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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,*
Petitioners,

- versus -

REAR ADMIRAL ERNESTO C.
ENRIQUEZ (in his capacity as the Deputy
Chief of Staff for Reservist and Retiree
Affairs, Armed Forces of the Philippines),
The Grave Services Unit (Philippine
Army), and GENERAL RICARDO R.
VISAYA (in his capacity as the Chief of
Staff, Armed Forces of the Philippines),
DEFENSE SECRETARY DELFIN
LORENZANA, and HEIRS OF
FERDINAND E. MARCOS, represented
by his surviving spouse Imelda Romualdez
Marcos,
Respondents.

X ----- X

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

RENE A.V. SAGUISAG, SR., RENE A.Q. SAGUISAG, JR., RENE A.C. SAGUISAG III,

Intervenors.

X ----- X
REP. EDCEL C. LAGMAN, in his personal and official capacities and as a member of Congress and as the Honorary Chairperson of the Families of Victims of Involuntary Disappearance (FIND); FAMILIES OF VICTIMS OF INVOLUNTARY DISAPPEARANCE (FIND), represented by its Co-Chairperson, NILDA L. SEVILLA; REP. TEDDY BRAWNER BAGUILAT, JR.; REP. TOMASITO S. VILLARIN; REP. EDGAR R. ERICE; and REP. EMMANUEL A. BILLONES ,
Petitioners,

G.R. No. 225984

- versus -

EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA; DEFENSE SECRETARY DELFIN N. LORENZANA; AFP CHIEF OF STAFF LT. GEN. RICARDO R. VISAYA; AFP DEPUTY CHIEF OF STAFF REAR ADMIRAL ERNESTO C. ENRIQUEZ; and HEIRS OF FERDINAND E. MARCOS, represented by his surviving spouse IMELDA ROMUALDEZ MARCOS,

Respondents.

G.R. No. 226097

X ----- X
LORETTA ANN PARGAS-ROSALES, HILDA B. NARCISO, AIDA F. SANTOS-MARANAN, JO-ANN Q. MAGLIPON, ZENAIDA S. MIQUE, FE B. MANGAHAS, MA. CRISTINA P. BAWAGAN, MILA D. AGUILAR, MINERVA G. GONZALES, MA. CRISTINA V. RODRIGUEZ, LOUIE G.

**CRISMO, FRANCISCO E. RODRIGO,
JR., LIWAYWAY D. ARCE, and
ABDULMARI DE LEON IMAO, JR.,**
Petitioners,

- versus -

**EXECUTIVE SECRETARY SALVADOR
C. MEDIALDEA, DEFENSE
SECRETARY DELFIN LORENZANA,
AFP DEPUTY CHIEF OF STAFF REAR
ADMIRAL ERNESTO C. ENRIQUEZ,
AFP CHIEF OF STAFF LT. GEN.
RICARDO R. VISAYA, and PHILIPPINE
VETERANS AFFAIRS OFFICE (PVAO)
Administrator Lt. Gen. Ernesto G.
Carolina (Ret.),**

Respondents.

X ----- X
**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,**

G.R. No. 226116

Petitioners,

- versus -

**EXECUTIVE SECRETARY SALVADOR
C. MEDIALDEA, DEFENSE
SECRETARY DELFIN LORENZANA,
AFP CHIEF OF STAFF LT. GEN.
RICARDO R. VISAYA, AFP DEPUTY
CHIEF OF STAFF REAR ADMIRAL
ERNESTO C. ENRIQUEZ, and**

**PHILIPPINE VETERANS AFFAIRS
OFFICE (PVAO) of the DND,**

Respondents.

X ----- X
**ZAIRA PATRICIA B. BANIAGA, JOHN
ARVIN BUENAAGUA, JOANNE ROSE
SACE LIM, JUAN ANTONIO RAROGAL
MAGALANG,**

Petitioners,

G.R. No. 226117

- versus -

**SECRETARY OF NATIONAL DEFENSE
DELFIN N. LORENZANA, AFP CHIEF
OF STAFF RICARDO R. VISAYA,
ADMINISTRATOR OF THE
PHILIPPINE VETERANS AFFAIRS
OFFICE ERNESTO G. CAROLINA,**

Respondents.

X ----- X
ALGAMAR A. LATIPH,

Petitioner,

G.R. No. 226120

- versus -

**SECRETARY DELFIN N. LORENZANA,
sued in his capacity as Secretary of
National Defense, LT. GEN. RICARDO R.
VISAYA, in his capacity as Chief of Staff
of the Armed Forces of the Philippines and
LT. GEN. ERNESTO G. CAROLINA
(ret.), in his capacity as Administrator,
Philippine Veterans Affairs Office (PVAO),**

Respondents.

X ----- X
**LEILA M. DE LIMA, in her capacity as
SENATOR OF THE REPUBLIC and as
TAXPAYER,**

Petitioner,

G.R. No. 226294

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,**
LEONARDO-DE CASTRO,

- versus -

** On official leave.

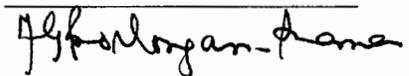
HON. SALVADOR C. MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, AFP CHIEF OF STAFF LT. GEN. RICARDO R. VISAYA, UNDERSECRETARY ERNESTO G. CAROLINA, in his capacity as PHILIPPINE VETERANS AFFAIRS OFFICE (PVAO) ADMINISTRATOR and B/GEN. RESTITUTO L. AGUILAR, in his capacity as SHRINE CURATOR AND CHIEF, VETERANS MEMORIAL AND HISTORICAL DIVISION and HEIRS OF FERDINAND EDRALIN MARCOS,

Respondents.

BRION, PERALTA, BERSAMIN, DEL CASTILLO, PEREZ, MENDOZA, REYES, PERLAS-BERNABE, LEONEN, JARDELEZA, and CAGUIOA, JJ.

Promulgated:

November 8, 2016



X-----X

DECISION

PERALTA, J.:

In law, as much as in life, there is need to find closure. Issues that have lingered and festered for so long and which unnecessarily divide the people and slow the path to the future have to be interred. To move on is not to forget the past. It is to focus on the present and the future, leaving behind what is better left for history to ultimately decide. The Court finds guidance from the Constitution and the applicable laws, and in the absence of clear prohibition against the exercise of discretion entrusted to the political branches of the Government, the Court must not overextend its readings of what may only be seen as providing tenuous connection to the issue before it.

Facts

During the campaign period for the 2016 Presidential Election, then candidate Rodrigo R. Duterte (*Duterte*) publicly announced that he would allow the burial of former President Ferdinand E. Marcos (*Marcos*) at the *Libingan Ng Mga Bayani (LNMB)*. He won the May 9, 2016 election, garnering 16,601,997 votes. At noon of June 30, 2016, he formally assumed his office at the Rizal Hall in the Malacañan Palace.



On August 7, 2016, public respondent Secretary of National Defense Delfin N. Lorenzana issued a Memorandum to the public respondent Chief of Staff of the Armed Forces of the Philippines (*AFP*), General Ricardo R. Visaya, regarding the interment of Marcos at the LNMB, to wit:

Subject: Interment of the late Former President Ferdinand Marcos at LNMB

Reference: Verbal Order of President Rodrigo Duterte on July 11, 2016.

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

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

Submit your Implementing Plan to my office as soon as possible.¹

On August 9, 2016, respondent *AFP* Rear Admiral Ernesto C. Enriquez issued the following directives to the Philippine Army (*PA*) Commanding General:

SUBJECT: Funeral Honors and Service

TO: Commanding General, Philippine Army
Headquarters, Philippine Army
Fort Bonifacio, Taguig City
Attn: Assistant Chief of Staff for RRA, G9

1. Pursuant to paragraph 2b, SOP Number 8, GHQ, *AFP* dated 14 July 1992, provide services, honors and other courtesies for the late **Former President Ferdinand E. Marcos** as indicated:

[x] Vigil **-Provide vigil-**
[x] Bugler/Drummer
[x] Firing Party
[x] Military Host/Pallbearers
[x] Escort and Transportation
[x] Arrival/Departure Honors

¹ See Annex "A" of Petition for Prohibition of Lagman, et al., G.R. No. 225984.



