



Republic of the Philippines
Supreme Court
Manila

EN BANC

G.R. No. 225973 – Saturnino C. Ocampo, Trinidad H. Repuno, Bienvenido Lumbera, Bonifacio P. Ilagan, Neri Javier Colmenares, Maria Carolina P. Araullo, M.D., Samahan ng Ex-Detainees Laban sa Detensyon at Aresto (SELDA) represented by Dionito Cabillas, Carmencita M. Florentino, Rodolfo del Rosario, Felix C. Dalisay, and Danilo M. dela Fuente v. Rear Admiral Ernesto C. Enriquez (in his capacity as the Deputy Chief of Staff for Reservist and Retiree Affairs, Armed Forces of the Philippines), The Grave Services Unit (Philippine Army) and General Ricardo R. Visaya (in his capacity as the Chief of Staff, Armed Forces of the Philippines), Defense Secretary Delfin Lorenzana, and Heirs of Ferdinand E. Marcos, represented by his surviving spouse Imelda Romualdez Marcos.

G.R. No. 225984 – Rep. Edcel C. Lagman, in his personal and official capacities as Honorary Chairperson of the Families of Victims of Involuntary Disappearance (FIND); Families of Victims of Involuntary Disappearance (FIND) represented by its Co-Chairperson, Nilda L. Sevilla; Rep. Teddy Brawner Baguilat, Jr.; Rep. Tomasito S. Villariin; Rep. Edgar R. Erice; and Rep. Emmanuel A. Billones v. Executive Secretary Salvador C. Medialdea; Defense Secretary Delfin Lorenzana; AFP Chief of Staff General Ricardo R. Visaya; AFP Deputy Chief of Staff Rear Admiral Ernesto C. Enriquez; and Philippine Veterans Affairs Office (PVAO) Administrator Lt. Gen. Ernesto G. Carolina (Ret.)

G.R. No. 226097 – Loretta Ann Pargas-Rosales, Hilda B. Narciso, Aida F. Santos-Maranan, Jo-Ann Q. Maglipon, Zenaida S. Mique, Fe B. Mangahas, Ma. Cristina P. Bawagan, Mila D. Aguilar, Minerva G. Gonzales, Ma. Cristina V. Rodriguez, Louie G. Crismo, Francisco E. Rodrigo, Jr., Liwayway D. Arce, Abdulmari de Leon Imao, Jr. v. Executive Secretary Salvador C. Medialdea, Defense Secretary Delfin Lorenzana, Rear Admiral Ernesto C. Enriquez (in his capacity as the Deputy Chief of Staff for Reservist and Retiree Affairs, Armed Forces of the Philippines), and General Ricardo R. Visaya (in his capacity as the Chief of Staff of the Armed Forces of the Philippines), and Heirs of Ferdinand E. Marcos, represented by Imelda Romualdez Marcos

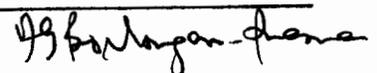
G.R. No. 226117 – Zaira Patricia B. Baniaga, John Arvin Buenaagua, Joanne Rose Sace Lim, Juan Antonio Rarogal Magalang v. Defense Secretary of National Defense Delfin Lorenzana, AFP Chief of Staff Ricardo R. Visaya, Administrator of the Philippine Veterans Affairs Office Ernesto G. Carolina

G.R. No. 226116 – Heherson T. Alvarez, Joel C. Lamangan, Francis X. Manglapus, Edilberto C. de Jesus, Belinda O. Cunanan, Cecilia Guidote Alvarez, Rex Degracia Lores, Sr. Arnold Marie Noel, Carlos Manuel, Edmund S. Tayao, Danilo P. Olivares, Noel F. Trinidad, Jesus dela Fuente, Rebecca M. Quijano, Fr. Benigno Beltran, SVD, Roberto S. Verzola, Augusto A. Legasto Jr., and Julia Kristina P. Legasto v. Hon. Salvador C. Medialdea, in his capacity as Executive Secretary, Hon. Delfin N. Lorenzana, in his capacity as Secretary of National Defense (DND), and General Ricardo R. Visaya, Chief of Staff of the Armed Forces of the Philippines (AFP), Rear Admiral Ernesto C. Enriquez and the Philippine Veterans Affairs Office (PVAO) of the DND

G.R. No. 226120 – Algamar A. Latiph v. Secretary Delfin N. Lorenzana, sued in his capacity as Secretary of National Defense, and Lt. Gen. Ricardo R. Visaya, in his capacity Chief of Staff of the Armed Forces of the Philippines, and Lt. Gen. Ernesto G. Carolina (Ret.), in his capacity as Philippine Veterans Affairs

Promulgated: November 8, 2016

Separate Opinion



Mendoza, J.

