honor, esteem, and revere its war dead. To further this intention, it changed the name of the cemetery to the Libingan ng mga Bayani. From this act alone, it is clear that the name of the cemetery conveys meaning. The Libingan ng mga Bayani was named as such to honor and esteem those who are and will be buried there.

If there was no intention to bestow any recognition upon Ferdinand E. Marcos as a hero, then he should not be buried at the Libingan ng mga Bayani. If the President wanted to allot a portion of public property to bury Ferdinand E. Marcos without according him the title of a hero, the President had other options. The President had the power to select a different cemetery where Marcos was to be buried.

Likewise, before ordering the interment, the President did not amend the name through his own presidential proclamation. Therefore, the intent to bury him with honors is clearly legible, totally unequivocal, and dangerously palpable.

Having the remains of Ferdinand E. Marcos in a national shrine called the Libingan ng mga Bayani undeniably elevates his status. It produces an indelible remark on our history. It commingles his name and his notorious legacy with the distinctively heroic and exemplary actions of all those privileged to be buried there.

The transfer of Ferdinand E. Marcos’ remains violates the policy of full and public disclosure of the truth. It produces an inaccurate account of the violations committed. It will fail to educate all sectors of society and all generations of the human rights violations committed under his watch. It is a violation of the fundamental statutory policy of recognition of the human rights violations committed during the Marcos regime.

As pointed out by the Commission on Human Rights:

17. Crucial to the Satisfaction component of effective reparation is the official acknowledgement of the truth of the abuses and violations that the victim suffered, including an acknowledgement of the responsibility of the perpetrator as well as a public apology.

18. Burying the remains of Ferdinand Marcos at the LNMB with the pomp and pageantry accorded to a hero is the complete antithesis of any such apology, and would constitute a denial or reversal of any



previous acknowledgement of his many sins against the victims of human rights violations under his government. It is an act that, for all of the discussion as to what “bayani” means, will inevitably extol him and his actions in government for all future generations. . . .

19. Moreover, the burial of Mr. Marcos’ remains at the LNMB sends a very dangerous message to Philippine society and even to the world by treating him as a hero, and violates the Guarantee of Non-Repetition component of effective reparations. . . .

20. To bury a legally confirmed human rights violator as hero would fly in the face of any effort to educate the Filipino people on the importance of human rights, and would, rather than promote reform in favor of respect for human rights, tend to promote impunity by honoring a man known all over the world for having perpetrated human rights violations for nearly two decades in order to perpetuate his hold on power;

21. Worse still, this would even send a message to other leaders that adopting a similar path of abuse and violations that characterized the Marcos dictatorship would ultimately result not in condemnation but instead acknowledgment and accolades of heroism, constituting thereby a set of circumstance not contemplated by the holistic notion of reparation, in particular violating both the standard of Satisfaction and the Guarantee of Non-Repetition. Therefore, this will not only deprive the victims of human rights violations of their right to effective reparations but will place future generations in genuine peril of the real prospect of coming face-to-face once more with authoritarian rule characterized by rampant human rights violations.¹⁴⁶

The interment of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani necessarily implies two (2) things: the honoring of Ferdinand E. Marcos; and the allotting of a portion of public property for this act.

The act of burying in itself has always been more than an act of disposing of dead bodies. A burial is a manner of memorializing and paying respects to a deceased person. Implicit in these ceremonies is the preservation of the memory of the person for his good or valiant deeds.

This cultural practice is not limited to private persons. The same practice applies when it is the State burying the deceased person. The act of burying a body under the sanction of the State means that it is the State itself paying its respects to the dead person and memorializing him or her for his or her good and valiant deeds. It is never done to remember past transgressions. Thus, burials are acts of honoring. And when the burial is state-sanctioned, it is the State that honors the deceased person.

¹⁴⁶ Commission on Human Rights Memorandum, pp. 9–16.

This is more emphasized when the place of interment is the Libingan ng mga Bayani. Again, whether or not one subscribes to the idea that the Libingan nga mga Bayani is a cemetery for the country's heroes, from the public's perspective, those buried at the Libingan ng mga Bayani are respected, revered, admired, and seen with high regard. To say otherwise is ridiculous. Although not all who are buried at the Libingan ng mga Bayani are recognized by the public, the public recognizes the distinction of being buried there. Those who are and will be buried there are accorded honors not only by their own families, but by the State itself.

It is impossible for the State to bury Ferdinand E. Marcos at the Libingan ng mga Bayani without according him, or his memory, any honor.

Given these considerations, the transfer of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani violates Republic Act No. 10368. It is inconsistent with the State's public policies as stated in Republic Act No. 10368.

In *Avon Cosmetics, Inc. v. Luna*,¹⁴⁷ this Court discussed the meaning and relevance of public policy:

And what is public policy? In the words of the eminent Spanish jurist, Don Jose Maria Manresa, in his commentaries of the *Codigo Civil*, public policy (*orden público*):

[R]epresents in the law of persons the public, social and legal interest, that which is permanent and essential of the institutions, that which, even if favoring an individual in whom the right lies, cannot be left to his own will. It is an idea which, in cases of the waiver of any right, is manifested with clearness and force.

As applied to agreements, Quintus Mucius Scaevola, another distinguished civilist gives the term "public policy" a more defined meaning:

Agreements in violation of *orden público* must be considered as those which conflict with law, whether properly, strictly and wholly a public law (*derecho*) or whether a law of the person, but law which in certain respects affects the interest of society.

Plainly put, public policy is that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good. As applied to contracts, in the absence of express legislation or constitutional prohibition, a court, in order to declare a contract void as against public policy, must find that the contract as to the consideration or thing to be done, has a tendency to

¹⁴⁷ 540 Phil. 389 (2006) [Per J. Chico-Nazario, First Decision].



injure the public, is against the public good, or contravenes some established interests of society, or is inconsistent with sound policy and good morals, or tends clearly to undermine the security of individual rights, whether of personal liability or of private property.¹⁴⁸ (Emphasis supplied, citations omitted)

The State's fundamental policies are laid out in the Constitution. The rest are embodied in statutes enacted by the legislature. The determination of policies is a legislative function, consistent with the Congress' power to make, alter, and repeal laws.¹⁴⁹

It is not the President alone who determines the State's policies. The President is always bound by the Constitution and the State's statutes and is constitutionally mandated to "ensure that the laws be faithfully executed."¹⁵⁰ To execute laws, the President must faithfully comply with all of them. He cannot ignore the laws for a particular group of people or for private interests. The President cannot ignore the laws to execute a policy that he determined on his own. He cannot ignore the laws to fulfill a campaign promise that may or may not have been the reason why he won the People's votes. Thus, the President is bound to comply with and execute Republic Act No. 10368.

Republic Act No. 10368's state policies are again as follows:

First, to recognize the heroism and sacrifices of all Filipinos who had been victims of summary execution, torture, enforced or involuntary disappearance, and other gross human rights violations committed during the regime of Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986; and

Second, to restore the victims' honor and dignity.

The nature of Ferdinand E. Marcos' burial at the Libingan ng mga Bayani contravenes these public policies. The State's act of according any honor to Ferdinand E. Marcos grossly contradicts, and is highly irreconcilable with, its own public policies to recognize the heroism and sacrifices of the Martial Law victims and restore these victims' honor and dignity.

To allow Ferdinand E. Marcos' burial is inconsistent with honoring the memory of the Martial Law victims. It conflicts with their recognized

¹⁴⁸ Id. at 404–405.

¹⁴⁹ *Government of the Philippine Islands v. Springer*, 50 Phil. 259, 276 (1927) [Per J. Malcolm, Second Division] citing Cooley's *Constitutional Limitations*, 7th ed., pp. 126-131, 157–162.

¹⁵⁰ CONST., art. VII, sec. 17.

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heroism and sacrifice, and as most of them testified, it opens an avenue for their re-traumatization. These victims' honor, which the State avowed to restore, is suddenly questionable because the State is also according honor and allotting public property to the person responsible for their victimization. The victims' state recognition is put into doubt when the President decided to act favorably towards the person who victimized them.

XI

Public respondents' contention that Ferdinand E. Marcos will not be buried as a hero, but only as a President, soldier, and Medal of Valor Awardee, fails to convince:

JUSTICE LEONEN:

I am not challenging whether the action of the President was regular or not, that's not the point. The point is, you know for a fact that it was a proclamation creating the Libingan ng mga Bayani, and now without changing the name, they are now, the President, according to you, verbally ordered the interment of the remains of the former President. Yet now, you take the position that the intention of government is not to honor the body of Ferdinand Marcos as the body of a hero. Although the Libingan's name is Libingan ng mga Bayani. So, can you explain that?