2. His remains lie in state at **Ilocos Norte**
3. **Interment** will take place at the **Libingan ng mga Bayani, Ft. Bonifacio, Taguig City. Date: TBAL.**
4. **Provide all necessary military honors accorded for a President**
5. POC: **Administrator, PVAO**
BY COMMAND OF GENERAL VISAYA²

Dissatisfied with the foregoing issuance, the following were filed by petitioners:

1. Petition for *Certiorari* and Prohibition³ filed by Saturnino Ocampo and several others,⁴ in their capacities as human rights advocates or human rights violations victims as defined under Section 3 (c) of Republic Act (R.A.) No. 10368 (*Human Rights Victims Reparation and Recognition Act of 2013*).

2. Petition for *Certiorari-in-Intervention*⁵ filed by Rene A.V. Saguisag, Sr. and his son,⁶ as members of the Bar and human rights lawyers, and his grandchild.⁷

3. Petition for Prohibition⁸ filed by Representative Edcel C. Lagman, in his personal capacity, as member of the House of Representatives and as Honorary Chairperson of Families of Victims of Involuntary Disappearance (FIND), a duly-registered corporation and organization of victims and families of enforced disappearance, mostly during the martial law regime of the former President Marcos, and several others,⁹ in their official capacities as duly-elected Congressmen of the House of Representatives of the Philippines.

4. Petition for Prohibition¹⁰ filed by Loretta Ann Pargas-Rosales, former Chairperson of the Commission on Human Rights, and several others,¹¹

² See Annex "B," *id.* (Emphasis in the original)

³ G.R. No. 225973.

⁴ TRINIDAD H. REPUNO, BIENVENIDO LUMBERA, BONIFACIO P. ILAGAN, NERI JAVIER COLMENARES, MARIA CAROLINA P. ARAULLO, M.D., SAMAHAN NG EX-DETAINEES LABAN SA DETENSYON AT ARESTO (SELDA) represented by DIONITO CABILLAS, CARMENCITA M. FLORENTINO, RODOLFO DEL ROSARIO, FELIX C. DALISAY and DANILO M. DELA FUENTE.

⁵ G.R. No. 225973.

⁶ RENE A. Q. SAGUISAG, JR.

⁷ RENE A. C. SAGUISAG, III.

⁸ G.R. No. 225984.

⁹ FIND CO-CHAIRPERSON, NILDA L. SEVILLA, REP. TEDDY BRAWNER BAGUILAT, JR., REP. TOMASITO S. VILLARIN, REP. EDGAR R. ERICE and REP. EMMANUEL A. BILLONES.

¹⁰ G.R. No. 226097

¹¹ HILDA B. NARCISO, AIDA F. SANTOS-MARANAN, JO-ANN Q. MAGLIPON, ZENAIDA S. MIQUE, FE B. MANGAHAS, MA. CRISTINA P. BAWAGAN, MILA D. AGUILAR, MINERVA G. GONZALES, MA. CRISTINA V. RODRIGUEZ, LOUUE G. CRISMO, FRANCISCO E. RODRIGO, JR., LIWAYWAY D. ARCE and ABDULMARI DE LEON IMAO, JR.

suing as victims of State-sanctioned human rights violations during the martial law regime of Marcos.

5. Petition for Mandamus and Prohibition¹² filed by Heherson T. Alvarez, former Senator of the Republic of the Philippines, who fought to oust the dictatorship of Marcos, and several others,¹³ as concerned Filipino citizens and taxpayers.

6. Petition for *Certiorari* and Prohibition¹⁴ filed by Zaira Patricia B. Baniaga and several others,¹⁵ as concerned Filipino citizens and taxpayers.

7. Petition for *Certiorari* and Prohibition¹⁶ filed by Algamar A. Latiph, former Chairperson of the Regional Human Rights Commission, Autonomous Region in Muslim Mindanao, by himself and on behalf of the *Moro*¹⁷ who are victims of human rights during the martial law regime of Marcos.

8. Petition for *Certiorari* and Prohibition¹⁸ filed by Leila M. De Lima as member of the Senate of the Republic of the Philippines, public official and concerned citizen.

Issues

Procedural

1. Whether President Duterte's determination to have the remains of Marcos interred at the LNMB poses a justiciable controversy.
2. Whether petitioners have *locus standi* to file the instant petitions.
3. Whether petitioners violated the doctrines of exhaustion of administrative remedies and hierarchy of courts.

¹² G.R. No. 226116.

¹³ JOEL C. LAMANGAN, FRANCIS X. MAGLAPUS, EDILBERTO C. DE JESUS, BELINDA O. CUNANAN, CECILIA GUIDOTE ALVAREZ, REX DEGRACIA LORES, SR., ARNOLD MARIE NOEL, CARLOS MANUEL, EDMUND S. TAYAO, DANILO P. OLIVARES, NOEL F. TRINIDAD, JESUS DELA FUENTE, REBECCA M. QUIJANO, FR. BENIGNO BELTRAN, SVD, ROBERTO S. VERZOLA, AUGUSTO A. LEGASTO, JR. and JULIA KRISTINA P. LEGASTO

¹⁴ G.R. No. 226117.

¹⁵ JOHN ARVIN BUENAAGUA, JOANNE ROSE SACE LIM, and JUAN ANTONIO RAROGAL MAGALANG

¹⁶ G.R. No. 226120.

¹⁷ Defined as native peoples who have historically inhabited Mindanao, Palawan and Sulu, who are largely of the Islamic Faith, under Sec. 4, par. d.[8], RA 9710 otherwise known as *The Magna Carta of Women*.

¹⁸ G.R. No. 226294.

Substantive

1. Whether the respondents Secretary of National Defense and AFP Rear Admiral committed grave abuse of discretion, amounting to lack or excess of jurisdiction, when they issued the assailed memorandum and directive in compliance with the verbal order of President Duterte to implement his election campaign promise to have the remains of Marcos interred at the LNMB.

2. Whether the issuance and implementation of the assailed memorandum and directive violate the Constitution, domestic and international laws, particularly:

(a) Sections 2, 11, 13, 23, 26, 27 and 28 of Article II, Section 1 of Article III, Section 17 of Article VII, Section 1 of Article XI, Section 3(2) of Article XIV, and Section 26 of Article XVIII of the 1987 Constitution;

(b) R.A. No. 289;

(c) R.A. No. 10368;

(d) AFP Regulation G 161-375 dated September 11, 2000;

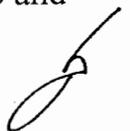
(e) The International Covenant on Civil and Political Rights;

(f) The “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” of the United Nations (*U.N.*) General Assembly; and

(g) The “Updated Set of Principles for Protection and Promotion of Human Rights through Action to Combat Impunity” of the U.N. Economic and Social Council;

3. Whether historical facts, laws enacted to recover ill-gotten wealth from the Marcoses and their cronies, and the pronouncements of the Court on the Marcos regime have nullified his entitlement as a soldier and former President to interment at the LNMB.

4. Whether the Marcos family is deemed to have waived the burial of the remains of former President Marcos at the LNMB after they entered into an agreement with the Government of the Republic of the Philippines as to the conditions and procedures by which his remains shall be brought back to and interred in the Philippines.



Opinion

The petitions must be dismissed.

