



Republic of the Philippines
Supreme Court
Manila

G.R. No. 225973 (*Ocampo, et al. v. Rear Admiral Ernesto C. Enriquez, et al.*), **G.R. No. 225984** (*Lagman, et al. v. Executive Secretary, et al.*), **G.R. No. 226097** (*Pargas-Rosales, et al. v. Executive Secretary, et al.*), **G.R. No. 226116** (*Alvarez, et al. v. Hon. Salvador C. Medialdea, et al.*), **G.R. No. 226117** (*Baniaga, et al. v. Secretary of National Defense, et al.*), **G.R. No. 226120** (*Latiph, et al. v. Secretary Delfin N. Lorenzana, et al.*) and **G.R. No. 226294** (*De Lima, et al. v. Hon. Salvador C. Medialdea, et al.*)

Promulgated:

November 8, 2016

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SEPARATE OPINION

PEREZ, J.:

The factual and procedural antecedents are not in dispute.

On 25 February 1986, during the snap election term of Ferdinand Marcos Sr., the EDSA People Power Revolution transpired. With US aid, the Former President, together with his family, was forced into exile. On 28 September 1989, he died in Honolulu, Hawaii. Two weeks before his death, the Supreme Court upheld then sitting President Corazon Aquino's firm decision to bar the return of the Marcos family.¹ In a statement, President Aquino said:

“In the interest of the safety of those who will take the death of Mr. Marcos in widely and passionately conflicting ways, and for the tranquility of the state and order of society, the remains of Ferdinand E.

¹ *Marcos v. Manglapus*, G.R. No. 88211, 27 October 1989.

Marcos will not be allowed to be brought to our country until such time as the government, be it under this administration or the succeeding one, shall otherwise decide.”²

Pursuant to a written agreement executed between the Philippine Government, then represented by Former President Fidel V. Ramos, and the Marcos family, the remains of the late strongman was returned to the Philippines on 5 September 1993. The mortal remains of Former President Marcos was allowed to be returned to the Philippines, under the following conditions:

1. The body of President Marcos would be flown straight from Hawaii to Ilocos Norte province without any fanfare;³
2. President Marcos would be given honors befitting a major, his last rank in the AFP;⁴ and
3. The body of President Marcos will be buried in Ilocos.⁵

The Former President was eventually interred in a Mausoleum, with his remains currently kept in a refrigerated crypt in Batac, Ilocos Norte.

During his campaign for president in the 2016 national elections, candidate Rodrigo R. Duterte publicly declared that he will cause the burial of the former President in the *Libingan ng mga Bayani* (LNMB). After his election as president, President Rodrigo R. Duterte ordered the implementation of his campaign declaration. On 11 July 2016, President Duterte verbally directed Marcos' burial in the LNMB. In compliance with the verbal order, Secretary of National Defense Delfin N. Lorenzana issued a Memorandum dated 7 August 2016, addressed to General Ricardo R. Visaya, Chief of Staff of the AFP, directing him to “undertake the necessary planning and preparations to facilitate the coordination of all agencies concerned specially the provisions for ceremonial and security requirements”⁶ and to “coordinate closely with the Marcos family regarding the date of interment and the transport of the late former President’s remains from Ilocos Norte to the LNMB.”⁷ Conforming to the 7 August 2016 Memorandum, AFP Chief of Staff General Visaya instructed Deputy Chief of Staff for Reservist and Retiree Affairs Rear Admiral Ernesto C. Enriquez to issue a directive addressed to the Philippine Army.⁸ According to the 9 August 2016 Directive, the Army is required to provide vigil,

² Id.

³ Alvarez petition, p. 10

⁴ Id.

⁵ Ocampo petition, p. 6.

⁶ Memorandum issued by Secretary of National Defense Delfin N. Lorenzana dated 7 August 2016.

⁷ Id.