SOLICITOR GENERAL CALIDA:

But, as I said, Your Honor, in my opening statement, that is not the purpose to bury him as a hero. But, by military standards, Your Honor, former President Marcos fits in to the definition of a hero. As defined by the Lagman's Petition, Your Honor.

JUSTICE LEONEN:

Excuse me, Counsel, a while ago, this morning, before we took lunch, you said that there was no intention to honor. In fact, you read from your Comment, that there was no intention to bury the President as a hero.

SOLICITOR GENERAL CALIDA:

Yes, we stand by that, Your Honor.

JUSTICE LEONEN:

Okay.

SOLICITOR GENERAL CALIDA:

However, based on the military standards given to a Medal of Valor awardee, he fits in to the definition which was proposed by Petitioner Lagman, Your Honor.

JUSTICE LEONEN:

A Medal of Valor awardee, is he or she a hero?

SOLICITOR GENERAL CALIDA:

May I read into the records, Your Honor.

JUSTICE LEONEN:

A Medal of Valor, please do not ignore my question.

SOLICITOR GENERAL CALIDA:

Yes.

JUSTICE LEONEN:

A Medal of Valor awardee, is he a hero or not a hero? Is he or she a hero or not a hero?

SOLICITOR GENERAL CALIDA:

Based on the wordings of Presidential Decree 1687, Your Honor, it says here, "The Medal of Valor is the highest award that may be given to a Filipino soldier in recognition of conspicuous acts of gallantry above and beyond a call of duty and in total disregard of personal safety; Whereas, an awardee of the Medal of Valor for his supreme self-sacrifice and distinctive act of gallantry, performed more than ordinarily hazardous service and deserved due recognition from a grateful government and people." . . .

JUSTICE LEONEN:

Is this a Presidential Decree, Counsel?

SOLICITOR GENERAL CALIDA:

. . . the definition, Your Honor, in the Lagman Petition . . .

JUSTICE LEONEN:

Is this a Presidential Decree?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE LEONEN:

Who issued the Presidential Decree?

. . . .

SOLICITOR GENERAL CALIDA:

Well, a judicial notice can be taken that it was during the term of President Marcos, Your Honor.

JUSTICE LEONEN:

Ferdinand Marcos, who is a Medal of Valor awardee, issued this Presidential Decree.

SOLICITOR GENERAL CALIDA:

However, Your Honor, the Medal of Valor . . .

JUSTICE LEONEN:

No, no, no, however, he had the power to issue the Presidential Decree, I'm not questioning that. Okay, my question here, which you ignored, is, is a Medal of Valor awardee a hero?



SOLICITOR GENERAL CALIDA:

By the definition, Your Honor, he is a hero.

JUSTICE LEONEN:

So, therefore, you are going back against what you said in the Comment . . .

SOLICITOR GENERAL CALIDA:

But we will set aside that, Your Honor.

JUSTICE LEONEN:

How can you set that aside?

SOLICITOR GENERAL CALIDA:

We will set it aside because . . .

JUSTICE LEONEN:

Which part of Marcos will you not bury as a Medal of Valor awardee and which part will you bury?

SOLICITOR GENERAL CALIDA:

Because, Your Honor . . .

JUSTICE LEONEN:

It's the same person.

SOLICITOR GENERAL CALIDA:

. . . President Duterte's announcement is that he will allow the burial not as a hero, but as a former president, a former veteran and a soldier, that's all, Your Honor.¹⁵¹

The claim that he is being buried only as a President, soldier, and Medal of Valor awardee is a fallacy. When a person is buried, the whole person is buried, not just parts of him or her. Thus, if government buries and honors Ferdinand E. Marcos' body as the body of a former soldier, it will, at the same time, be burying and honoring the body of a human rights violator, dictator, and plunderer. It is impossible to isolate the President, soldier, and Medal of Valor awardee from the human rights violator, dictator, and plunderer.

XII

Apart from recognizing the normative framework and the acknowledgment of human rights violations during the Marcos regime, the law likewise acknowledges the State's obligation that "any person whose rights or freedoms have been violated shall have an effective remedy."¹⁵²

¹⁵¹ TSN, Oral Arguments, September 7, 2016, pp. 156–159.

¹⁵² Rep. Act No. 10368, sec. 2, par. 2.

This right to an “effective remedy” is available even if “the violation is committed by persons acting in an official capacity.”¹⁵³

With the recognition of human rights victims of Martial Law, the Board created by Republic Act No. 10368 may provide “awards.”¹⁵⁴ Although this award has a monetary value,¹⁵⁵ other duties for government are likewise provided by law. There can be nonmonetary reparation:

Section 5. *Nonmonetary Reparation.* – The Department of Social Welfare and Development (DSWD), the Department of Education (DepED), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA), and such other government agencies shall render the necessary services as nonmonetary reparation for HRVVs and/or their families, as may be determined by the Board pursuant to the provisions of this Act[.]¹⁵⁶

The phrase “other government agencies” includes public respondents in these consolidated cases.

The law also requires the documentation of the human rights violations committed during the Marcos regime:

Section 21. *Documentation of Human Rights Violations Committed by the Marcos Regime.* – In the implementation of this Act and without prejudice to any other documentary or other evidence that may be required for the award of any reparation, any HRVV seeking reparation shall execute a detailed sworn statement narrating the circumstances of the pertinent human rights violation/s committed.¹⁵⁷

Further, memorialization is required under the law:

Section 26. *Roll of Victims.* – Persons who are HRVVs, regardless of whether they opt to seek reparation or not, shall be given recognition by enshrining their names in a Roll of Human Rights Victims to be prepared by the Board.

A Memorial/Museum/Library shall be established in honor and in memory of the victims of human rights violations whose names shall be inscribed in the Roll. A compendium of their sacrifices shall be prepared and may be readily viewed and accessed in the internet. The Memorial/Museum/Library/Compendium shall have an appropriation of at least Five hundred million pesos (P500,000,000.00) from the accrued interest of Ten billion pesos (P10,000,000,000.00) fund.

¹⁵³ Rep. Act No. 10368, sec. 2, par. 2.

¹⁵⁴ Rep. Act No. 10368, sec. 19.

¹⁵⁵ Rep. Act No. 10368, sec. 19(c). The monetary value shall be dependent on a point system.

¹⁵⁶ Rep. Act No. 10368, sec. 5.

¹⁵⁷ Rep. Act No. 10368, sec. 21.

The Roll may also be displayed in government agencies as may be designated by the HRVV Memorial Commission as created hereunder.

The Human Rights Violations Victims' Memorial Commission is given the task of making such memory permanent. It is tasked to ensure that the atrocities that happened during the Marcos regime are included in the educational curricula of schools:

Section 27. *Human Rights Violations Victims' Memorial Commission.* – There is hereby created a Commission to be known as the Human Rights Violations Victims' Memorial Commission, hereinafter referred to as the Commission, primarily for the establishment, restoration, preservation and conservation of the Memorial / Museum / Library / Compendium in honor of the HRVVs during the Marcos regime.

....

The Commission shall be attached to the CHR solely for budgetary and administrative purposes. The operating budget of the Commission shall be appropriated from the General Appropriations Act.

The Commission shall also coordinate and collaborate with the DepEd and the CHED to ensure that the teaching of Martial Law atrocities, the lives and sacrifices of HRVVs in our history are included in the basic, secondary and tertiary education curricula.

The concept of an effective remedy can be read from the law.

The requirements of effective remedies beyond monetary compensation are also supported by jurisprudence. In *Department of Environment and Natural Resources v. United Planners Consultants, Inc.*:¹⁵⁸

[E]very statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. In *Atienza v Villarosa*, the doctrine was explained, thus:

No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation. What is thought, at the time of enactment, to be an all-embracing legislation may be inadequate to provide for the unfolding events of the future. So-called gaps in the law develop as the law is enforced. One of the rules of statutory construction used to fill in the gap is the doctrine of necessary implication. The doctrine states that what is implied in a statute is as much a part thereof as that which is expressed. Every statute is

¹⁵⁸ G.R. No. 212081, February 23, 2015
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/212081.pdf>>
[Per J. Perlas-Bernabe, First Division].



understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. *Ex necessitate legis*. And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. This is so because the greater includes the lesser, expressed in the maxim, *in eo plus sit, simpliciter inest et minus*.¹⁵⁹

Persuasive, as it dovetails with the requirements of our Constitution and our statutes, are international laws and treaties providing for the right to a remedy for victims of international human rights law. This has been recognized in Article 8¹⁶⁰ of the Universal Declaration of Human Rights; Article 2¹⁶¹ of the International Covenant on Civil and Political Rights; Article 6¹⁶² of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 14¹⁶³ of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and

¹⁵⁹ *Id.* at 10–11, citing *Atienza v. Villarosa*, 497 Phil. 689 (2005) [Per J. Callejo, Sr., En Banc].