Procedural Grounds

Justiciable controversy

It is well settled that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless the following requisites for judicial inquiry are present: (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have the standing to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the very *lis mota* of the case.¹⁹ In this case, the absence of the first two requisites, which are the most essential, renders the discussion of the last two superfluous.²⁰

An “actual case or controversy” is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.²¹ There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.²² Related to the requisite of an actual case or controversy is the requisite of “ripeness,” which means that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action.²³ Moreover, the limitation on the power of judicial review to actual cases and controversies carries the assurance that the courts will not intrude into areas committed to the other branches of government.²⁴ Those areas pertain to questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive

¹⁹ *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr.*, 721 Phil. 416, 518-519 (2013).

²⁰ *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 471 (2010).

²¹ *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr.*, *supra* note 19, at 519, citing *Province of North Cotabato, et al. v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), et al.*, 589 Phil. 387, 481 (2008).

²² *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), et al.*, *supra*.

²³ *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr.*, *supra* note 19, at 519-520.

²⁴ *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), et al.* *supra* note 21.



branch of the government.²⁵ As they are concerned with questions of policy and issues dependent upon the wisdom, not legality of a particular measure,²⁶ political questions used to be beyond the ambit of judicial review. However, the scope of the political question doctrine has been limited by Section 1 of Article VIII of the 1987 Constitution when it vested in the judiciary the power to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The Court agrees with the OSG that President Duterte's decision to have the remains of Marcos interred at the LNMB involves a political question that is not a justiciable controversy. In the exercise of his powers under the Constitution and the Executive Order (E.O.) No. 292 (otherwise known as the Administrative Code of 1987) to allow the interment of Marcos at the LNMB, which is a land of the public domain devoted for national military cemetery and military shrine purposes, President Duterte decided a question of policy based on his wisdom that it shall promote national healing and forgiveness. There being no taint of grave abuse in the exercise of such discretion, as discussed below, President Duterte's decision on that political question is outside the ambit of judicial review.

Locus standi

Defined as a right of appearance in a court of justice on a given question,²⁷ *locus standi* requires that a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.²⁸ Unless a person has sustained or is in imminent danger of sustaining an injury as a result of an act complained of, such proper party has no standing.²⁹ Petitioners, who filed their respective petitions for *certiorari*, prohibition and mandamus, in their capacities as citizens, human rights violations victims, legislators, members of the Bar and taxpayers, have no legal standing to file such petitions because they failed to show that they have suffered or will suffer direct and personal injury as a result of the interment of Marcos at the LNMB.

²⁵ *Tañada v. Cuenco*, 100 Phil. 1101 (1957); *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr.*, *supra* note 19, at 526.

²⁶ *Id.*; *id.*

²⁷ Black's Law Dictionary, 941(1991 6th ed.).

²⁸ *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr.*, *supra* note 19, at 527.

²⁹ *Id.* at 527, citing *La Bugal-B'Laan, Inc. v. Sec. Ramos*, 465 Phil. 860, 890 (2004).



Taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law.³⁰ In this case, what is essentially being assailed is the wisdom behind the decision of the President to proceed with the interment of Marcos at the LNMB. As taxpayers, petitioners merely claim illegal disbursement of public funds, without showing that Marcos is disqualified to be interred at the LNMB by either express or implied provision of the Constitution, the laws or jurisprudence.

Petitioners Saguisag, *et al.*,³¹ as members of the Bar, are required to allege any direct or potential injury which the Integrated Bar of the Philippines, as an institution, or its members may suffer as a consequence of the act complained of.³² Suffice it to state that the averments in their petition-in-intervention failed to disclose such injury, and that their interest in this case is too general and shared by other groups, such that their duty to uphold the rule of law, without more, is inadequate to clothe them with requisite legal standing.³³

As concerned citizens, petitioners are also required to substantiate that the issues raised are of transcendental importance, of overreaching significance to society, or of paramount public interest.³⁴ In cases involving such issues, the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence.³⁵ In *Marcos v. Manglapus*,³⁶ the majority opinion observed that the subject controversy was of grave national importance, and that the Court's decision would have a profound effect on the political, economic, and other aspects of national life. The *ponencia* explained that the case was in a class by itself, unique and could not create precedent because it involved a dictator forced out of office and into exile after causing twenty years of political, economic and social havoc in the country and who, within the short space of three years (from 1986), sought to return to the Philippines to die.

At this point in time, the interment of Marcos at a cemetery originally established as a national military cemetery and declared a national shrine would have no profound effect on the political, economic, and other aspects

³⁰ *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr.*, *supra* note 19, at 528.

³¹ Rene A.V. Saguisag, Sr. and Rene A.Q. Saguisag, Jr.

³² *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 762 (2006).

³³ *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618 (2000).

³⁴ *Kilosbayan v. Guingona*, G.R. No. 113375, May 5, 1994, 232 SCRA 110.

³⁵ *The Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015, 747 SCRA 1, 46.

³⁶ 258 Phil 479 (1989).



of our national life considering that more than twenty-seven (27) years since his death and thirty (30) years after his ouster have already passed. Significantly, petitioners failed to demonstrate a clear and imminent threat to their fundamental constitutional rights.

As human rights violations victims during the Martial Law regime, some of petitioners decry re-traumatization, historical revisionism, and disregard of their state recognition as heroes. Petitioners' argument is founded on the wrong premise that the LNMB is the National Pantheon intended by law to perpetuate the memory of all Presidents, national heroes and patriots. The history of the LNMB, as will be discussed further, reveals its nature and purpose as a national military cemetery and national shrine, under the administration of the AFP.

Apart from being concerned citizens and taxpayers, petitioners Senator De Lima, and Congressman Lagman, *et al.*³⁷ come before the Court as legislators suing to defend the Constitution and to protect appropriated public funds from being used unlawfully. In the absence of a clear showing of any direct injury to their person or the institution to which they belong, their standing as members of the Congress cannot be upheld.³⁸ They do not specifically claim that the official actions complained of, *i.e.*, the memorandum of the Secretary of National Defense and the directive of the AFP Chief of Staff regarding the interment of Marcos at the LNMB, encroach on their prerogatives as legislators.³⁹

Exhaustion of Administrative Remedies

Petitioners violated the doctrines of exhaustion of administrative remedies and hierarchy of courts. Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, one should have availed first of all the means of administrative processes available.⁴⁰ If resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought.⁴¹ For reasons of comity and convenience, courts of justice shy away from a dispute until the system of administrative redress has been

³⁷ REP. TEDDY BRAWNER BAGUILAT JR., REP. TOMASITO S. VILLARIN, REP. EDGAR R. ERICE and REP. EMMANUEL A. BILLONES.

³⁸ *BAYAN (Bagong Alyansang Makabayan) v. Exec. Sec. Zamora*, 396 Phil. 623, 648 (2000).

³⁹ *Biraogo v. The Philippine Truth Commission*, 651 Phil. 374, 439 (2010).

⁴⁰ *Maglalang v. Philippine Amusement and Gaming Corp.*, 723 Phil. 546, 556 (2013).

⁴¹ *Id.*



completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.⁴² While there are exceptions⁴³ to the doctrine of exhaustion of administrative remedies, petitioners failed to prove the presence of any of those exceptions.

Contrary to their claim of lack of plain, speedy, adequate remedy in the ordinary course of law, petitioners should be faulted for failing to seek reconsideration of the assailed memorandum and directive before the Secretary of National Defense. The Secretary of National Defense should be given opportunity to correct himself, if warranted, considering that AFP Regulations G 161-375 was issued upon his order. Questions on the implementation and interpretation thereof demand the exercise of sound administrative discretion, requiring the special knowledge, experience and services of his office to determine technical and intricate matters of fact. If petitioners would still be dissatisfied with the decision of the Secretary, they could elevate the matter before the Office of the President which has control and supervision over the Department of National Defense (*DND*).⁴⁴

Hierarchy of Courts

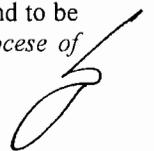
In the same vein, while direct resort to the Court through petitions for the extraordinary writs of *certiorari*, prohibition and mandamus are allowed under exceptional cases,⁴⁵ which are lacking in this case, petitioners cannot simply brush aside the doctrine of hierarchy of courts that requires such

⁴² *Id.* at 557.