⁸ Ocampo petition, p. 8.

bugler/drummer, firing party, military host/pallbearers, escort and transportation, and arrival and departure honors.⁹

Five different petitions, praying for a Temporary Restraining Order to restrain respondents from proceeding with the burial were filed and consolidated. Petitioners likewise sought the nullification of the 7 August 2016 Memorandum and the 9 August 2016 Directive, and a permanent prohibition from allowing the interment of the remains of Former President Marcos at the *Libingan ng mga Bayani*.

The first petition (*Ocampo* petition) was filed on 15 August 2016 by Saturnino C. Ocampo, Trinidad G. Repuno, Bienvenido Lumbera, Bonifacio P. Ilagan, Neri Javier Colmenares, Maria Carolina P. Araullo, all of whom alleged that they were human rights violations victims and members of the class suit in the human rights litigation against the Estate of Ferdinand E. Marcos in MDL No. 840, CA No. 88-0390 in the US Federal District Court of Honolulu, Hawaii. The Samahan ng Ex-Detainees Laban sa Detensyon at Aresto (SELDA), an organization of political prisoners and former political detainees in the country, also took part in the petition.

The second petition (*Lagman* petition) was also filed on 15 August 2016 by Rep. Edcel C. Lagman, Rep. Teddy Brawner Baguilat, Jr., Rep. Tomasito S. Villarin, Rep. Edgar R. Erice, Rep. Emmanuel A. Billones, and the Families of Victims of Involuntary Disappearance (FIND). The incumbent members of the House of Representatives sued as legislators with duties including the protection of appropriated funds from being misused for void, illegal and improvident activities.

The third petition (*Rosales* petition) was filed on 19 August 2016 by the former chairperson of the Commission on Human Rights, Loretta Ann Paragas –Rosales; Hilda B. Narciso; Aida F. Santos-Maranan; Jo-Ann Q. Maglipon; Zenaida S. Mique; Fe B. Mangahas; Ma. Cristina P. Bawagan; Mila D. Aguilar; Minerva G. Gonzales; Ma. Cristina V. Rodriguez; Francisco E. Rodrigo, Jr.; Louie G. Crismo; Abdulmari De Leon Imao, Jr.; and Liwayway D. Arce. All the petitioners sued as victims of allegedly State-sanctioned human rights violations during Martial Law.

The fourth petition (*Alvarez* petition) was filed on 22 August 2016 by Former Senator Heherson T. Alvarez; Joel C. Lamangan, a martial law

⁹ Id.

victim; Francis X. Manglapus; Edilberto C. De Jesus; Belinda O. Cunanan; Cecilia G. Alvarez; Rex De Garcia Lores; Arnold Marie Noel Sr.; Carlos Manuel; Edmund S. Tayao; Danilo P. Olivares; Noel F. Trinidad; Jesus Dela Fuente; Rebecca M. Quijano; Fr. Benigno Beltran, SVD; Roberto S. Verzola; Augusto A. Legasto, Jr.; Julia Kristina P. Legasto, all of whom came to court Filipino citizens and tax payers.

The fifth petition (*Baniaga* petition) was filed on 22 August 2016 by Zaira Patricia B. Baniaga, John Arvin Buenaagua, Joanne Rose Sace Lim, and Juan Antonio, also as Filipino citizens and taxpayers.

The Respondents are Honorable Salvador C. Medialdea, in his capacity as the Executive Secretary of the Republic of the Philippines; Honorable Delfin N. Lorenzana, in his capacity as the Secretary of the Department of National Defense; General Ricardo R. Visaya, in his capacity as Chief of Staff of the Armed Forces of the Philippines; Rear Admiral Ernesto C. Enriquez, in his capacity as Deputy Chief of Staff for Reservist and Retiree Affairs of the Armed Forces of the Philippines; Lt. Gen. Ernesto G. Carolina (Ret.), in his capacity as Administrator of the Philippine Veterans Affairs Office (PVAO); and the heirs of Marcos.

All the contentions espoused by the five petitions pivot around the alleged grave abuse of discretion committed by public respondents when they allowed the burial of the remains of the Former President Marcos at the *Libingan ng mga Bayani*.