¹⁶⁰ Universal Declaration of Human Rights, art. 8 provides:

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

¹⁶¹ International Covenant of Civil and Political Rights, art. 2 provides:

Article 2.

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

¹⁶² International Convention on the Elimination of All Forms of Racial Discrimination, art. 6 provides:

Article 6. States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

¹⁶³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14 provides:

Article 14.

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 39¹⁶⁴ of the Convention on the Rights of the Child. The right to a remedy is also an obligation in Article 3¹⁶⁵ of the Hague Convention Respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV); Article 91¹⁶⁶ of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977; and Article 68¹⁶⁷ and Article 75¹⁶⁸ of the Rome Statute of the International Criminal Court.

¹⁶⁴ Convention on the Rights of the Child, art. 39 provides:

Article 39. States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

¹⁶⁵ Hague Convention Respecting the Laws and Customs of War on Land, art. 3 provides:

Article 3. A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

¹⁶⁶ Protocol Additional to the Geneva Conventions, art. 91 provides:

Article 91. Responsibility — A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

¹⁶⁷ Rome Statute of the International Criminal Court, art. 68 provides:

Article 68. Protection of the victims and witnesses and their participation in the proceedings

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.
3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.
4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.
5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

¹⁶⁸ Rome Statute of the International Criminal Court, art. 75 provides:

Article 75. Reparations to victims

1. The Court shall establish principles relating to reparations to, or in respect of victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

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Additionally, the Rome Statute of the International Criminal Court requires that the “principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation”¹⁶⁹ be established by state parties.

Except for the Hague Convention of 1907, the Philippines has ratified all of these international conventions.¹⁷⁰ The contents of the Hague Convention of 1907 already form part of customary international law embodying much of the foundation of international humanitarian law. All the obligations in these treaties are already part of our laws.

We take a closer look at the International Convention on Civil and Political Rights (ICCPR). Part II, Article 2, Section 3 provides:

PART II
Article 2

....

3. Each State Party to the present Covenant undertakes:

(a) *To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*

(b) *To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*

-
2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.
 3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.
 4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.

A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.

¹⁶⁹ Rome Statute of the International Criminal Court, art. 75.

¹⁷⁰ The Philippines signed and approved the Universal Declaration on Human Rights on December 10, 1948 as part of the United Nations General Assembly that adopted it; ratified the International Convention on Civil and Political Rights on October 23, 1986; the International Convention on the Elimination of All Forms of Racial Discrimination on September 15, 1967; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on June 26, 1987; Convention on the Rights of the Child on August 21, 1990; the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of June 8, 1977 on March 30, 2012; the Rome Statute of the International Criminal Court on August 30, 2011.

(c) *To ensure that the competent authorities shall enforce such remedies when granted.* (Emphasis supplied)

The United Nations General Assembly later adopted Resolution No. 60/147, which embodied the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles).¹⁷¹ The Basic Principles was adopted to affirm and expound on the right of victims to a remedy as provided for in the ICCPR and other international laws and treaties. It is persuasive in the ICCPR's interpretation and contributes to achieving the full guarantee for respect of human rights required by the Constitution.

The Basic Principles does not entail new international obligations. The document only identifies "mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary through different as to their norms."¹⁷²

Under the Basic Principles, the dignity of victims must be respected, and their well-being ensured. The State must take measures to safeguard that its laws protect the victims from re-traumatization:

VI. Treatment of victims

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

The victims' right to a remedy under the Basic Principles includes adequate, *effective*, and prompt reparation for harm suffered:

¹⁷¹ UN G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (16 December 2005). The Basic Principles and Guidelines were recommended by the UN Commission on Human Rights in its resolution 2005/35 dated April 19, 2005 and by the Economic and Social Council also in its resolution dated 2005/30 dated July 25, 2005.

¹⁷² Basic Principles, 7th whereas clause provides:
Emphasizing that the Basic Principles and Guidelines contained herein do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms[.]

VII. Victims' right to remedies

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.

The Basic Principles further elucidates the reparation to which the victims are entitled. It provides that the reparation must be proportional to the harm suffered. The general concept of reparation and effective remedies is found in Principles 15 and 18 of the Basic Principles:

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparations should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

....

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Full and effective reparation includes Restitution, Compensation, Rehabilitation, Satisfaction, and Guarantees of Non-repetition. These are provided for under Principles 19 to 23:

19. Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights

law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, and return to one's place of residence, restoration of employment and return of property.

20. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. Rehabilitation should include medical and psychological care as well as legal and social services.

22. Satisfaction should include, where applicable, any or all of the following:

- (a) Effective measures aimed at the cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and of the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
- (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;
- (f) Judicial and administrative sanctions against persons liable for the violations;
- (g) Commemorations and tributes to the victims;
- (h) Inclusion of an accurate account of the violations that occurred in international human rights law and



international humanitarian law training and in educational material at all levels.

23. Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:

- (a) Ensuring effective civilian control of military and security forces;
- (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
- (c) Strengthening the independence of the judiciary;
- (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
- (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;
- (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
- (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
- (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

The Basic Principles requires separate obligations that are complete in themselves, and all these components are necessary for achieving an “effective remedy”¹⁷³ against human rights violations.

Thus, Compensation for violations committed is not enough without the victim’s satisfaction. Satisfying and compensating the victim is not enough unless there is a guarantee against non-repetition. This requires a legal order that can address these violations, as well as a cultural and educational system that allows remembrance of its occurrences.¹⁷⁴ It also requires a state that does what it can to guarantee non-repetition of these offenses.

These are essential to “guarantee full respect for human rights.”¹⁷⁵ Article 2, Section 11 of the Constitution provides that “[t]he State values the

¹⁷³ Rep. Act No. 10368, sec. 2

¹⁷⁴ See Memorandum (G.R. No. 225973), p. 47; Memorandum Commission on Human Rights Memorandum, p. 7.

¹⁷⁵ CONST., art II, sec. 11.

dignity of every human person. It guarantees full respect of human rights.”¹⁷⁶

This provision is not a mere guide or suggestion. It requires the positive act of the State to *guarantee* full respect of human rights. Moreover, the State, with all its branches and instrumentalities including this Court, must provide this guarantee. When this state policy is invoked, the State cannot shy away from recognizing it as a source of right that may be affected by government actions.

The reparation due to the victims should not be solely monetary. In addition to the compensation provided under Republic Act No. 10368, the State must retribute, rehabilitate, satisfy, and guarantee non-repetition to victims.

Pertinent to issues raised by the victims of the Marcos regime is the reparation in the form of Satisfaction and Guarantee of Non-Repetition. The Basic Principles is clear that Satisfaction must include a “public apology, including acknowledgement of the facts and acceptance of responsibility,” “judicial and administrative sanctions against persons liable for the violations,” and an “inclusion of an accurate account of the violations that occurred . . . in educational material at all levels.”

The Guarantee of Non-Repetition requires the State to “provide, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society,” and “review and reform laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.”

The transfer of the remains of Ferdinand E. Marcos negates all these aspects of Satisfaction and Guarantee of Non-Repetition. There has been no sufficient public apology, full acknowledgement of facts, or any clear acceptance of responsibility on the part of Ferdinand E. Marcos or his Heirs. Neither was Ferdinand E. Marcos sanctioned specifically for human rights violations. Now that he is dead, the victims can no longer avail themselves of this recourse. To add insult to this injury, the President decided to acknowledge the heroic acts and other favorable aspects of Ferdinand E. Marcos, the person primarily responsible for these human rights violations. This affects the accuracy of the accounts of the violations committed on the victims. It reneges on the State’s obligation to provide human rights education and humanitarian law education to the Filipino People. It contributes to allowing violations of international human rights law and encourages impunity. If the State chooses to revere the person responsible

¹⁷⁶ CONST., art. II, sec. 11.

for human rights violations, the perception of its People and the rest of the world on the gravity and weight of the violations is necessarily compromised.

Allowing Ferdinand E. Marcos' burial under the pretense of the President's policy of promotion of national healing and forgiveness lowers the victims' dignity and takes away from them their right to heal in their own time. Allowing the Marcos burial on the premise of national healing and forgiveness is a compulsion from the State for the victims and the Filipino People to forgive their transgressor without requiring anything to be done by the transgressor or his successors, and without even allowing the victims to be provided first the reparations granted to them by law.