⁴³ Nonetheless, the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. There are many accepted exceptions, such as: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings. (See *Republic v. Lacap*, 546 Phil. 87, 97-98 [2007]).

⁴⁴ Book IV, Chapter 1, Section 1 of the Administrative Code.

⁴⁵ Direct resort to the Court is allowed as follows (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (2) when the issues involved are of transcendental importance; (3) when cases of first impression are involved; and (4) when constitutional issues raised are better decided by the Court; (5) when the time element presented in the case cannot be ignored; (6) when the filed petition reviews the act of a constitutional organ; (7) when petitioners rightly claim that they had no other plain, speedy and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and (8) when the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy." (See *The Diocese of Bacolod v. Commission on Elections*, *supra* note 35, at 45-49.



petitions to be filed first with the proper Regional Trial Court (*RTC*). The *RTC* is not just a trier of facts, but can also resolve questions of law in the exercise of its original and concurrent jurisdiction over petitions for *certiorari*, prohibition and mandamus, and has the power to issue restraining order and injunction when proven necessary.

In fine, the petitions at bar should be dismissed on procedural grounds alone. Even if We decide the case based on the merits, the petitions should still be denied.

Substantive Grounds

There is grave abuse of discretion when an act is (1) done contrary to the Constitution, the law or jurisprudence or (2) executed whimsically, capriciously or arbitrarily, out of malice, ill will or personal bias.⁴⁶ None is present in this case.

I

The President's decision to bury Marcos at the LNMB is in accordance with the Constitution, the law or jurisprudence

Petitioners argue that the burial of Marcos at the LNMB should not be allowed because it has the effect of not just rewriting history as to the Filipino people's act of revolting against an authoritarian ruler but also condoning the abuses committed during the Martial Law, thereby violating the letter and spirit of the 1987 Constitution, which is a "post-dictatorship charter" and a "human rights constitution." For them, the ratification of the Constitution serves as a clear condemnation of Marcos' alleged "heroism." To support their case, petitioners invoke Sections 2,⁴⁷ 11,⁴⁸ 13,⁴⁹ 23,⁵⁰ 26,⁵¹

⁴⁶ *Almario, et al. v. Executive Secretary, et al.*, 714 Phil. 127, 169 (2013).

⁴⁷ SECTION 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

⁴⁸ SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

⁴⁹ SECTION 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

⁵⁰ SECTION 23. The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation.

⁵¹ SECTION 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.

27⁵² and 28⁵³ of Article II, Sec. 17 of Art. VII,⁵⁴ Sec. 3(2) of Art. XIV,⁵⁵ Sec. 1 of Art. XI,⁵⁶ and Sec. 26 of Art. XVIII⁵⁷ of the Constitution.

There is no merit to the contention.

As the Office of the Solicitor General (*OSG*) logically reasoned out, while the Constitution is a product of our collective history as a people, its entirety should not be interpreted as providing guiding principles to just about anything remotely related to the Martial Law period such as the proposed Marcos burial at the LNMB.

*Tañada v. Angara*⁵⁸ already ruled that the provisions in Article II of the Constitution are not self-executing. Thus:

By its very title, Article II of the Constitution is a "declaration of principles and state policies." The counterpart of this article in the 1935 Constitution is called the "basic political creed of the nation" by Dean Vicente Sinco. These principles in Article II are not intended to be self-executing principles ready for enforcement through the courts. They are used by the judiciary as aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws. As held in the leading case of *Kilosbayan, Incorporated vs. Morato*, the principles and state policies enumerated in Article II x x x are not "self-executing provisions, the disregard of which can give rise to a cause of action in the

⁵² SECTION 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

⁵³ SECTION 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

⁵⁴ SECTION 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

⁵⁵ SECTION 3. x x x

(2) They shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline, encourage critical and creative thinking, broaden scientific and technological knowledge, and promote vocational efficiency.

⁵⁶ SECTION 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

⁵⁷ SECTION 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.

A sequestration or freeze order shall be issued only upon showing of a *prima facie* case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.

⁵⁸ 338 Phil. 546 (1997).

courts. They do not embody judicially enforceable constitutional rights but guidelines for legislation."

In the same light, we held in *Basco vs. Pagcor* that broad constitutional principles need legislative enactments to implement them x x x.

x x x

The reasons for denying a cause of action to an alleged infringement of broad constitutional principles are sourced from basic considerations of due process and the lack of judicial authority to wade "into the uncharted ocean of social and economic policy making."⁵⁹

In the same vein, Sec. 1 of Art. XI of the Constitution is not a self-executing provision considering that a law should be passed by the Congress to clearly define and effectuate the principle embodied therein. As a matter of fact, pursuant thereto, Congress enacted R.A. No. 6713 ("*Code of Conduct and Ethical Standards for Public Officials and Employees*"), R.A. No. 6770 ("*The Ombudsman Act of 1989*"), R.A. No. 7080 ("*An Act Defining and Penalizing the Crime of Plunder*"), and Republic Act No. 9485 ("*Anti-Red Tape Act of 2007*"). To complement these statutes, the Executive Branch has issued various orders, memoranda, and instructions relative to the norms of behavior/code of conduct/ethical standards of officials and employees; workflow charts/public transactions; rules and policies on gifts and benefits; whistle blowing and reporting; and client feedback program.

Petitioners' reliance on Sec. 3(2) of Art. XIV and Sec. 26 of Art. XVIII of the Constitution is also misplaced. Sec. 3(2) of Art. XIV refers to the constitutional duty of educational institutions in teaching the values of patriotism and nationalism and respect for human rights, while Sec. 26 of Art. XVIII is a transitory provision on sequestration or freeze orders in relation to the recovery of Marcos' ill-gotten wealth. Clearly, with respect to these provisions, there is no direct or indirect prohibition to Marcos' interment at the LNMB.

The second sentence of Sec. 17 of Art. VII pertaining to the duty of the President to "*ensure that the laws be faithfully executed,*" which is identical to Sec. 1, Title I, Book III of the Administrative Code of 1987,⁶⁰ is likewise not violated by public respondents. Being the Chief Executive, the

⁵⁹ *Tañada v. Angara, supra*, at 580-581. (Citations omitted). The case was cited in *Tondo Medical Center Employees Ass'n v. Court of Appeals*, 554 Phil. 609, 625-626 (2007); *Bases Conversion and Development Authority v. COA*, 599 Phil. 455, 465 (2009); and *Representatives Espina, et al. v. Hon. Zamora, Jr. (Executive Secretary), et al.*, 645 Phil. 269, 278-279 (2010). See also *Manila Prince Hotel v. GSIS*, 335 Phil. 82, 101-102 (1997).

⁶⁰ Executive Order No. 292, s. 1987, Signed on July 25, 1987.



President represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his or her department.⁶¹ Under the Faithful Execution Clause, the President has the power to take "necessary and proper steps" to carry into execution the law.⁶² The mandate is self-executory by virtue of its being inherently executive in nature and is intimately related to the other executive functions.⁶³ It is best construed as an imposed obligation, not a separate grant of power.⁶⁴ The provision simply underscores the rule of law and, corollarily, the cardinal principle that the President is not above the laws but is obliged to obey and execute them.⁶⁵

Consistent with President Duterte's mandate under Sec. 17, Art. VII of the Constitution, the burial of Marcos at the LNMB does not contravene R.A. No. 289, R.A. No. 10368, and the international human rights laws cited by petitioners.