All the petitioners argue that the Memorandum and Directive for the burial mock and are in contravention of Republic Act No. 289 (An Act Providing for the Construction of a National Pantheon for Presidents of the Philippines, National Heroes and Patriots of the Country), which petitioners argue created the *Libingan ng mga Bayani*. They cite Section 1 of the statute that the purpose of the construction of the National Pantheon is “to perpetuate the memory of all presidents of the Philippines, national heroes and patriots for the inspiration and emulation of this generation and of generations still unborn.”¹⁰ The petitioners contend that the Former President’s transgressions against the Filipino people hardly make him an inspiration and do not make him worthy of emulation by this generation and the next.¹¹ The petitioners further aver that the public respondents had no authority to allow the burial, considering that only members of the Board of

¹⁰ Section 1 of R.A. No. 289 (An Act Providing for the Construction of a National Pantheon for Presidents of the Philippines, National heroes and Patriots of the Country)

¹¹ Lagman Petition, p. 12; Alvarez Petition, p. 31

the National Pantheon may cause to be interred therein the mortal remains of all presidents, national heroes, and patriots.¹² The Board is composed of the Secretary of Interior, Secretary of Public Works and Communications, and the Secretary of Education, and two private citizens to be appointed by the President of the Philippines with the consent of the Commission on Appointments.¹³

Petitioners who took part in the *Ocampo*, *Lagman* and *Rosales* petitions maintain that the Memorandum and the Directive are inconsistent with Republic Act No. 10368 (Human Rights Victims Reparation and Recognition Act of 2013), a law which serves as an indubitable validation by the Legislative and Executive departments of the widespread human rights violations attributable to the late President Marcos under his martial law regime.¹⁴ In their petitions, great weight is attributed to Section 2 of the law, which reads:

“x x x [I]t is hereby declared the policy of the State to recognize the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986 and restore the victims’ honor and dignity. The State hereby acknowledges its moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime.”¹⁵

Thus, for petitioners, allowing the burial is inconsistent with the declared policy of the State. The *Lagman* Petition in particular, espouses the view that R.A. No. 10368 amended the burial requirements and entitlements issued by the Armed Forces of the Philippines respecting the *Libingan ng mga Bayani* by excluding the Former President from being interred therein.¹⁶ Similarly, those who took part in the *Ocampo* and the *Lagman* petitions assert that a hero’s burial at the *Libingan ng mga Bayani* for the Former President is contrary to public policy, premised on the fact that he committed crimes involving moral turpitude against the Filipino People.¹⁷

The *Ocampo*, *Rosales*, and *Alvarez* petitions attack the constitutionality of the Memorandum and Directive. Petitioners therein

¹² Baniaga Petition, p. 10.

¹³ Sec. 2, R.A. No. 289.

¹⁴ Lagman Petition, p. 15.

¹⁵ Sec. 2 R.A. No. 10368.

¹⁶ Lagman Petition, p. 16.

¹⁷ *Ocampo* Petition, p. 21, *Lagman* Petition, p. 12.

contend that a burial at the *Libingan ng mga Bayani* will amount to a denial of the history of authoritarian rule and a condonation of the abuses committed by the Marcos Regime.¹⁸ For those who took part in the *Rosales* petition, burying the Former President at the *Libingan ng mga Bayani*, a place supposedly for heroes and patriots, is to desecrate the *raison d'être* of the 1987 Constitution.¹⁹ That the burial of the Former President at the *Libingan ng Bayan* runs counter to judicial pronouncements is another argument raised in the *Rosales* and the *Lagman* petitions. In support of such argument, judicial decisions of the Philippine Supreme Court, as well as foreign courts, which established the culpability of Former President Marcos for human rights atrocities and plunder were cited.²⁰

The *Baniaga* and the *Alvarez* petitions advance a related argument, with petitioners therein maintaining that the Memorandum and Directive are violative of the Faithful Execution Clause of the 1987 Constitution.²¹ Citing Article VII Section 17 of the Constitution, petitioners argue that President Duterte, acting through his alter ego, respondent Sec. Lorenzana, would not be faithfully executing R.A. No. 10368 and R.A. No. 289 by burying Former President Marcos in the *Libingan ng mga Bayani*.²² The *Baniaga* petition likewise argues that the Memorandum and Directive violate the equal protection guaranteed by the Constitution,²³ given that the Former President is in a different class from the other Presidents already buried in the *Libingan ng mga Bayani*.