Despite the conclusive presumption accorded to some of these human rights victims, they have still been unable to claim the reparations explicitly granted to them by Republic Act No. 10368. Meanwhile, Ferdinand E. Marcos is awarded forgiveness and accorded state funds and public property to honor him as a Former President and a military man. This is not the effective remedy contemplated by law.

XIII

To allow the Marcos burial is diametrically opposed to Republic Act No. 10368. The stated policies are clear. These must be applied, and applied in its entirety—in accordance with its spirit and intent:

Thus, the literal interpretation of a statute may render it meaningless; and lead to absurdity, injustice, or contradiction. When this happens, and following the rule that the intent or the spirit of the law is the law itself, resort should be had to the principle that the spirit of the law controls its letter. Not to the letter that killeth, but to the spirit that vivifieth. *Hindi ang letra na pumapatay, kung hindi ang diwa na nagbibigay buhay.*¹⁷⁷ (Emphasis supplied)

Likewise, a law is always superior to an administrative regulation, including those issued by the Armed Forces of the Philippines.¹⁷⁸ The latter cannot prevail over the former. In *Vide Conte et al. v. Commission on Audit*.¹⁷⁹

It is doctrinal that in case of conflict between a statute and an administrative order, the former must prevail. A rule or regulation must

¹⁷⁷ *League of Cities of the Phils. v. Commission on Elections*, 592 Phil. 1, 62 (2008) [Per J. Carpio, En Banc].

¹⁷⁸ *China Banking Corp. v. Court of Appeals*, 333 Phil. 158, 173 (1996) [Per J. Francisco, Third Division].

¹⁷⁹ 332 Phil. 20 (1996) [Per J. Panganiban, En Banc].

conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid. The rule-making power of a public administrative body is a delegated legislative power, which it may not use either to abridge the authority given it by the Congress or the Constitution or to enlarge its power beyond the scope intended. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it. *It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute.*¹⁸⁰ (Emphasis supplied)

This is especially true when the regulation does not stem from any enabling statute. Administrative regulations stem from the President's administrative power. In *Ople v. Tocres*:¹⁸¹

Corollary to the power of control, the President also has the duty of supervising the enforcement of laws for the maintenance of general peace and public order. Thus, he is granted *administrative power* over bureaus and offices under his control to enable him to discharge his duties effectively.¹⁸²

Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs. It enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents. To this end, he can issue administrative orders, rules and regulations. (Emphasis supplied, citations omitted)

Because regulations are issued under the administrative powers of the President, its function is mostly to properly apply policies and enforce orders. Thus, regulations must be in harmony with the law. The AFP Regulations cannot be given priority by the President over Republic Act No. 10368.

Nonetheless, assuming the AFP Regulations are valid, Republic Act No. 10368 has amended them such that they disallow any governmental act that conflicts with the victims' right to recognition and reparation. Section 31 of Republic Act No. 10368 provides:

Section 31. *Repealing Clause.* — All laws, decrees, executive orders, rules and regulations or parts thereof inconsistent with any of the provisions of this Act, including Section 63(b) of Republic Act No. 6657, as amended, otherwise known as the Comprehensive Agrarian Reform Law of 1988 and Section 40(a) of Republic Act No. 7160, otherwise

¹⁸⁰ Id. at 36.

¹⁸¹ 354 Phil. 948 (1998) [Per J. Puno, En Banc].

¹⁸² Id. at 967–968.

known as the Local Government Code of 1991, are hereby repealed, amended or modified accordingly.

Since Republic Act No. 10368 should be read into or deemed to have amended the AFP Regulations, the transfer of the remains of Ferdinand E. Marcos is illegal.

XIV

Assuming the AFP Regulations remain the governing regulation over the Libingan ng mga Bayani, Ferdinand E. Marcos is still disqualified from being interred there. It can be inferred from the list of disqualifications that those who have committed serious crimes, something inherently immoral, despite having served the country in some way, are not “bayani” deserving to be interred at the Libingan ng mga Bayani.

Associate Justice Diosdado M. Peralta contends that Ferdinand E. Marcos is not disqualified from being interred at the Libingan ng mga Bayani under the AFP Regulations as he was neither convicted of an offense involving moral turpitude nor dishonorably discharged from active military service. This argument is hinged on the constitutional provision that a person shall not be held to answer for a criminal offense without due process of law and the presumption of innocence in all criminal prosecutions.¹⁸³

It is true that the presumption of innocence applies in criminal prosecutions. Nonetheless, relying on the presumption of innocence to allow Ferdinand E. Marcos to escape the consequence of his crimes is flimsy.

First, this is not a criminal prosecution, and the rights of the accused do not apply. Second, Ferdinand E. Marcos’ innocence is not in issue here. Even public respondents do not insult petitioners by arguing that Ferdinand E. Marcos is not complicit and responsible for the atrocities committed during his dictatorship. Third, an invocation of the presumption of Ferdinand E. Marcos’ innocence is a rejection of the legislative findings of Republic Act No. 10368 and of this Court’s own pronouncements in numerous cases.

The issue at hand is whether Ferdinand E. Marcos is someone who should be honored and emulated.

¹⁸³ Ponencia, pp. 51–52.

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There is no presumption of innocence when it comes to determining one's fitness to be buried at the Libingan ng mga Bayani. Moreover, as Ferdinand E. Marcos is a public officer, the standards are high. Article XI of the Constitution provides the basic rules that must be followed by all public officers:

ARTICLE XI
Accountability of Public Officers

SECTION 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

Not only is Ferdinand E. Marcos responsible for gross human rights violations and, thus, crimes of moral turpitude; he also failed to meet any of the standards imposed on a public officer under the Constitution. On this alone, he is not worthy of being emulated and does not belong at the Libingan ng mga Bayani.

XV

The Solicitor General claims that the provision in the Administrative Code of 1987 is the government's legal basis for the instructions to bury the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani:

Section 14. Power to Reserve Lands of the Public and Private Domain of the Government. – (1) The President shall have the power to reserve for settlement or *public use*, and for specific public purposes, any of the lands of the public domain, the use of which is *not otherwise directed by law*. The reserved land shall thereafter remain subject to the specific public purpose indicated until otherwise provided by law or proclamation. (Emphasis supplied)

This provision requires two (2) substantive requirements. First, the segregation of land is “for public use and a specific public purpose.” Second, the use of public land “is not otherwise directed by law.”

The Solicitor General cites *Manosca v. Court of Appeals*¹⁸⁴ and *City of Manila v. Chinese Community of Manila*.¹⁸⁵ These cases provide little assistance to their case.

¹⁸⁴ G.R. No. 106440, January 29, 1996, 252 SCRA 412 [Per J. Vitug, First Division].

¹⁸⁵ 40 Phil. 349 (1919) [Per J. Johnson, En Banc].

The Solicitor General claims that “recognizing a person’s contribution to Philippine history and culture is consistent with the requirement of public use.”¹⁸⁶ Yet, he acknowledges on behalf of government that Martial Law was part of the “dark pages” of our history. Thus, in his Consolidated Comment:

No amount of heartfelt eulogy, gun salutes, holy anointment, and elaborate procession and rituals can transmogrify the dark pages of history during Martial Law. As it is written now, Philippine history is on the side of Petitioners and everybody who fought and died for democracy.¹⁸⁷

Ferdinand E. Marcos was ousted from the highest office by the direct sovereign act of the People. His regime was marked by brutality and by the “organized pillaging” that came to pass.

In *Marcos v. Manglapus*,¹⁸⁸ which was decided in 1989, this Court acknowledged that Ferdinand E. Marcos was “a dictator”¹⁸⁹ who was “forced out of office and into exile after causing twenty years of political, economic and social havoc in the country.”¹⁹⁰ This Court recognized the immediate effects of the Marcos regime:

We cannot also lose sight of the fact that the country is only now beginning to recover from the hardships brought about by the plunder of the economy attributed to the Marcoses and their close associates and relatives, many of whom are still here in the Philippines in a position to destabilize the country, while the Government has barely scratched the surface, so to speak, in its efforts to recover the enormous wealth stashed away by the Marcoses in foreign jurisdictions. Then, we cannot ignore the continually increasing burden imposed on the economy by the excessive foreign borrowing during the Marcos regime, which stifles and stagnates development and is one of the root causes of widespread poverty and all its attendant ills. The resulting precarious state of our economy is of common knowledge and is easily within the ambit of judicial notice.¹⁹¹

In 2006, in *Yuchengco v. Sandiganbayan*:¹⁹²

In *PCGG v Peña*, this Court, describing the rule of Marcos as a “well-entrenched plundering regime of twenty years” noted the “magnitude of the past regime’s ‘organized pillage’ and the ingenuity of the plunderers and pillagers with the assistance of the experts and best

¹⁸⁶ Solicitor General Consolidated Comment, p. 43.