A. On R.A. No. 289⁶⁶

For the perpetuation of their memory and for the inspiration and emulation of this generation and of generations still unborn, R.A. No. 289 authorized the construction of a National Pantheon as the burial place of the mortal remains of all the Presidents of the Philippines, national heroes and patriots.⁶⁷ It also provided for the creation of a Board on National Pantheon to implement the law.⁶⁸

⁶¹ *Biraogo v. The Phil. Truth Commission of 2010*, 651 Phil. 374, 451 (2010).

⁶² *Philippine Constitution Association v. Enriquez*, G.R. No. 113105, 113174, 113766, and 113888, August 19, 1994, 235 SCRA 506, 552.

⁶³ *Rene A.V. Saguisag, et al. v. Executive Secretary Paquito N. Ochoa, Jr., et al.*, G.R. No. 212426 & 212444, January 12, 2016.

⁶⁴ *Almario, et al. v. Executive Secretary, et al.*, *supra* note 46, at 164, as cited in *Rene A.V. Saguisag, et al. v. Executive Secretary Paquito N. Ochoa, Jr.*, *supra* note 63.

⁶⁵ *Almario, et al. v. Executive Secretary, et al.*, *supra* note 46, at 164.

⁶⁶ Entitled "*An Act Providing for the Construction of a National Pantheon for Presidents of the Philippines, National Heroes and Patriots of the Country*," approved on June 16, 1948.

⁶⁷ Section 1.

⁶⁸ Sec. 2. There is hereby created a Board on National Pantheon composed of the Secretary of the Interior, the Secretary of Public Works and Communications and the Secretary of Education and two private citizens to be appointed by the President of the Philippines with the consent of the Commission on Appointments which shall have the following duties and functions:

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

(b) To order and supervise the construction thereon of uniform monuments, mausoleums, or tombs as the Board may deem appropriate;

(c) To cause to be interred therein the mortal remains of all Presidents of the Philippines, the national heroes and patriots;

(d) To order and supervise the construction of a suitable road leading to the said National Pantheon from the nearest national or provincial road; and

(e) To perform such other functions as may be necessary to carry out the purposes of this Act.

On May 12, 1953, President Elpidio R. Quirino approved the site of the National Pantheon at East Avenue, Quezon City.⁶⁹ On December 23, 1953, he issued Proclamation No. 431 to formally “withdraw from sale or settlement and reserve as a site for the construction of the National Pantheon a certain parcel of land located in Quezon City.” However, on July 5, 1954, President Magsaysay issued Proclamation No. 42 revoking Proclamation Nos. 422 and 431, both series of 1953, and reserving the parcels of land embraced therein for national park purposes to be known as Quezon Memorial Park.

It is asserted that Sec. 1 of R.A. No 289 provides for the legal standard by which a person's mortal remains may be interred at the LNMB, and that AFP Regulations G 161-375 merely implements the law and should not violate its spirit and intent. Petitioners claim that it is known, both here and abroad, that Marcos' acts and deed – the gross human rights violations, the massive corruption and plunder of government coffers, and his military record that is fraught with myths, factual inconsistencies, and lies – are neither worthy of perpetuation in our memory nor serve as a source of inspiration and emulation of the present and future generations. They maintain that public respondents are not members of the Board on National Pantheon, which is authorized by the law to cause the burial at the LNMB of the deceased Presidents of the Philippines, national heroes, and patriots.

Petitioners are mistaken. Both in their pleadings and during the oral arguments, they miserably failed to provide legal and historical bases as to their supposition that the LNMB and the National Pantheon are one and the same. This is not at all unexpected because the LNMB is distinct and separate from the burial place envisioned in R.A. No 289. The parcel of land subject matter of President Quirino's Proclamation No. 431, which was later on revoked by President Magsaysay's Proclamation No. 42, is different from that covered by Marcos' Proclamation No. 208. The National Pantheon does not exist at present. To date, the Congress has deemed it wise not to appropriate any funds for its construction or the creation of the Board on National Pantheon. This is indicative of the legislative will not to pursue, at the moment, the establishment of a singular interment place for the mortal remains of all Presidents of the Philippines, national heroes, and patriots. Perhaps, the Manila North Cemetery, the Manila South Cemetery, and other equally distinguished private cemeteries already serve the noble purpose but without cost to the limited funds of the government.

⁶⁹ Office of the President of the Philippines. (1953). Official Month in Review. *Official Gazette of the Republic of the Philippines*, 49(5), lxxv-lxxvi (<http://www.gov.ph/1953/05/01/official-month-in-review-may-1953/>, last accessed on October 28, 2016).



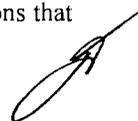
Even if the Court treats R.A. No. 289 as relevant to the issue, still, petitioners' allegations must fail. To apply the standard that the LNMB is reserved only for the "decent and the brave" or "hero" would be violative of public policy as it will put into question the validity of the burial of each and every mortal remains resting therein, and infringe upon the principle of separation of powers since the allocation of plots at the LNMB is based on the grant of authority to the President under existing laws and regulations. Also, the Court shares the view of the OSG that the proposed interment is not equivalent to the consecration of Marcos' mortal remains. The act in itself does not confer upon him the status of a "hero." Despite its name, which is actually a misnomer, the purpose of the LNMB, both from legal and historical perspectives, has neither been to confer to the people buried there the title of "hero" nor to require that only those interred therein should be treated as a "hero." Lastly, petitioners' repeated reference to a "hero's burial" and "state honors," without showing proof as to what kind of burial or honors that will be accorded to the remains of Marcos, is speculative until the specifics of the interment have been finalized by public respondents.

B. On R.A. No. 10368⁷⁰

For petitioners, R.A. No. 10368 modified AFP Regulations G 161-375 by implicitly disqualifying Marcos' burial at the LNMB because the legislature, which is a co-equal branch of the government, has statutorily declared his tyranny as a deposed dictator and has recognized the heroism and sacrifices of the Human Rights Violations Victims (HRVVs)⁷¹ under his

⁷⁰ Approved on February 25, 2013, R.A. No. 10368 is the consolidation of House Bill (H.B.) No. 5990 and Senate Bill (S.B.) No. 3334. H.B. No. 5990, entitled "*An Act Providing Compensation To Victims Of Human Rights Violations During The Marcos Regime, Documentation Of Said Violations, Appropriating Funds Therefor, And For Other Purposes,*" was co-sponsored by Lorenzo R. Tañada III, Edcel C. Lagman, Rene L. Relampagos, Joseph Emilio A. Abaya, Walden F. Bello, Kaka J. Bag-ao, Teodoro A. Casiño, Neri Javier Colmenares, Rafael V. Mariano, Luzviminda C. Ilagan, Antonio L. Tinio, Emerenciana A. De Jesus, and Raymond V. Palatino. No member of the House signified an intention to ask any question during the period of sponsorship and debate, and no committee or individual amendments were made during the period of amendments (Congressional Record, Vol. 2, No. 44, March 14, 2012, p. 3). The bill was approved on Second Reading (Congressional Record, Vol. 2, No. 44, March 14, 2012, p. 4). On Third Reading, the bill was approved with 235 affirmative votes, no negative vote, and no abstention (Congressional Record, Vol. 2, No. 47, March 21, 2012, p. 15). On the other hand, S.B. No. 3334, entitled "*An Act Providing For Reparation And Recognition Of The Survivors And Relatives Of The Victims Of Violations Of Human Rights And Other Related Violations During The Regime Of Former President Ferdinand Marcos, Documentation Of Said Violations, Appropriating Funds Therefor, And For Other Purposes,*" was co-authored by Sergio R. Osmena III, Teofisto D. Guingona III, Francis G. Escudero, and Franklin M. Drilon. Senators Drilon and Panfilo M. Lacson withdrew their reservation to interpellate on the measure (Senate Journal No. 41, December 10, 2012, p. 1171). The bill was approved on Second Reading with no objection (Senate Journal No. 41, December 10, 2012, p. 1172). On Third Reading, the bill was approved with 18 senators voting in favor, none against, and no abstention (Senate Journal No. 44, December 17, 2012, p. 1281).