Tackling the issue from a broader perspective, the parties who took part in the *Rosales* petition maintain that a burial at the *Libingan ng mga Bayani* violates the international duties of the Philippines to combat impunity and to guarantee non-repetition of violations of international human rights law.²⁴ Petitioners insist that allowing the burial could potentially hinder and violate human rights victims' remedies and could lead to a distortion of the findings of previous authorities thus, creating an injustice to the victims rightly afforded a remedy from the Former President's actions.²⁵ For the petitioners, such injustice would put the Philippines in violation of the International Covenant on Civil and Political Rights, specifically Section 2 thereof, *viz*:

¹⁸ Rosales Petition, p. 20.

¹⁹ *Id.* at 29.

²⁰ Lagman Petition, p. 17; Rosales Petition, p. 37, Rosales Petition, pp. 37-44.

²¹ Baniaga Petition, p. 14.

²² *Id.* at 14; Alvarez Petition, p. 11.

²³ *Id.* at 13.

²⁴ Rosales Petition, p. 60.

²⁵ *Id.* at 62.

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been omitted by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

At the core of all the controversy is AFP Regulation G 161-373: Allocation of Cemetery Plots at the LNMB, as amended by AFP Regulation G 161-375. The regulation was issued on 9 April 1986 by then AFP Chief of Staff Fidel V. Ramos and then President Corazon Aquino. The said Regulation provides that the following deceased persons are qualified to be interred in the *Libingan ng mga Bayani*:

1. Medal of Valor awardees
2. Presidents or commanders-in-chief AFP
3. Secretaries of National Defense
4. Chiefs of staff, AFP
5. Generals/ flag officers of the AFP
6. Active and retired military personnel of the AFP
7. Former AFP members who laterally entered/joined the Philippine National Police and the Philippine Coast Guard
8. Veterans of Philippine Revolution of 1896, World War I, World War II and recognized guerillas
9. Government dignitaries, statesmen, national artists and other deceased persons whose interment or re-interment has been approved by the Commander-in-chief, Congress, or the Secretary of National Defense
10. Former Presidents, secretaries of defense, CSAFP, generals/flag officers, dignitaries, statesmen, national artists, widows of former presidents, secretaries of national defense and chief of staff

In the same vein, the regulation disallows the interment in the *Libingan ng mga Bayani* of the following:

1. Personnel who were dishonorably separated, reverted, and/or discharged from the service
2. Authorized personnel who were convicted by final judgment of an offense involving moral turpitude

Petitioners who took part in the *Ocampo*, *Rosales*, and *Baniaga* petitions submit that notwithstanding the fact that Ferdinand E. Marcos was



a Former President, he is disqualified from being buried in the *Libingan ng mga Bayani* because he falls under the category of “personnel who were dishonorably separated or discharged from the service”.²⁶ Therein petitioners emphasize that the Former President was deposed and removed from the presidency because of the atrocities he committed during his tenure. Insisting that such facts are matters of judicial notice, petitioners maintain that such removal through revolution is tantamount to being dishonorably separated or discharged from the service, thereby effectively disqualifying him from being buried at the *Libingan ng mga Bayani*. Alternatively, the *Ocampo* petition attacks the legality and constitutionality of the AFP Regulation. Petitioners therein submit that the AFP Regulation unduly expands the parameters of R.A. No. 289 by allowing one unworthy to be considered an inspiration and unworthy of emulation by generations to be buried at the *Libingan ng mga Bayani*.²⁷