¹⁸⁷ Id. at 60–61.

¹⁸⁸ 258 Phil. 479 (1989) [Per J. Cortes, En Banc].

¹⁸⁹ Id. at 492.

¹⁹⁰ Id.

¹⁹¹ Id. at 509.

¹⁹² 515 Phil. 1 (2006) [Per J. Carpio Morales, En Banc].

legal minds available in the market.” The evidence presented in this case reveals one more instance of this grand scheme. This Court—guardian of the high standards and noble traditions of the legal profession—has thus before it an opportunity to undo, even if only to a certain extent, the damage that has been done.¹⁹³ (Citations omitted)

In the 2001 case of *Estrada v. Desierto*,¹⁹⁴ this Court characterized once again the 1986 EDSA Revolution and, in so doing, described the rejection of the Marcos regime:

[T]he government of former President Aquino was the result of a successful revolution by the sovereign people, albeit a peaceful one. No less than the Freedom Constitution declared that the Aquino government was installed through a direct exercise of the power of the Filipino people in defiance of the provisions of the 1973 Constitution, as amended.¹⁹⁵

The other possible purpose stated by the Solicitor General is to achieve the ambiguous goal of “national healing.”¹⁹⁶ During the Oral Arguments, the Solicitor General argues that the aim of the burial is to achieve “changing the national psyche and beginning the painful healing of this country.” In doing so, however, respondents rewrite our history to erase the remembrance of Ferdinand E. Marcos as a symbol of the atrocities committed to many of our People. It is an attempt to forget that he was a human rights violator, a dictator, and a plunderer, in the name of “national healing” and at the cost of repetition of the same acts in this or future generations.

Considering Ferdinand E. Marcos’ disreputable role in Philippine history, there can be no recognition that serves the public interest for him. There is no legitimate public purpose for setting aside public land at the Libingan ng mga Bayani—definitely a national shrine—for him.

Manosca states the standard that governmental action to favor an individual or his or her memory will only be allowed if it is to recognize the person’s laudable and distinctive contribution to Philippine history or culture. Ferdinand E. Marcos’ leadership has been discredited both by statutory provisions and jurisprudence. He has contribution that stands out and that should be validly recognized.

¹⁹³ Id. at 48–49.

¹⁹⁴ 406 Phil. 1 (2001) [Per J. Puno, En Banc].

¹⁹⁵ Id. at 43–44. See also *Lawyers’ League for a Better Philippines v Aquino*, G.R. No. 73748, May 22, 1986

<<http://elibrary.judiciary.gov.ph/dtSearch/dtisapi6.dll?cmd=getdoc&DocId=142363&Index=%2aaa1de0751c9cff7439815a4b27e3ab58&HitCount=5&hits=4+d+38+71+e1+&SearchForm=C%3a%5celibrev%5celibsearch%5cdtform>>, as cited in *Saturnino V. Bermudez*, 229 Phil. 185, 188 (1986) [Per Curiam, En Banc].

¹⁹⁶ Solicitor General, Consolidated Comment, page 5.

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It is disturbing that what appears to be the underlying cause for the interment of the remains of Ferdinand E. Marcos at the Libingan ng mga Bayani is the fulfillment of a campaign promise by President Duterte to the Heirs of Marcos. This dovetails with petitioners' manifestation that campaign contributions were made by the Heirs of Marcos. Promised acts of a political candidate to a family to further personal political ambition at the cost of the public's welfare cannot be considered as the public purpose required by the Administrative Code of 1987.

XVI

The exercise of the President's powers may not be justified by invoking the executive's residual powers.

An exercise of the President's residual powers is appropriate only if there is no law delegating the power to another body, and if there is an exigency that should be addressed immediately or that threatens the existence of government. These involve contingencies that cannot await consideration by the appropriate branches of government.

In *Gonzales v. Marcos*,¹⁹⁷ this Court recognized the residual power of the President to administer donations specifically in the absence of legislative guidelines. This Court stressed that it was necessary that the executive act promptly, as time was of the essence:

There is impressive juridical support for the stand taken by the lower court. Justice Malcolm in *Government of the Philippine Islands v. Springer* took pains to emphasize: "Just as surely as the duty of caring for governmental property is neither judicial nor legislative in character is it as surely executive." It would be an unduly narrow or restrictive view of such a principle if the public funds that accrued by way of donation from the United States and financial contributions for the Cultural Center project could not be legally considered as "governmental property." They may be acquired under the concept of *dominium*, the state as a *persona* in law not being deprived of such an attribute, thereafter to be administered by virtue of its prerogative of *imperium*. What is a more appropriate agency for assuring that they be not wasted or frittered away than the Executive, the department precisely entrusted with management functions? It would thus appear that for the President to refrain from taking positive steps and await the action of the then Congress could be tantamount to dereliction of duty. *He had to act; time was of the essence. Delay was far from conducive to public interest.* It was as simple as that. Certainly then, it could be only under the most strained construction of executive power to conclude that in taking the step he took, he

¹⁹⁷ 160 Phil. 637 (1975) [Per J. Fernando, En Banc].

transgressed on terrain constitutionally reserved for Congress.¹⁹⁸
(Emphasis supplied, citations omitted)

In *Marcos v. Manglapus*,¹⁹⁹ the government was unstable and was threatened by various forces, such as elements within the military, who were among the rabid followers of Ferdinand E. Marcos. Thus, the residual power of the President to bar the return of Ferdinand E. Marcos' body was recognized by this Court as borne by the duty to preserve and defend the Constitution and ensure the faithful execution of laws:

The power involved is the President's residual power to protect the general welfare of the people. It is founded on the duty of the President, as steward of the people. To paraphrase Theodore Roosevelt, it is not only the power of the President but also his duty to do anything not forbidden by the Constitution or the laws that the needs of the nation demand. It is a power borne by the President's duty to preserve and defend the Constitution. It also may be viewed as a power implicit in the President's duty to take care that the laws are faithfully executed.²⁰⁰

Further, this Court recognized the President's residual powers for the purpose of, and necessary for, *maintaining peace*:

More particularly, this case calls for the exercise of the President's powers as protector of the peace. The power of the President to keep the peace is not limited merely to exercising the commander-in-chief powers in times of emergency or to leading the State against external and internal threats to its existence. The President is not only clothed with extraordinary powers in times of emergency, but is also tasked with attending to the day-to-day problems of maintaining peace and order and ensuring domestic tranquillity in times when no foreign foe appears on the horizon. Wide discretion, within the bounds of law, in fulfilling presidential duties in times of peace is not in any way diminished by the relative want of an emergency specified in the commander-in-chief provision. For in making the President commander-in-chief the enumeration of powers that follow cannot be said to exclude the President's exercising as Commander-in-Chief powers short of the calling of the armed forces, or suspending the privilege of the writ of *habeas corpus* or declaring martial law, in order to keep the peace, and maintain public order and security.²⁰¹

In *Sanlakas v. Reyes*,²⁰² where several hundred members of the Armed Forces of the Philippines stormed the Oakwood Premiere apartments in Makati City and demanded Former President Gloria Macapagal-Arroyo's resignation, the use of the President's residual power to declare a state of

¹⁹⁸ Id. at 644.

¹⁹⁹ 258 Phil. 479 (1989) [Per J. Cortes, En Banc].

²⁰⁰ Id. at 504, *citing* Hyman, *The American President*, where the author advances the view that an allowance of discretionary power is unavoidable in any government and is best lodged in the President.

²⁰¹ Id. at 504–505, *citing* Rossiter, *The American Presidency*.

²⁰² 466 Phil. 482 (2004) [Per J. Tinga, En Banc].

rebellion was allowed. This Court held that although the declaration is a superfluity, her power to declare a state of rebellion arises from her powers as Chief Executive and Commander-in-Chief.²⁰³ This Court examined the history of such powers:

The lesson to be learned from the U.S. constitutional history is that the Commander-in-Chief powers are broad enough as it is and become more so when taken together with the provision on executive power and the presidential oath of office. Thus, the plenitude of the powers of the presidency equips the occupant with the means to address exigencies or threats which undermine the very existence of government or the integrity of the State.²⁰⁴

In these cases, the residual powers recognized by this Court were directly related to the President's duty to attend to a present contingency or an urgent need to act in order to preserve domestic tranquility. In all cases of the exercise of residual power, there must be a clear lack of legislative policy to guide executive power.

This is not the situation in these consolidated cases. As discussed, there are laws violated. At the very least, there was no urgency. There was no disturbance to the public peace.