⁷¹ *Human Rights Violations Victim (HRVV)* refers to a person whose human rights were violated by persons acting in an official capacity and/or agents of the State as defined herein. In order to qualify for reparation under this Act, the human rights violation must have been committed during the period from September 21, 1972 to February 25, 1986: *Provided, however,* That victims of human rights violations that



regime. They insist that the intended act of public respondents damages and makes mockery of the mandatory teaching of Martial Law atrocities and of the lives and sacrifices of its victims. They contend that “reparation” under R.A. No. 10368 is *non-judicial* in nature but a *political* action of the State through the Legislative and Executive branches by providing administrative relief for the compensation, recognition, and memorialization of human rights victims.

We beg to disagree.

Certainly, R.A. No. 10368 recognizes the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance, and other gross human rights violations committed from September 21, 1972 to February 25, 1986. To restore their honor and dignity, the State acknowledges its moral and legal obligation⁷² to provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they experienced.

In restoring the rights and upholding the dignity of HRVVs, which is part of the right to an effective remedy, R.A. No. 10368 entitles them to monetary and non-monetary reparation. Any HRVV qualified under the law⁷³ shall receive a monetary reparation, which is tax-free and without prejudice to the receipt of any other sum from any other person or entity in any case involving human rights violations.⁷⁴ Anent the non-monetary reparation, the Department of Health (*DOH*), the Department of Social Welfare and Development (*DSWD*), the Department of Education (*DepEd*), the Commission on Higher Education (*CHED*), the Technical Education and Skills Development Authority (*TESDA*), and such other government agencies are required to render the necessary services for the HRVVs and/or

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. (Sec. 3[c] of

R.A. No. 10368).

⁷² Section 11 Article II and Section 12 Article III of the 1987 Constitution as well as Section 2 of Article II of the 1987 Constitution in relation to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT) and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other international human rights laws and conventions (See Sec. 2 of R.A. No. 10368).

⁷³ The claimants in the class suit and direct action plaintiffs in the Human Rights Litigation Against the Estate of Ferdinand E. Marcos (MDL No. 840, CA No. 86-0390) in the US Federal District Court of Honolulu, Hawaii wherein a favorable judgment has been rendered, and the HRVVs recognized by the *Bantayog Ng Mga Bayani* Foundation shall be extended the conclusive presumption that they are HRVVs. However, the Human Rights Victims’ Claims Board is not deprived of its original jurisdiction and its inherent power to determine the extent of the human rights violations and the corresponding reparation and/or recognition that may be granted (See Sec. 17 of R.A. No. 10368).

⁷⁴ Sec. 4 of R.A. No. 10368.



their families, as may be determined by the Human Rights Victims' Claims Board (*Board*) pursuant to the provisions of the law.⁷⁵

Additionally, R.A. No. 10368 requires the recognition of the violations committed against the HRVVs, regardless of whether they opt to seek reparation or not. This is manifested by enshrining their names in the Roll of Human Rights Violations Victims (*Roll*) prepared by the Board.⁷⁶ The Roll may be displayed in government agencies designated by the HRVV Memorial Commission (*Commission*).⁷⁷ Also, a Memorial/Museum/Library shall be established and a compendium of their sacrifices shall be prepared and may be readily viewed and accessed in the internet.⁷⁸ The Commission is created primarily for the establishment, restoration, preservation and conservation of the Memorial/Museum/ Library/Compendium.⁷⁹

To memorialize⁸⁰ the HRVVs, the Implementing Rules and Regulations of R.A. No. 10368 further mandates that: (1) the database prepared by the Board derived from the processing of claims shall be turned over to the Commission for archival purposes, and made accessible for the promotion of human rights to all government agencies and instrumentalities in order to prevent recurrence of similar abuses, encourage continuing reforms and contribute to ending impunity;⁸¹ (2) the lessons learned from Martial Law atrocities and the lives and sacrifices of HRVVs shall be included in the basic and higher education curricula, as well as in continuing adult learning, prioritizing those most prone to commit human rights violations;⁸² and (3) the Commission shall publish only those stories of HRVVs who have given prior informed consent.⁸³

This Court cannot subscribe to petitioners' logic that the beneficial provisions of R.A. No. 10368 are not exclusive as it includes the prohibition on Marcos' burial at the LNMB. It would be undue to extend the law beyond what it actually contemplates. With its victim-oriented perspective, our legislators could have easily inserted a provision specifically proscribing Marcos' interment at the LNMB as a "reparation" for the HRVVs, but they

⁷⁵ Sec. 5 of R.A. No. 10368.

⁷⁶ Sec. 26 of R.A. No. 10368.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Sec. 27 of R.A. No. 10368.

⁸⁰ "*Memorialization*" refers to the preservation of the memory of the human rights violations victims, objects, events and lessons learned during the Marcos regime. This is part of the inherent obligation of the State to acknowledge the wrongs committed in the past, to recognize the heroism and sacrifices of all Filipinos who were victims of gross human rights violations during Martial Law, and to prevent the recurrence of similar abuses. (Sec. 1 [j], Rule II, IRR of R.A. No. 10368).

⁸¹ Sec. 1, Rule VII, IRR of R.A. No. 10368.

⁸² Sec. 2, Rule VII, IRR of R.A. No. 10368.

⁸³ Sec. 3, Rule VII, IRR of R.A. No. 10368.



did not. As it is, the law is silent and should remain to be so. This Court cannot read into the law what is simply not there. It is irregular, if not unconstitutional, for Us to presume the legislative will by supplying material details into the law. That would be tantamount to judicial legislation.

Considering the foregoing, the enforcement of the HRVVs' rights under R.A. No 10368 will surely not be impaired by the interment of Marcos at the LNMB. As opined by the OSG, the assailed act has no causal connection and legal relation to the law. The subject memorandum and directive of public respondents do not and cannot interfere with the statutory powers and functions of the Board and the Commission. More importantly, the HRVVs' entitlements to the benefits provided for by R.A. No 10368 and other domestic laws are not curtailed. It must be emphasized that R.A. No. 10368 does not amend or repeal, whether express or implied, the provisions of the Administrative Code or AFP Regulations G 161-375:

It is a well-settled rule of statutory construction that repeals by implication are not favored. In order to effect a repeal by implication, the later statute must be so irreconcilably inconsistent and repugnant with the existing law that they cannot be made to reconcile and stand together. The clearest case possible must be made before the inference of implied repeal may be drawn, for inconsistency is never presumed. There must be a showing of repugnance clear and convincing in character. The language used in the later statute must be such as to render it irreconcilable with what had been formerly enacted. An inconsistency that falls short of that standard does not suffice. x x x⁸⁴

C. On International Human Rights Laws

Petitioners argue that the burial of Marcos at the LNMB will violate the rights of the HRVVs to “full” and “effective” reparation, which is provided under the *International Covenant on Civil and Political Rights* (ICCPR),⁸⁵ the *Basic Principles and Guidelines on the Right to a Remedy*

⁸⁴ *Remman Enterprises, Inc., et al. v. Professional Regulatory Board of Real Estate Service, et al.*, 726 Phil. 104, 118-119 (2014).

⁸⁵ **Article 2**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(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

*and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*⁸⁶

official capacity;

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

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

⁸⁶

IX. Reparation for harm suffered

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

16. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.