Finally, for those who took part in the *Ocampo*, *Lagman*, and *Rosales* petitions, even if it be conceded that Former President Marcos is qualified under the law and the AFP Regulation, whatever benefits and courtesies due him have already been waived and contracted away by the Marcos family when they agreed to bury him in Batac, Ilocos Norte pursuant to their agreement with then President Fidel V. Ramos. It was likewise submitted that the 1993 Agreement should be treated as a compromise agreement that was voluntarily entered into by the Philippine Government and the Marcos family, making it the law between the parties.²⁸ Stated otherwise, petitioners contend that respondents are bound to observe the terms of the Agreement as it is a binding contract between the parties. Petitioners insist that the High Court should take judicial notice of such Agreement as it was an official act of the Executive Department.²⁹ Moreover, it is averred that an abandonment of the Agreement, a reboot of the entire process, by allowing the burial at the *Libingan ng mga Bayani* is tantamount to reliving the terror and horrors of the victims.³⁰

I join the opinion to dismiss the consolidated petitions for the issuance in their favor and against the respondents, of the special writ of certiorari. President Rodrigo R. Duterte did not gravely abuse his discretion, was neither whimsical nor capricious when upon assumption of the office to which he was elected he forthwith proceeded to implement his election promise to have the remains of the late President Ferdinand E. Marcos

²⁶ Baniaga Petition, p. 11; Rosales Petition, p. 37; Ocampo Petition, p. 15.

²⁷ Ocampo Petition, p. 25

²⁸ Rosales Petition, p. 68.

²⁹ Id. at 67.

³⁰ Ocampo Petition, p. 26.

buried in the *Libingan ng mga Bayani*.

This position is fixed and firmed by the origins of the petitions so impressively presented in the petition itself in G.R. No. 225973:

“10. During the campaign period for the 2016 Presidential Elections then candidate Rodrigo Duterte publicly announced that he will allow the burial of former President Ferdinand Marcos at the *Libingan ng mga Bayani*. He reiterated this public pronouncement when he became president without giving details on how this will be implemented, leaving the Marcoses to process the same with the proper authorities.

“11. These pronouncements were met with opposition by various sectors including victims or relatives of human rights violations of torture, illegal arrest, arbitrary detention, disappearances and summary executions during martial law. Family members of the thousands who died during martial law also protested these public pronouncements with the hope that the plan will not push through.”

As judicial admissions,³¹ petitioners state as fact that the burial of former President Marcos as the *Libingan ng mga Bayani* is a matter about which the Filipino public was consulted as a campaign promise of candidate Duterte who, when he became president redeemed the pledge.

Significantly, petitioners further admitted that they, as “the various sectors” participated in the election of options and met with opposition the pronouncements favoring the *Libingan* as burial of Marcos' remains and protested the public pronouncements of the promisor.

Thus did the petitioners admit that the determination of the issue can be, if not ought to be, left to the will of the people. True to the admission, petitioners sought to forge that will into the shape they hoped for. The petitioners objected against the publicly announced Marcos *Libingan* burial; they protested the pronouncement. Indeed the issue was made public and was resolved through a most political process, a most appropriate process: the election of the President of the Republic.³² A juxtaposition of two

³¹ Section 4, Rule 129 of the Revised Rules of Court:

Section 4. Judicial admissions. An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

A party may take judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding. (Spouses Binarao v. Plus Builders, Inc., G.R. No. 154430, June 16, 2006).

³² Rodrigo R. Duterte garnered a total of 16,601,997 votes; 6,623,822 votes more than his closest

concepts, people and suffrage, show this. In his treatise, as old as it is respected, Dean Vicente Sinco expounds:

The same meaning, that of all the citizens considered as a collective unit acting under a majority rule, is given to the term people in an Illinois decision which states that “in a representative government all powers of government belong ultimately to the people in their sovereign corporate capacity.” Obviously it is in this sense that the term people is used in the Constitution of the Philippines when it declares in its Article II thus: “The Philippines is a republican state. Sovereignty resides in the people and all governmental authority from them.”³³