XVII

I disagree with Associate Justice Jose P. Perez's view that the issue relating to the transfer of the remains of Ferdinand E. Marcos was already resolved through the political process of the election of the President of the Philippines.²⁰⁵ In his view, the issue had already been presented to the public during the campaign season, and President Duterte was elected despite petitioners' opposition. Thus, he concludes that the sovereign has subscribed to the policy promised by President Duterte.²⁰⁶ In other words, he is of the opinion that the People decided that Ferdinand E. Marcos should be buried at the Libingan ng mga Bayani because President Duterte did not lose.²⁰⁷

Associate Justice Perez suggests that the President-elect's acts to effectuate his campaign promises may no longer be questioned by any party, regardless of whether it is contrary to the Constitution, laws, and public policy, regardless of whether he obtained the votes of the majority, and regardless of whether he acted with grave abuse of discretion amounting to

²⁰³ Id. at 522.

²⁰⁴ Id. at 518.

²⁰⁵ J. Perez, Concurring Opinion, p. 9.

²⁰⁶ Id. at 10.

²⁰⁷ Id. at 12.

lack or excess of jurisdiction.²⁰⁸ He takes the position that any act of the President to fulfill his electoral promise will be deemed legitimate because the People have supposedly chosen him as their President.²⁰⁹

I cannot agree to this dangerous proposition. We are a constitutional democracy: a State under the rule of law.

The number of votes obtained by the President does not determine whether the Constitution or the laws will or will not apply. The Constitution is not suspended on account of the election of a President who promised a particular policy. We elect a President whom we expect to implement political platforms given the existing state of the law. The process of election is not a means to create new law. The process of creating law is provided in Article VIII of the Constitution. Neither should the elections for President be the process for amending the Constitution. The process for amending the Constitution is provided in Article XVII of the same Constitution.

Furthermore, the President is tasked to execute the law—not create it. It is the legislative branch that determines state policies through its power to enact, amend, and repeal laws. Thus, it is dangerous to assume that the sovereign voted for the President to “ratify” policies he promised during his campaign.

In other words, under our constitutional order, we elect a President subject to the Constitution and the current state of the law. We do not, through the process of elections, anoint a king.

Moreover, the theory that a campaign promise becomes policy is an abdication of the judiciary’s duty to uphold the Constitution and its laws.

Article VIII, Section 1 of the Constitution provides:

ARTICLE VIII
Judicial Department

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse

²⁰⁸ Id.

²⁰⁹ Id.

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of discretion amounting to lack or excess jurisdiction on the part of any branch or instrumentality of the Government.

This provision defines this Court's duty to ensure that all branches or instrumentalities of Government act only within the scope of their powers as defined by the Constitution and by law. Nothing in the provision allows campaign promises to trump the rule of law.

Associate Justice Perez's Concurring Opinion is founded upon the premise that the transfer of the remains of Ferdinand E. Marcos is a question of policy to be determined by the People, outside the scope of this Court's power of judicial review. He claims that the matter is a political question. Unfortunately, the allegations of an infringement upon a fundamental individual or collective right and grave abuse of discretion on the part of another branch of government, which were properly pleaded by petitioners, were not addressed.

Recently, in *Diocese of Bacolod v. Commission on Elections*:²¹⁰

The political question doctrine is used as a defense when the petition asks this court to nullify certain acts that are exclusively within the domain of their respective competencies, as provided by the Constitution or the law. In such situation, presumptively, this court should act with deference. It will decline to void an act unless the exercise of that power was so capricious and arbitrary so as to amount to grave abuse of discretion.

The concept of a political question, however, never precludes judicial review when the act of a constitutional organ infringes upon a fundamental individual or collective right. . . .

Marcos v. Manglapus limited the use of the political question doctrine:

When political questions are involved, the Constitution limits the determination to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned. If grave abuse is not established, the Court will not substitute its judgment for that of the official concerned and decide a matter which by its nature or by law is for the latter alone to decide.

How this court has chosen to address the political question doctrine has undergone an evolution since the time that it had been first invoked in *Marcos vs. Manglapus*. Increasingly, this court has taken the historical and social context of the case and the relevance of pronouncements of carefully and narrowly tailored constitutional doctrines. . . .

²¹⁰ G.R. No. 205728, January 21, 2015
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf>>
[Per J. Leonen, En Banc].



Many constitutional cases arise from political crises. The actors in such crises may use the resolution of constitutional issues as leverage. But the expanded jurisdiction of this court now mandates a duty for it to exercise its power of judicial review expanding on principles that may avert catastrophe or resolve social conflict.

This court's understanding of the political question has not been static or unbending. In *Llamas v. Executive Secretary Oscar Orbos*, this court held:

While it is true that courts cannot inquire into the manner in which the President's discretionary powers are exercised or into the wisdom for its exercise, ***it is also a settled rule that when the issue involved concerns the validity of such discretionary powers or whether said powers are within the limits prescribed by the Constitution, We will not decline to exercise our power of judicial review.*** And such review does not constitute a modification or correction of the act of the President, nor does it constitute interference with the functions of the President.

The concept of judicial power in relation to the concept of the political question was discussed most extensively in *Francisco v. HRET*. In this case, the House of Representatives argued that the question of the validity of the second impeachment complaint that was filed against former Chief Justice Hilario Davide was a political question beyond the ambit of this court. . . .

As stated in *Francisco*, a political question will not be considered justiciable if there are no constitutionally imposed limits on powers or functions conferred upon political bodies. Hence, ***the existence of constitutionally imposed limits justifies subjecting the official actions of the body to the scrutiny and review of this court.***²¹¹ (Emphasis supplied, citations omitted)

XVIII

Similarly, I cannot agree with the conclusions of Associate Justice Arturo D. Brion with respect to the interpretation of Article VIII, Section 1 of the Constitution.

Associate Justice Brion opines that this Court's expanded jurisdiction under the Constitution does not empower this Court to review allegations involving violations and misapplication of statutes.²¹² He claims that the remedies available to petitioners are those found in the Rules of Court, which address errors of law.²¹³ He claims that this Court can only check

²¹¹ Id. at 20–23.

²¹² J. Brion, Concurring Opinion, p. 2.

²¹³ Id.

whether there is grave abuse of discretion on the part of another branch or instrumentality of government when there is a violation of the Constitution.²¹⁴ Necessarily, petitioners must have shown that there is prima facie evidence that the President violated the Constitution in allowing the Marcos burial.²¹⁵ He insists that the Court's authority, under its expanded jurisdiction, is limited to determining the constitutionality of a governmental act. Grave abuse of discretion from violations of statutes cannot be made a matter of judicial review under this Court's expanded jurisdiction.

Associate Justice Brion's interpretation proceeds from the theory that there is a hierarchy of breach of the normative legal order and that only a breach of the Constitution will be considered grave abuse of discretion.

In my view, this reading is not supported by the text of the provision or by its history.

Article VIII, Section 1 of the Constitution is clear. This Court is possessed of the duty to exercise its judicial power to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of government. This provision does not state that this Court may exercise its power of judicial review exclusively in cases of violations of the Constitution.

An illegal act is an illegal act, no matter whether it is illegal as a result of the violation of a constitutional provision or a violation of a valid and existing law. It is the exercise of *discretion* that must be subjected to review, and it is the discretion of *any* branch or instrumentality of government. Nothing in the Constitution can lead to the conclusion that a violation of a statute by the President is not a grave abuse of discretion.

This jurisdiction to determine whether there is grave abuse of discretion amounting to lack or excess jurisdiction of any branch of government is a new provision under the 1987 Constitution. It was added as a safeguard from abuses of other branches of government, which were justified under the doctrine of political question. In *Francisco, Jr. v. House of Representatives*:²¹⁶

In our own jurisdiction, as early as 1902, decades before its express grant in the 1935 Constitution, the power of judicial review was exercised by our courts to invalidate constitutionally infirm acts. And as pointed out by noted political law professor and former Supreme Court Justice Vicente V. Mendoza, the executive and legislative branches of our

²¹⁴ Id. at 3.

²¹⁵ Id.

²¹⁶ 460 Phil. 830 (2003) [Per J. Carpio-Morales, En Banc].

government in fact effectively acknowledged this power of judicial review in Article 7 of the Civil Code, to wit:

Article 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.

When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.

Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.

....

In the scholarly estimation of former Supreme Court Justice Florentino Feliciano, “. . . *judicial review is essential for the maintenance and enforcement of the separation of powers and the balancing of powers among the three great departments of government through the definition and maintenance of the boundaries of authority and control between them.*” To him, “[j]udicial review is the chief, indeed the only, medium of participation — or instrument of intervention — of the judiciary in that balancing operation.”