The Court should not take sides in this political controversy.

The questions being truly political, there is simply no justiciable controversy.

Hence, the petitions should be dismissed.

Ferdinand Edralin Marcos (*President Marcos*) was not, and will never be, a hero. His interment in the Libingan Ng Mga Bayani (*LNMB*) will not erase the atrocities committed during his authoritarian rule. His place in history will ultimately be judged by the people.

His worthiness as a hero, however, is not the issue at hand. The current controversy revolves around the decision of the administration of President Rodrigo Roa Duterte (*President Duterte*) to allow the burial of the remains of President Marcos in the LNMB in the exercise of his discretion as Chief Executive.

In the course of his campaign for the May 2016 national elections, President Duterte promised to have the remains of the late president buried in the LNMB as a step towards national conciliation or healing. After winning the elections, he followed through on his campaign promise. Pursuant thereto, the public respondents began to take steps to implement his verbal order.

Herein petitioners, majority of whom are either victims or kin of victims of human rights violations committed during the regime of the deposed dictator, assert that the interment is contrary to the Constitution, laws and regulations, and international law. The petitioners claim that a recognized dictator, plunderer and human rights violator has no place in the LNMB, which is reserved for persons who are worthy of emulation or a source of inspiration.

Issues involved are truly political questions which are non-justiciable

The Court has refused to take cognizance of cases which do not present any justiciable controversy, such as when the issue presented is a truly political question. In the landmark case of *Tañada v Cuenco*,¹ the Court expounded on the concept of political question, *viz*:

As already adverted to, the objection to our jurisdiction hinges on the question whether the issue before us is political or not. In this connection, Willoughby lucidly states:

"Elsewhere in this treatise the well-known and well-established principle is considered that it is not within the province of the courts to pass judgment upon *the policy* of legislative or executive action. **Where, therefore, discretionary powers are granted by the Constitution or by statute, the manner in which those powers are exercised is not subject to judicial review.** The courts, therefore, concern themselves only with the question as to the *existence and extent of these discretionary powers.*

¹ G.R. No. L-10520, February 28, 1957.

xxx

In short, the term "political question" connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words, in the language of *Corpus Juris Secundum* (*supra*), it refers to "those questions which, under the Constitution, are to be *decided by the people* in their sovereign capacity, or in regard to which *full discretionary authority* has been delegated to the Legislature or executive branch of the Government." **It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.** [Emphases supplied]

It is true that under the present constitutional milieu, the scope of judicial power has been expanded. Under Section 1, Article VIII of the Constitution, "[j]udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government."

The expanded judicial power bestowed by the Constitution is an offshoot of the prevalence, during the Marcos regime, of invoking the political question doctrine every time government acts were questioned before the courts. The present Constitution, thus, empowered the courts to settle controversies if there would be grave abuse of discretion.

Notwithstanding the expanded power of the courts, the political question doctrine remains operative. The present provision on judicial power does not mean to do away with the political question doctrine itself, and so "**truly political questions**" are still recognized.² In *Francisco v. HRET*,³ the Court explicitly recognized the political question doctrine and explained how the same was determined:

From the foregoing record of the proceedings of the 1986 Constitutional Commission, it is clear that judicial power is not only a power; it is also a *duty*, a duty which cannot be abdicated by the mere specter of this creature called the political question doctrine. Chief Justice Concepcion hastened to clarify, however, that **Section 1, Article VIII was not intended to do away with truly political questions.** From this clarification it is gathered that there are two species of political questions: (1) truly political questions and (2) those which "are not truly political questions."

² Joaquin G. Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (2003).

³ 460 Phil. 830 ((2003).

Truly political questions are thus beyond judicial review, the reason for respect of the doctrine of separation of powers to be maintained. On the other hand, by virtue of Section 1, Article VIII of the Constitution, courts can review questions which are not truly political in nature.

xxx

Section 1, Article VIII of the Constitution does not define what are justiciable political questions and non-justiciable political questions, however. Identification of these two species of political questions may be problematic. There has been no clear standard. The American case of *Baker v. Carr* attempts to provide some:

. . . Prominent on the surface of any case held to involve a political question is found a *textually demonstrable constitutional commitment* of the issue to a coordinate political department; or a *lack of judicially discoverable and manageable standards for resolving it*; or the *impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion*; or the *impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government*; or an *unusual need for questioning adherence to a political decision already made*; or the *potentiality of embarrassment from multifarious pronouncements by various departments on one question*.