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Suffrage, or the right to vote, is a political right. Different views have been expressed about its nature. One is that it is merely a privilege to be given or withheld by the law-making power in the absence of constitutional limitations. Another view considers it as a natural right included among the liberties guaranteed to every citizen in a republican form of government, and may not therefore be taken away from him except by due process of law. A third view maintains that the right of suffrage is one reserved by the people to a definite portion of the population possessing the qualifications prescribed in the constitution. This view is based on the theory that the sovereign political power in a democratic state remains with the people and is to be exercised only in the manner indicated by the constitution. Consequently, a person who belongs to the class to whom the constitution grants this right may not be deprived of it by any legislative act except by due process of law. It is in this sense that suffrage may be understood in the Philippines at present.³⁴ (Underscoring supplied)

The people or the qualified voters elected as president of the Philippines the candidate who made the election pronouncement, objected to by the persons who are now the petitioners, that he will allow the burial of former President Ferdinand Marcos at the *Libingan ng mga Bayani*.

As things are, it is hardly debatable that, by word and deed, petitioners have accepted that the issue they now, after losing the vote, present before the Court is a political issue, defined over and over again, by variations of

rival Mar Roxas who got 9,978,175 votes. The rest of the candidates got the following votes:

Jojo Binay – 5,416,140 votes
Miriam Defensor Santiago – 1,455,532 votes
Grace Poe – 9,100,991 votes
Roy Señeres – 25,779 votes

³³ Sinco, *Philippine Political Law: Principles and Concepts*, 10th Edition, pp. 8-9; Article II in the 1935 Constitution is now Sec. 1 of Article II of the 1987 Constitution.

³⁴ *Id.* at 402-403.

phrases that have one meaning:

“...What is generally meant, when it is said that a question is political, and not judicial, is that it is a matter which, is to be exercised by the people in their primary political capacity, or that it has been specifically delegated to some other department or particular officer of the government, with discretionary power to act. See *State vs. Cunningham*, 81 Wis. 497, 51 L. R. A. 561; *In Re Gunn*, 50 Kan. 155; 32 Pac. 470, 948, 19 L. R. A. 519; *Green vs. Mills*, 69 Fed. 852, 16, C. C. A. 516, 30 L. R. A. 90; *Fletcher vs. Tuttle*, 151 Ill. 41, 37 N. E. 683, 25 L. R. A. 143, 42 Am. St. Rep. 220. Thus the Legislature may in its discretion determine whether it will pass a law or submit a proposed constitutional amendment to the people. The courts have no judicial control over such matters, not merely because they involve political question, but because they are matters which the people have by the Constitution delegated to the Legislature. The Governor may exercise the powers delegated to him, free from judicial control, so long as he observes the laws and acts within the limits of the power conferred. His discretionary acts cannot be controllable, not primarily because they are of a political nature, but because the Constitution and laws have placed the particular matter under his control. But every officer under a constitutional government must act according to law and subject him to the restraining and controlling power of the people, acting through the courts, as well as through the executive or the Legislature. One department is just as representative as the other, and the judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action. The recognition of this principle, unknown except in Great Britain and America, is necessary, to the end that the government may be one of laws and not men'-words which Webster said were the greatest contained in any written constitutional document.” (pp. 411, 417; emphasis supplied.)

In short, the term “political question” connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words, in the language of *Corpus Juris Secundum* (supra), it refers to “those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government.” It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.³⁵

There were ripostes. They were feeble though; and, notably they concern not the political nature of the issue but rather the indications of the electoral response.

There was reference to the nitpicked significance of “majority” in the definition of “people” the argument being that the 16,601,997 votes in favor

³⁵ *Tañada v. Cuenco*, G.R. No. L-10520, 28 February 1957.



of the promising candidate is not the majority of the total number of those who voted for the position. What makes the observation specious is the fact that it was only candidate Duterte who made the serious and specific promise of a *Libingan* burial for Marcos. The other four candidates for president were unclear about their preference. The votes for the four cannot be definitely counted as against the burial.

Referring to the variety of the electoral issues, there were those who submit that not all those who voted for Duterte did so because they favored the burial of Marcos at the *Libingan*. It is contended that the votes for Duterte were determined by items in his platform other than the burial issue. That may be plausible; but what cannot be questioned is that Duterte did not lose because of his burial pronouncement.