17. States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements.

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

19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

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

(a) Physical or mental harm;

(b) Lost opportunities, including employment, education and social benefits;

(c) Material damages and loss of earnings, including loss of earning potential;

(d) Moral damage;

(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

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

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

(a) Effective measures aimed at the cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

(c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

(e) Public apology, including acknowledgment of the facts and acceptance of responsibility;

adopted by the U.N. General Assembly on December 16, 2005, and the *Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*⁸⁷ dated February 8, 2005 by the U.N. Economic and Social Council.

We do not think so. The ICCPR,⁸⁸ as well as the U.N. principles on reparation and to combat impunity, call for the enactment of legislative measures, establishment of national programmes, and provision for administrative and judicial recourse, in accordance with the country's constitutional processes, that are necessary to give effect to human rights embodied in treaties, covenants and other international laws. The U.N. principles on reparation expressly states:

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

(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.

⁸⁷ PRINCIPLE 2. THE INALIENABLE RIGHT TO THE TRUTH

Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.

PRINCIPLE 3. THE DUTY TO PRESERVE MEMORY

A people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfillment of the State's duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.

⁸⁸ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966, entry into force March 23, 1976, in accordance with Article 49 (<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, last accessed on October 28, 2016).



The Philippines is more than compliant with its international obligations. When the Filipinos regained their democratic institutions after the successful People Power Revolution that culminated on February 25, 1986, the three branches of the government have done their fair share to respect, protect and fulfill the country's human rights obligations, to wit:

The 1987 Constitution contains provisions that promote and protect human rights and social justice.

As to judicial remedies, aside from the writs of *habeas corpus*, *amparo*,⁸⁹ and *habeas data*,⁹⁰ the Supreme Court promulgated on March 1, 2007 Administrative Order No. 25-2007,⁹¹ which provides rules on cases involving extra-judicial killings of political ideologists and members of the media. The provision of the *Basic Principles and Guidelines* on the prevention of the victim's re-traumatization applies in the course of legal and administrative procedures designed to provide justice and reparation.⁹²

On the part of the Executive Branch, it issued a number of administrative and executive orders. Notable of which are the following:

1. A.O. No. 370 dated December 10, 1997 (*Creating the Inter-Agency Coordinating Committee on Human Rights*)
2. E.O. No. 118 dated July 5, 1999 (*Providing for the Creation of a National Committee on the Culture of Peace*)
3. E.O. No. 134 dated July 31, 1999 (*Declaring August 12, 1999 and Every 12th Day of August Thereafter as International Humanitarian Law Day*)
4. E.O. No. 404 dated January 24, 2005 (*Creating the Government of the Republic of the Philippines Monitoring Committee [GRP-MC] on Human Rights and International Humanitarian Law*)
5. A.O. No. 157 dated August 21, 2006 (*Creating an Independent Commission to Address Media and Activist Killings*)

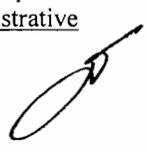
⁸⁹ A.M. No. 07-9-12-SC, Effective on October 24, 2007.

⁹⁰ A.M. No. 08-1-16-SC, Effective on February 2, 2008.

⁹¹ Reiterated in OCA Circular No. 103-07 dated October 16, 2007 and OCA Circular No. 46-09 dated April 20, 2009.

⁹² **VI. Treatment of victims**

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



6. A.O. No. 163 dated December 8, 2006 (*Strengthening and Increasing the Membership of the Presidential Human Rights Committee, and Expanding Further the Functions of Said Committee*)⁹³
7. A.O. No. 181 dated July 3, 2007 (*Directing the Cooperation and Coordination Between the National Prosecution Service and Other Concerned Agencies of Government for the Successful Investigation and Prosecution of Political and Media Killings*)
8. A.O. No. 197 dated September 25, 2007 (*DND and AFP Coordination with PHRC Sub-committee on Killings and Disappearances*)
9. A.O. No. 211 dated November 26, 2007 (*Creating a Task Force Against Political Violence*)
10. A.O. No. 249 dated December 10, 2008 (*Further Strengthening Government Policies, Plans, and Programs for the Effective Promotion and Protection of Human Rights on the Occasion of the 60th Anniversary of the Universal Declaration of Human Rights*)
11. E.O. No. 847 dated November 23, 2009 (*Creating the Church-Police-Military-Liaison Committee to Formulate and Implement a Comprehensive Program to Establish Strong Partnership Between the State and the Church on Matters Concerning Peace and Order and Human Rights*)
12. A.O. No. 35 dated November 22, 2012 (*Creating the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons*)
13. A.O. No. 1 dated October 11, 2016 (*Creating the Presidential Task Force on Violations of the Right to Life, Liberty and Security of the Members of the Media*)

Finally, the Congress passed the following laws affecting human rights:

1. Republic Act No. 7438 (*An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof*)
2. Republic Act No. 8371 (*The Indigenous Peoples' Rights Act of 1997*)

⁹³

Originated from A.O. No. 101 dated December 13, 1988 and A.O. No. 29 dated January 27, 2002.



3. Republic Act No. 9201 (*National Human Rights Consciousness Week Act of 2002*)
4. Republic Act No. 9208 (*Anti-Trafficking in Persons Act of 2003*)
5. Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*)
6. Republic Act No. 9344 (*Juvenile Justice and Welfare Act of 2006*)
7. Republic Act No. 9372 (*Human Security Act of 2007*)
8. Republic Act No. 9710 (*The Magna Carta of Women*)
9. Republic Act No. 9745 (*Anti-Torture Act of 2009*)
10. Republic Act No. 9851 (*Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity*)
11. Republic Act No. 10121 (*Philippine Disaster Risk Reduction and Management Act of 2010*)
12. Republic Act No. 10168 (*The Terrorism Financing Prevention and Suppression Act of 2012*)
13. Republic Act No. 10353 (*Anti-Enforced or Involuntary Disappearance Act of 2012*)
14. Republic Act No. 10364 (*Expanded Anti-Trafficking In Persons Act of 2012*)
15. Republic Act No. 10368 (*Human Rights Victims Reparation And Recognition Act of 2013*)
16. Republic Act No. 10530 (*The Red Cross and Other Emblems Act of 2013*)

Contrary to petitioners' postulation, our nation's history will not be instantly revised by a single resolve of President Duterte, acting through the public respondents, to bury Marcos at the LNMB. Whether petitioners admit it or not, the lessons of Martial Law are already engraved, albeit in varying degrees, in the hearts and minds of the present generation of Filipinos. As to the unborn, it must be said that the preservation and popularization of our history is not the sole responsibility of the Chief Executive; it is a joint and collective endeavor of every freedom-loving citizen of this country.

Notably, complementing the statutory powers and functions of the Human Rights Victims' Claims Board and the HRVV Memorial Commission in the memorialization of HRVVs, the National Historical Commission of the Philippines (*NHCP*), formerly known as the National Historical Institute (*NHI*),⁹⁴ is mandated to act as the primary government agency responsible for history and is authorized to determine all factual matters relating to

⁹⁴

Sec. 4 of R.A. No. 10086.



official Philippine history.⁹⁵ Among others, it is tasked to: (a) conduct and support all kinds of research relating to Philippine national and local history; (b) develop educational materials in various media, implement historical educational activities for the popularization of Philippine history, and disseminate, information regarding Philippine historical events, dates, places and personages; and (c) actively engage in the settlement or resolution of controversies or issues relative to historical personages, places, dates and events.⁹⁶ Under R.A. Nos. 10066 (*National Cultural Heritage Act of 2009*)⁹⁷ and 10086 (*Strengthening Peoples' Nationalism Through Philippine History Act*),⁹⁸ the declared State policy is to conserve, develop, promote, and popularize the nation's historical and cultural heritage and resources.⁹⁹ Towards this end, means shall be provided to strengthen people's nationalism, love of country, respect for its heroes and pride for the people's accomplishments by reinforcing the importance of Philippine national and local history in daily life with the end in view of raising social consciousness.¹⁰⁰ Utmost priority shall be given not only with the research on history but also its popularization.¹⁰¹

II.