Of these standards, the more reliable have been the first three: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) the lack of judicially discoverable and manageable standards for resolving it; and (3) the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion. These standards are not separate and distinct concepts but are interrelated to each in that the presence of one strengthens the conclusion that the others are also present.

The problem in applying the foregoing standards is that the American concept of judicial review is radically different from our current concept, for Section 1, Article VIII of the Constitution provides our courts with far less discretion in determining whether they should pass upon a constitutional issue.

In our jurisdiction, the determination of a truly political question from a non-justiciable political question lies in the answer to the question of whether there are constitutionally imposed limits on powers or functions conferred upon political bodies. If there are, then

✓

our courts are duty-bound to examine whether the branch or instrumentality of the government properly acted within such limits.⁴ X x x.[Emphases and underscoring supplied]

Thus, a political question will not be considered justiciable if there are no constitutionally imposed limits on powers or functions conferred upon the political bodies.⁵ Nonetheless, even in cases where matters of policy may be brought before the courts, there must be a showing of grave abuse of discretion on the part of any branch or instrumentality of the government before the questioned act may be struck down. **“If grave abuse is not established, the Court will not substitute its judgment for that of the official concerned and decide a matter which by its nature or by law is for the latter alone to decide.”**⁶ “We cannot, for example, question the President's recognition of a foreign government, no matter how premature or improvident such action may appear. We cannot set aside a presidential pardon though it may appear to us that the beneficiary is totally undeserving of the grant. Nor can we amend the Constitution under the guise of resolving a dispute brought before us because the power is reserved to the people.”⁷

Guided by the foregoing, it is my considered view that the decision of President Duterte to allow President Marcos to be interred in the LNMB is beyond the ambit of judicial review.

*Interment of President
Marcos in the LNMB is a
discretionary act of
President Duterte*

Executive power is vested in the President of the Philippines.⁸ Inherent in the executive power is the duty to faithfully execute the laws of the land and is intimately related to the other executive functions.⁹ Section 17, Article VII of the Constitution¹⁰ embodies the faithful execution clause. The Executive is given much leeway in ensuring that our laws are faithfully executed.¹¹ Thus, any act pursuant to the faithful execution clause should be

⁴ Id. at 910-912.

⁵ *The Diocese of Bacolod v. COMELEC*, G.R. No. 205728, January 21, 2015.

⁶ *Marcos v. Manglapus*, 258 Phil. 479, 506-507 (1989)

⁷ Id. at 506.

⁸ Section 1, Article VII of the Constitution.

⁹ *Saguisag v. Executive Secretary Ochoa*, G.R. No. 212426, January 12, 2016.

¹⁰ The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

¹¹ *Biraogo v. The Philippine Truth Commission*, 651 Phil. 394, 449 (2010).

W

deemed a political question as the President is merely executing the law as it is. There is no question as to the legality of the act but on its wisdom or propriety.

Indeed, the duty to execute the laws of the land is not discretionary on the part of the President, in the same manner that it is not discretionary on the part of the citizens to obey the laws. In *Spouses Marquez v. Spouses Alindog*,¹² the Court drew a fine line between a discretionary act and a ministerial one.

A clear line demarcates a discretionary act from a ministerial one. Thus:

The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. **If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial.** The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment. [Emphasis and underscoring supplied]

The President may also exercise his judgment in the manner of implementing the laws. For as long as he faithfully executes the law, any issue on the wisdom or propriety of his acts is deemed a political question.

Moreover, the authority of President Duterte to allow the interment of President Marcos in the LNMB is derived from the **residual powers** of the executive. In the landmark case of *Marcos v. Manglapus*,¹³ the Court had expounded on the residual powers of the President, to wit:

To the President, the problem is one of balancing the general welfare and the common good against the exercise of rights of certain individuals. **The power involved is the President's residual power to protect the general welfare of the people. It is founded on the duty of the President, as steward of the people.** To paraphrase Theodore Roosevelt, it is not only the power of the President but also his **duty to do anything not forbidden by the Constitution or the laws that the needs of the nation demand** [See Corwin, *supra*, at 153]. It is a power borne by the President's duty to preserve and

¹² G.R. No. 184045, January 22, 2014.

¹³ 258 Phil. 479, 504-505 (1989).

defend the Constitution. It also may be viewed as a power implicit in the President's duty to take care that the laws are faithfully executed [see Hyman, *The American President*, where the author advances the view that an allowance of discretionary power is unavoidable in any government and is best lodged in the President].

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

To reiterate, President Duterte's rationale in allowing the interment of President Marcos in the LNMB was for national healing, reconciliation and forgiveness amidst our fragmented society, so that the country could move forward in unity far from the spectre of the martial law regime.