It was urged that the *Libingan* allowance was not a commitment to the nation, not a principled promise, a mere propaganda pitch. Thus, was the issue sought to be reduced as a promise made to be broken, treacherous trap for undiscerning electors. That the allegations are unfounded is clearly shown by the prefatory phrase in the memorandum³⁶ of respondent Secretary of National Defense Delfin N. Lorenzana to respondent Gen. Ricardo R. Visaya, AFP:

In compliance to the verbal order of the President to implement his election campaign promise to have the remains of the late former President Ferdinand E. Marcos be interred at the Libangan ng mga Bayani, kindly undertake the necessary planning and preparations to facilitate the coordination of all agencies concerned specially the provisions for ceremonial and security requirements. Coordinate closely with the Marcos family regarding the date of interment and the transport of the late former President's remains from Ilocos Norte to the LNMB.

The overall OPR for this activity will be the PVAO since the LNMB is under its supervision and administration. PVAO shall designate the focal person for this activity who shall be the overall overseer of the event.

Submit your Implementing Plan to my office as soon as possible.

The Marcos internment at *Libingan*, borrowing the petitioners' words, was a principled commitment which President Duterte firmly believed was so when he offered it to the Filipino voters whom he considered capable of intelligent choice such that upon election he had to "implement his election promise." That, precisely, resulted in the filing of the consolidated petitions before the Court.

³⁶ Annex "A" (Petition in G.R. 225984).



Quite obviously, the petitions were submitted because the petitioners did not prevail in the political exercise that was the National Elections of 2016. Right away, we have the reason why the petitions should be dismissed. The petitions with premises and prayer no different from those that were publicly debated, for or against, between and among the people including petitioners themselves proceeding to a conclusion unacceptable to them, cannot be pursued in lieu of the failed public submission.

Adamant in their position, petitioners nonetheless went to Court with their cause now in legal clothing. Still, petitioners cannot thereby bring the matter within the adjudication of the Court.

There was heavy reference to R.A. No. 10368, titled "An Act Providing for Reparation and Recognition of Victims of Human Rights Violations during the Marcos Regime, Documentations of Said Violations, Appropriating Funds Therefor And For Other Purposes." Notably, the petitioners, as they described themselves, are the same persons for whose favor the statute was enacted; the reasons they mention in their petition consisting of the provisions of the Constitution and of the international agreement are the same reasons mentioned in Section 2 of the statute in the "Declaration Policy." Quite specifically the statute defines "Human Rights Violation" as any act or omission committed during the period from September 21, 1972 to February 25, 1986 carried out pursuant to the declaration of Martial Law by former President Ferdinand E. Marcos including warrantless arrest, ASSO, PCO, PDA, torture, killing, involuntary disappearances, illegal takeover of business, confiscation of property, sexual offenses and "analogous" abuses. And, it is provided that Human Rights Violations Victim (HRVV) refers to a person whose human rights were violated by persons acting in an official capacity and "to qualify for reparations "the human rights violation must have been committed during the period from September 21, 1972 to February 25, 1986".

Clearly, as proclaimed human rights victims, they squarely fall under the definition of R.A. No.10368. For the same reasons and basis that they are now before this Court, petitioners have already, by the proper political body, been given the recognition and reparation due them, in specific, direct and detailed provisions that even include the creation of a Human Rights Victims' Claims Board to implement the recognition and reparation granted to them by statute.

R.A. No. 10368 is a complete law. It has defined their rights, not just for reparation for damages suffered as HRV's but also they will have by the



law their names enshrined in a Roll of Human Rights Victims. A Memorial/Museum/Library shall be established in their Honor. A compendium of their sacrifice shall be prepared and be readily viewed in the internet. There will even be a Human Rights Violations Victims' Memorial Commission. The definition of what their rights are limits any further inclusions except, perhaps, through the same legislative action. There too is significance in the "sunset clause" of the law which states that the Human Rights Victims' Claims Board shall complete its work within two years from the effectivity of the IRR promulgated by it, after which it shall become functus officio. By its concrete and definite terms, R.A. No. 10368 is a completed exercise of legislative wisdom. The Court cannot allow the collected petitions at bar to interfere with that wisdom.