To ensure the potency of the power of judicial review to curb grave abuse of discretion by “*any branch or instrumentalities of government,*” the afore-quoted *Section 1, Article VIII of the Constitution egraves, for the first time into its history, into block letter law the so-called “expanded certiorari jurisdiction” of this Court,* the nature of and rationale for which are mirrored in the following excerpt from the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion:

....

The first section starts with a sentence copied from former Constitution. It says:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

I suppose nobody can question it.

The next provision is new in our constitutional law. I will read it first and explain.

Judicial power includes the duty of courts of justice to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part or instrumentality of the government.



Fellow Members of this Commission, *this is actually a product of our experience during martial law.* As a matter of fact, it has some antecedents in the past, but *the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political questions and got away with it.* As a consequence, certain principles concerning particularly the writ of *habeas corpus*, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." *The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime. . . .*

.....

Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that *the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question.*²¹⁷ (Emphasis supplied)

It is not about violations that may or may not be constitutional or statutory in character. It is about discretion gravely abused.

Regretfully, Associate Justice Brion's position ignores the legal issues presented by petitioners, which involve a question of the proper exercise of constitutional powers: whether the President may use his executive power to order the transfer of the remains of Ferdinand E. Marcos' to the Libingan ng mga Bayani burial despite the rights invoked by petitioners and other particular provisions in the Constitution, statutes, and public policy.

²¹⁷ Id. at 881-884.

Definitely, there is an actual case or controversy ripe for judicial review. Recalling a position in *Spouses Imbong v. Ochoa, Jr.*:²¹⁸

The requirement for a “case” or “controversy” locates the judiciary in the scheme of our constitutional order. It defines our role and distinguishes this institution from the other constitutional organs.

.....

An actual case or controversy is “one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice.” To be justiciable, the issues presented must be “‘definite and concrete, touching the legal relations of parties having adverse legal interest;’ a real and substantial controversy admitting of specific relief.” The term justiciability refers to the dual limitation of only considering in an adversarial context the questions presented before courts, and in the process, the courts’ duty to respect its co-equal branches of government’s powers and prerogatives under the doctrine of separation of powers.

There is a case or controversy when there is a real conflict of rights or duties *arising from actual facts*. These facts, properly established in court through evidence or judicial notice, provide the natural limitations upon judicial interpretation of the statute. When it is claimed that a statute is inconsistent with a provision of the Constitution, the meaning of a constitutional provision will be narrowly drawn.

Without the necessary findings of facts, this court is left to speculate leaving justices to grapple within the limitations of their own life experiences. This provides too much leeway for the imposition of political standpoints or personal predilections of the majority of this court. This is not what the Constitution contemplates. Rigor in determining whether controversies brought before us are justiciable avoids the counter majoritarian difficulties attributed to the judiciary.

Without the existence and proper proof of actual facts, any review of the statute or its implementing rules will be theoretical and abstract. Courts are not structured to predict facts, acts or events that will still happen. Unlike the legislature, we do not determine policy. We read law only when we are convinced that there is enough proof of the real acts or events that raise conflicts of legal rights or duties. Unlike the executive, our participation comes in after the law has been implemented. Verily, we also do not determine how laws are to be implemented.²¹⁹

There is an actual case or controversy in this case as it involves a conflict of legal rights arising from actual facts, which have been properly established through evidence or judicial notice, and which provide the natural limitations upon judicial interpretation of the statute.

²¹⁸ J. Leonen, Dissenting Opinion in *Spouses Imbong v. Ochoa, Jr.*, G.R. Nos. 204819, April 8, 2014, 721 SCRA 146, 731–847 [Per J. Mendoza, En Banc].

²¹⁹ *Id.* at 738–739.

Petitioners invoke a violation of their existing legal rights, among which is their right as victims of human rights violations committed during the Marcos regime. They invoke an act from the executive branch, which allegedly violates their rights and was allegedly committed with grave abuse of discretion amounting to lack or excess of jurisdiction. On the other hand, respondents insist on the President's right to exercise his executive discretion on who may or may not be buried at the Libingan ng mga Bayani. Thus, a conflict of rights must be determined by this Court in accordance with the Constitution and statutes. This Court's ruling on the matter will not be merely advisory; on the contrary, it shall be binding among the parties and shall be implemented with force and effect. Thus, there is an actual case or controversy.

XIX

Associate Justice Peralta contends that petitioners have no *locus standi* because they failed to show any direct suffering or personal injury that they have incurred or will incur as a result of Ferdinand E. Marcos' burial.²²⁰

I cannot agree.

The requirement of *locus standi* requires that the party raising the issue must have "a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result."²²¹

In *Public Interest Center, Inc. v. Roxas*:²²²

In *Integrated Bar of the Philippines v. Zamora*, this Court defined legal standing as follows:

Legal standing or *locus standi* has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The gist of the question of standing is whether a party alleges "such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."

²²⁰ Ponencia, p. 11.

²²¹ *People v. Vera*, 65 Phil. 56, 87 (1937) [Per J. Laurel, First Division].

²²² 542 Phil. 443 (2007) [Per J. Carpio Morales, Second Division].

In public suits, the plaintiff, representing the general public, asserts a “public right” in assailing an allegedly illegal official action. The plaintiff may be a person who is affected no differently from any other person, and could be suing as a “stranger,” or as a “citizen” or “taxpayer.” To invest him with *locus standi*, the plaintiff has to adequately show that he is entitled to judicial protection and has a sufficient interest in the vindication of the asserted public right.²²³ (Citations omitted)

Several petitioners allege that they are human rights victims during the Marcos regime who had filed claims under Republic Act No. 10368. In their Petitions, they claim that respondents’ questioned acts affect their right to reparation and recognition under Republic Act No. 10368 and international laws. As petitioners have an interest against Ferdinand E. Marcos and have claims against the State in connection with the violation of their human rights, petitioners are vested with material interest in the President’s act in allowing the Marcos burial at the Libingan ng mga Bayani.

In any case, the rule on standing has been relaxed “when the matter is of transcendental importance, of overreaching significance to society, or of paramount public interest.”²²⁴ In *In Re Supreme Court Judicial Independence v. Judiciary Development Fund*:²²⁵

Transcendental importance is not defined in our jurisprudence, thus, in *Francisco v. House of Representatives*:

There being no doctrinal definition of transcendental importance, the following instructive determinants formulated by former Supreme Court Justice Florentino P. Feliciano are instructive: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.²²⁶ (Citations omitted)

Given that public property and funds are involved and there are allegations of disregard of constitutional and statutory limitations by the executive department, this Court may properly act on the Petitions.

²²³ Id. at 455–456.

²²⁴ *In Re Supreme Court Judicial Independence v. Judiciary Development Fund (Resolution)*, UDK-15143, January 21, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/15143.pdf>> [Per J. Leonen, En Banc], citing *Biraogo v. Philippine Truth Commission*, 651 Phil. 374, 441 (2010) [Per J. Mendoza, En Banc], in turn citing *Social Justice Society v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*, 591 Phil. 393, 404 (2008) [Per J. Velasco, Jr., En Banc], *Tatad v. Secretary of the Department of Energy*, 346 Phil. 321, 359 (1997) [Per J. Puno, En Banc], and *De Guia v. Commission on Elections*, G.R. No. 104712, May 6, 1992, 208 SCRA 420, 422 [Per J. Bellosillo, En Banc].

²²⁵ Resolution, UDK-15143, January 21, 2015 [Per J. Leonen, En Banc].

²²⁶ Id. at 9–10.

The ponencia states that petitioners violated the doctrines of exhaustion of administrative remedies and hierarchy of courts,²²⁷ which essentially espouse the principle that no direct resort to this Court is allowed when there are other plain, speedy, and adequate remedies.

However, there are exceptions to this rule, as restated in *Diocese of Bacolod*:

- (a) When there are genuine issues of constitutionality that must be addressed at the most immediate time;
- (b) When the issues involved are of transcendental importance. In these cases, the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence. The doctrine relating to constitutional issues of transcendental importance prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection;
- (c) In cases of first impression, and no jurisprudence yet exists that will guide the lower courts on this matter;
- (d) When the constitutional issues raised are better decided by this court;
- (e) When the filed petition reviews the act of a constitutional organ;
- (f) When there is a time element presented in this case cannot be ignored;
- (g) When there is no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their rights; and
- (h) When the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders

²²⁷ Ponencia, p. 13.

complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.”²²⁸

These exceptions are present in these consolidated cases. First, these cases involve reviewing the act of another constitutional organ, that is, the President’s exercise of discretion in allowing Ferdinand E. Marcos’ burial at the Libingan ng mga Bayani. Second, these Petitions raise constitutional questions that would be better decided by this Court, as well as issues relating to public policy that may be beyond the competence of the lower courts. These cases are likewise of first impression, and no jurisprudence yet exists on this matter. Thus, the Petitions cannot be dismissed by invoking the doctrine of hierarchy of courts and exhaustion of administrative remedies.