To this, however, the petitioners vehemently disagree. Thus, in their petitions, they challenge the wisdom of the decision of the President. They bewail, and understandably so, that Marcos was not a hero who deserved to be buried in the hallowed grounds of the LNMB. They view him as not worthy of being buried alongside those who were true heroes, as they hold him responsible for the illegal detention, arrest, torture, disappearances, and summary executions of those who opposed his regime.

The Court should not comment on those points for now. It is not unaware of the sufferings of the victims of human rights during martial law. The Court, however, should defer exercising jurisdiction when the acts of the State are challenged based on their wisdom or propriety. It should be stressed, however, that the interment of President Marcos in the LNMB will not bestow upon him the title of a hero. It will not erase from the memories

of the victims what have been etched in their minds – that President Marcos was a heartless dictator and rapacious plunderer of our national economy and patrimony.

No Grave Abuse of Discretion

Granting that the discretionary act of President Duterte was covered by the expanded scope of judicial power, the petitions would still lack merit. There is absolutely no showing that the acts of the public respondents are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Grave abuse of discretion is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.¹⁴

In the situation at hand, no grave abuse of discretion is manifest as there is no violation of any constitutional provision or law. In fact, the public respondents were guided by, and complied with, the law. Under AFP Regulation G 161-375, the following are eligible for interment in the LNMB:

1. Medal of Valor Awardees;
2. Presidents or Commanders-in-Chief;
3. Secretaries of National Defense;
4. Chiefs of Staff;
5. General/Flag Officers of the AFP;
6. Active and **retired military personnel** of the AFP to include active draftees and trainees who died in line of duty, active reservists and CAFGU Active Auxiliary (CAA) who died in combat operations or combat related activities;
7. Former members of the AFP who laterally entered or joined the PCG and the PNP;
8. **Veterans of Philippine Revolution of 1890, WWI, WWII and recognized guerrillas;**
9. Government Dignitaries, Statesmen, National Artists and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, Congress, or the Secretary of National Defense; and

¹⁴ *Intec Cebu, Inc., v. CA*, G.R. No. 189851, June 22, 2016.

10. **Former Presidents, Secretaries of Defense, Dignitaries, Statesmen, National Artists, widows of Former Presidents, Secretaries of National defense and Chief of Staff.**

In the absence of any law to the contrary, AFP Regulation G 161-375 remains to be the sole legal basis in determining who are qualified to be buried in the LNMB.

When the public respondents based their decision on the applicable laws and regulations, they cannot be said to have committed grave abuse of discretion. Besides, it is not for the Court to determine who is worthy of inspiration or emulation.

It is true that the present Constitution was crafted to prevent the occurrence of abuse prevalent during the Marcos Regime. This is evident in numerous provisions of the Constitution such as the Bill of Rights and the provisions under the Executive Department limiting the power to declare Martial Law. Nevertheless, the Constitution neither expressly nor impliedly prohibits the interment of President Marcos in the LNMB.

Moreover, the decision to allow the interment of President Marcos in the LNMB is not contrary to R.A. No. 289 and R.A. No. 10368. As explained by the public respondents, the National Pantheon mentioned in R.A. No. 289 was quite different from the LNMB. As such, the standards claimed by the petitioners in R.A. No. 289 are not applicable to the LNMB.

Likewise, the interment of President Marcos in the LNMB is not repugnant to the avowed policy of R.A. No. 10368, which seeks to recognize the heroism of human rights violation victims (*HRVVs*) during martial law. *First*, R.A. No. 10368 neither expressly nor impliedly prohibits his burial in the LNMB. *Second*, his interment is not incongruous with honoring HRVVs considering that the burial is not intended to confer upon him the title of a hero. *Third*, the State can continue to comply with its obligation under R.A. No. 10368 to provide recognition and reparation, monetary or non-monetary, to the HRVVs, notwithstanding his burial in the LNMB.

A Final Note

Lest it be misunderstood, the Court is not passing judgment on whether President Marcos truly deserves to be buried in the LNMB. It is

merely exercising judicial restraint as the issues at hand are truly political in nature and, therefore, are best left to the discretion of the President.

The Court sympathizes with the HRVVs and acknowledges the harrowing ordeals they suffered in the hands of government forces during martial law. The stigma left by the martial law regime will never be forgotten by the Filipino people and the burial of President Marcos in the LNMB will not re-write history.

On the matter, however, the Supreme Court should not have a hand. It should not resolve the issues in this truly political controversy.

Accordingly, I vote to dismiss these petitions and move on.


JOSE CATRAL MENDOZA
Associate Justice