The urgings for judicial action inspite of the limits of R.A. No. 10368 can be gleaned from the presentation by petitioners during the oral arguments. They testified on the details of their suffering during the term of President Ferdinand E. Marcos and pleaded that the burial of Marcos at the *Libingan ng mga Bayani* would "retraumatize" them. They supported the claim and prayer with the submission that their suffering accompanied by the other commission of Marcos, was a national experience that became sovereign contempt culminating in a revolt against Marcos and eventually the "constitutionalization" of both sin and sinner. Hence, the prayer that the allowance of the burial at the *Libingan ng mga Bayani* of the constitutionalized offender is in grave abuse of discretion.

Relative to the petitioners' prayer, an explanation was made by the Solicitor General:

Justice Caguioa:

Was this a unilateral act on the part of the President or was this a request from the Marcos family?

Solicitor General Calida:

I do not know the circumstances in which this promise was made, Your Honor, but if I know President Duterte, he already had a plan for the Philippines, a plan to unite all the Filipinos of different persuasions, ideologist, in fact, this policy of reconciliation is now manifested in the recent Oslo, Norway talks, Your Honor. He wants an inclusive government, Your Honor.

Justice Caguioa:

So, what are we saying here that the testimonials made by human



rights victims and other people like them which the Claims Board has numbered at around seventy-five thousand (75), those pain, the pain that they feel they do not reflect the national psyche today, is that what you're saying?

Solicitor General Calida:

Your Honor, I'm human being I feel their pain, but we are in a Court of law, Your Honor. And there are venues where that pain will be expressed by the victims, and as far as I know, making them recount their horrible experience is a form of retraumatization.

Justice Caguioa:

I understand from their testimonies and the summation made by the human rights, what is retraumatizing them is the act of burying President Marcos, do you dispute that?

Solicitor General Calida:

I do not agree with that, Your Honor.

Justice Caguioa:

When the President made this decision to allow the interment of President Marcos in the *Libingan*, did they also considered the injury that the Marcos family would suffer if the burial did not take place?

x x x x

Solicitor General Calida:

Well, the urgency, Your Honor, is that President Duterte has already stated that among his policies, Your Honor, is the policy of reconciliation, national healing, and any day that is, shall I rephrase if Your Honor. This is the policy that he has adopted: the remains of Marcos should now be interred at the *Libingan* even the 218 Congressmen, Your Honor, of the 15th Congress agreed that this place is the most fitting place where former President Marcos will be buried, Your Honor.

Justice Caguioa:

And this wisdom, this decision is over and above the pain and sufferings of the human rights victims do I understand that correctly as a political decision that he made?

Solicitor General Calida:

Well, the President will take every matter into consideration, Your Honor, and I assume he considered that too.

Justice Caguioa:

Alright, thank you.³⁷

Whether the policy of healing and reconciliation “over and above the pain and suffering of the human rights victims” is in grave abuse of executive discretion or not is answered by the evidently substantial Marcos vote during the fresh and immediately preceding national elections of 2016. The election result is a showing that, while there may have once been, there is no longer a national damnation of President Ferdinand E. Marcos; that the “constitutionalization” of the sin and its personification is no longer of national acceptance. A Marcos vote came out of the elections, substantial enough to be a legitimate consideration in the executive policy formulation. To go back, a *Libingan* Burial for Marcos was a promise made by President Duterte, which promise was opposed by petitioners, in spite of which opposition, candidate Duterte was elected President.

All in all, the redemption of an election pledge and the policy which has basis in the result of the election, cannot be tainted with grave abuse of discretion. As things are the issue presented by the petitioners should not even be touched by the Court since it is a political question already resolved politically.

I vote to DISMISS the consolidated petitions before this Court.



³⁷

TSN of Oral Arguments, Wednesday 7 September 2016 10:00 a.m.