XX

Grave abuse of discretion is committed when the President violates his or her own oath of office. Thus, in Article VII, Section 5 of the 1987 Constitution:

ARTICLE VII Executive Department

....

SECTION 5. . . .

“I, do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President . . . of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the nation. So help me God.”

The President’s duty to faithfully execute the laws of the land is enshrined in the Constitution. Thus, in Article VII, Section 17:

SECTION 17. The President shall have control of all executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

In *Almario v. Executive Secretary*,²²⁹ we have clarified that the faithful execution clause is not a separate grant of power but an obligation imposed on the President. The President is, therefore, not above the law or

²²⁸ *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf>> 15–18 [Per J. Leonen, En Banc].

²²⁹ 714 Phil. 127 (2013) [Per J. Leonardo-de Castro, En Banc].

above judicial interpretation. He is duty-bound to obey and execute them. Thus, “administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.”²³⁰

In *Almario*, the President’s proclamation of several national artists was nullified because several rules, guidelines, and processes of the National Commission on Culture and the Arts and the Cultural Center of the Philippines were disregarded. This Court declared that the actions of the President, contrary to the spirit of these rules, constituted grave abuse of discretion:

Thus, in the matter of the conferment of the Order of National Artists, the President may or may not adopt the recommendation or advice of the NCCA and the CCP Boards. In other words, the advice of the NCCA and the CCP is subject to the President’s discretion.

Nevertheless, the President’s discretion on the matter is not totally unfettered, nor the role of the NCCA and the CCP Boards meaningless.

Discretion is not a free-spirited stallion that runs and roams wherever it pleases but is reigned in to keep it from straying. In its classic formulation, ‘discretion is not unconfined and vagrant’ but ‘canalized within banks that keep it from overflowing.’

The President’s power must be exercised in accordance with existing laws. Section 17, Article VII of the Constitution prescribes faithful execution of the laws by the President:

Sec. 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

The President’s discretion in the conferment of the Order of National Artists should be exercised in accordance with the duty to faithfully execute the relevant laws. The faithful execution clause is best construed as an obligation imposed on the President, not a separate grant of power. It simply underscores the rule of law and, corollarily, the cardinal principle that the President is not above the laws but is obliged to obey and execute them. This is precisely why the law provides that “[a]dministrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution.”²³¹

²³⁰ CIVIL CODE, art. 7.

²³¹ *Almario v Executive Secretary*, 714 Phil. 127, 163–164 (2013) [Per J. Leonardo-de Castro, En Banc].

XXI

The ponencia's characterization of Ferdinand E. Marcos as "just a human who erred like us"²³² trivializes the magnitude of the suffering that he inflicted on scores of Filipinos.

Ferdinand E. Marcos' "errors" were not errors that a President is entitled to commit. They were exceptional in both severity and scale. They were inhuman acts.

Ferdinand E. Marcos provided the atmosphere of impunity that allowed the molestations, rape, torture, death, and disappearance of thousands of Filipinos. Ferdinand E. Marcos was the President who, rather than preserve and protect the public trust, caused untold anguish upon thousands of Filipino families. Their trauma, after all these years, still exists.

Ferdinand E. Marcos plundered the nation's coffers. The systematic plunder was so exceptional and outrageous that even after being ousted, he and his family brought more than ₱27,000,000.00 in freshly printed notes, 23 wooden crates, 12 suitcases and bags, and various boxes of jewelry, gold bricks, and enough clothes to fill 57 racks²³³ with them to their exile in Hawaii.

These were not accidents that humans, like us, commit. These were deliberate and conscious acts by one who abused his power. To suggest that Ferdinand E. Marcos was "just a human who erred like us" is an affront to those who suffered under the Marcos regime.

To suggest that these were mere errors is an attempt to erase Ferdinand E. Marcos' accountability for the atrocities during Martial Law. It is an attempt to usher in and guarantee impunity for them as well as for those who will commit the same in the future.

It is within the power of this Court to prevent impunity for gross violations of human rights, systematic plunder by those whom we elect to public office, and abuse of power at the expense of our toiling masses. We should do justice rather than characterize these acts as the "mere human error" of one whom We have characterized as a dictator and an authoritarian.

²³² Ponencia, p. 49.

²³³ Ocampo Memorandum (G.R. No. 225973), p. 5, citing Nick Davies, *The \$10bn question: what happened to the Marcos millions?*, The Guardian, May 7, 2016 <<https://www.theguardian.com/world/2016/may/07/10bn-dollar-question-marcos-millions-nick-davies>> (visited November 7, 2016).

XXII

Interpreting the law is not mere power. It is not simply our personal privilege.

Judicial review is an awesome social responsibility that should always be discharged with the desire to learn from history and to do justice. Social justice will not come as a gift. It is a product of the constant, conscious, and determined effort to understand our society and do what is right. Justice will not come when we insist that we should decide behind a veil of ignorance. Precisely, our expanded jurisdiction in the present Constitution contains our People's command for this Court not to forget that never again should this Court be blind to reality.

The reality is that the retelling of the story of Martial Law is agonizing to many who went through the ordeal. Reliving it for eternity, with the transfer of the remains of he who is responsible for the ordeal to the sacred grounds of the Libingan ng mga Bayani, will permanently cause untold anguish to the victims.

The mother who stood by her principles but was tortured, molested, or raped during Martial Law will now have to explain to her daughter why he who allowed that indignity to happen is now at the Libingan ng mga Bayani.

The family of the father or the mother or the son or the daughter or the nephew or niece or cousin who disappeared will have extreme difficulty accepting that the remains of Ferdinand E. Marcos—the President who was Commander-in-Chief and who had control over all those who wielded state coercion during Martial Law—is buried in a place that implies that he is a hero. They will have to explain to themselves, with the pain and anguish that they still suffer, why the most powerful man who was unable to help them find their kin is granted honors by this State.

Those who will celebrate this country's pride every year with the commemoration of People Power or the EDSA Revolution will also live with the contradiction that the remains of the President they ousted for his abuses is now interred at the Libingan ng mga Bayani.

National healing cannot happen without the victims' participation and consent.

The decision of the majority to deny the Petitions robs this generation and future generations of the ability to learn from our past mistakes. It will



tell them that there are rewards for the abuse of power and that there is impunity for human rights violations. The decision of the majority implies that, learning from the past, our People should be silent and cower in fear of an oppressor. After all, as time passes, the authoritarian and the dictator will be rewarded.

Sooner rather than later, we will experience the same fear of a strongman who will dictate his view on the solutions of his favored social ills. Women will again be disrespected, molested, and then raped. People will die needlessly—perhaps summarily killed by the same law enforcers who are supposed to protect them and guarantee the rule of law. Perhaps, there will be people who will be tortured after they are shamed and stereotyped.

We forget the lessons of the past when we allow abuse to hold sway over the lives of those who seem to be unrelated to us. Silence, in the face of abuse, is complicity.

The burial of Ferdinand E. Marcos at the Libingan ng mga Bayani is not an act of national healing. It cannot be an act of healing when petitioners, and all others who suffered, are not consulted and do not participate. Rather, it is an effort to forget our collective shame of having failed to act as a People as many suffered. It is to contribute to the impunity for human rights abuses and the plunder of our public trust.

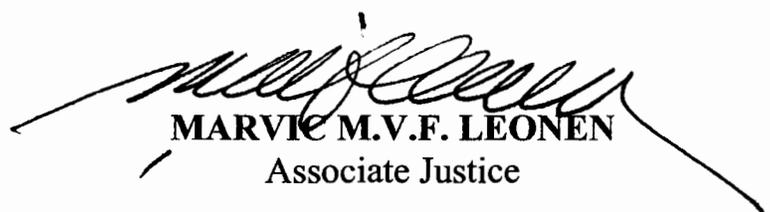
The full guarantee of human rights is a fundamental primordial principle enshrined in the Constitution. It is not the antithesis of government.

To deny these Petitions is to participate in the effort to create myth at the expense of history.

Ferdinand E. Marcos' remains, by law, cannot be transferred to the Libingan ng mga Bayani. Ferdinand E. Marcos is not a "bayani."

Ferdinand E. Marcos is not a hero.

ACCORDINGLY, I vote to **GRANT** the consolidated Petitions.


MARVIC M.V.F. LEONEN
Associate Justice