The President's decision to bury Marcos at the LNMB is not done whimsically, capriciously or arbitrarily, out of malice, ill will or personal bias

Petitioners contend that the interment of Marcos at the LNMB will desecrate it as a sacred and hallowed place and a revered national shrine where the mortal remains of our country's great men and women are interred for the inspiration and emulation of the present generation and generations to come. They erred.

A. National Shrines

As one of the cultural properties of the Philippines, national historical shrines (or historical shrines) refer to sites or structures hallowed and revered for their history or association as declared by the NHCP.¹⁰² The

⁹⁵ Sec. 5 of R.A. No. 10086.

⁹⁶ *Id.*

⁹⁷ Approved on March 26, 2010.

⁹⁸ Approved on May 12, 2010 and took effect on June 13, 2010.

⁹⁹ Sec. 2 of R.A. 10066 and Sec. 2 of R.A. 10086.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See Sec. 4 (d) of R.A. 10066 in relation to Sec. 3 (u) of R.A. No. 10066 and Sec. 3 (n) of R.A. No.

national shrines created by law and presidential issuance include, among others: Fort Santiago (*Dambana ng Kalayaan*) in Manila;¹⁰³ all battlefield areas in Corregidor and Bataan;¹⁰⁴ the site of First Mass in the Philippines in Magallanes, Limasawa, Leyte;¹⁰⁵ Aguinaldo Shrine or Freedom Shrine in Kawit, Cavite;¹⁰⁶ Fort San Antonio Abad National Shrine in Malate, Manila;¹⁰⁷ Tirad Pass National Shrine in Ilocos Sur;¹⁰⁸ Ricarte Shrine¹⁰⁹ and Aglipay Shrine¹¹⁰ in Batac, Ilocos Norte; Liberty Shrine in Lapu-Lapu, Cebu;¹¹¹ "Red Beach" or the landing point of General Douglas MacArthur and the liberating forces in Baras, Palo, Leyte;¹¹² Dapitan City as a National Shrine City in Zamboanga Del Norte;¹¹³ General Leandro Locsin Fullon National Shrine in Hamtic, Antique;¹¹⁴ and Mabini Shrine in Polytechnic University of the Philippines - Mabini Campus, Sta. Mesa, Manila.¹¹⁵ As sites of the birth, exile, imprisonment, detention or death of great and eminent leaders of the nation, it is the policy of the Government to hold and keep the national shrines as sacred and hallowed place.¹¹⁶ P.D. No. 105¹¹⁷ strictly prohibits and punishes by imprisonment and/or fine the desecration of national shrines by disturbing their peace and serenity through digging, excavating, defacing, causing unnecessary noise, and committing unbecoming acts within their premises. R.A. No. 10066 also makes it punishable to intentionally modify, alter, or destroy the original features of, or undertake construction or real estate development in any national shrine, monument, landmark and other historic edifices and structures, declared, classified, and marked by the NHCP as such, without the prior written permission from the National Commission for Culture and the Arts (*NCAA*).¹¹⁸

10086. The Implementing Rules and Regulations of R.A. No. 10086 specifically defines National Historical Shrine as "a site or structure hallowed and revered for its association to national heroes or historical events declared by the Commission." (Art. 6[q.], Rule 5, Title I)

¹⁰³ R.A. No. 597, as amended by R.A. Nos. 1569 and 1607.

¹⁰⁴ E.O. No. 58 issued on August 16, 1954 (See *Arula v. Brig. Gen. Espino, etc., et al.*, 138 Phil. 570, 589-591 [1969]).

¹⁰⁵ R.A. No. 2733.

¹⁰⁶ R.A. No. 4039.

¹⁰⁷ Proclamation No. 207 dated May 27, 1967.

¹⁰⁸ Proclamation No. 433 dated July 23, 1968.

¹⁰⁹ R.A. No. 5648.

¹¹⁰ R.A. No. 5649.

¹¹¹ R.A. No. 5695.

¹¹² Proclamation No. 618 dated October 13, 1969, as amended by Proclamation No. 1272 dated June 4, 1974.

¹¹³ R.A. No. 6468.

¹¹⁴ Batas Pambansa Bilang 309 dated November 14, 1982.

¹¹⁵ Proclamation No. 1992 dated February 8, 2010.

¹¹⁶ P.D. No. 105 dated January 24, 1973.

¹¹⁷ Entitled "*Declaring National Shrines As Sacred (Hallowed) Places And Prohibiting Desecration Thereof.*" (Signed on January 24, 1973)

¹¹⁸ Sec. 48 (b).

As one of the cultural agencies attached to the NCAA,¹¹⁹ the NHCP manages, maintains and administers national shrines, monuments, historical sites, edifices and landmarks of significant historico-cultural value.¹²⁰ In particular, the NHCP Board has the power to approve the declaration of historic structures and sites, such as national shrines, monuments, landmarks and heritage houses and to determine the manner of their identification, maintenance, restoration, conservation, preservation and protection.¹²¹

Excluded, however, from the jurisdiction of the NHCP are the military memorials and battle monuments declared as national shrines, which have been under the administration, maintenance and development of the Philippine Veterans Affairs Office (*PVAO*) of the DND. Among the military shrines are: Mt. Samat National Shrine in Pilar, Bataan;¹²² Kiangnan War Memorial Shrine in Linda, Kiangnan, Ifugao;¹²³ Capas National Shrine in Capas, Tarlac;¹²⁴ Ricarte National Shrine in Malasin, Batac, Ilocos Norte;¹²⁵ Balantang Memorial Cemetery National Shrine in Jaro, Iloilo;¹²⁶ Balete Pass National Shrine in Sta. Fe, Nueva Vizcaya;¹²⁷ USAFIP, NL Military Shrine and Park in Bessang Pass, Cervantes, Ilocos Sur;¹²⁸ and the LNMB in Taguig City, Metro Manila.¹²⁹

B. The Libingan Ng Mga Bayani

At the end of World War II, the entire nation was left mourning for the death of thousands of Filipinos. Several places served as grounds for the war dead, such as the Republic Memorial Cemetery, the Bataan Memorial Cemetery, and other places throughout the country. The Republic Memorial Cemetery, in particular, was established in May 1947 as a fitting tribute and final resting place of Filipino military personnel who died in World War II.

On October 23, 1954, President Ramon D. Magsaysay, Sr. issued E.O. No. 77, which ordered "*the remains of the war dead interred at the Bataan Memorial Cemetery, Bataan Province, and at other places in the Philippines, be transferred to, and reinterred at, the Republic Memorial*

¹¹⁹ Sec. 31 (d) of R.A. No. 10066.

¹²⁰ Sec. 5 (d) of R.A. No. 10086.

¹²¹ Article 12 (e) and (f) Rule 8 Title III of the Implementing Rules and Regulations of R.A. No. 10086.

¹²² Proclamation No. 25 dated April 18, 1966.

¹²³ Proclamation No. 1682 dated October 17, 1977.

¹²⁴ Proclamation No. 842 dated December 7, 1991 and R.A. No. 8221.

¹²⁵ Proclamation No. 228 dated August 12, 1993.

¹²⁶ Proclamation No. 425 dated July 13, 1994.

¹²⁷ R.A. No. 10796.

¹²⁸ <http://server.pvao.mil.ph/PDF/shrines/usafipnl.pdf>, last accessed on September 19, 2016.

¹²⁹ Proclamation No. 208 dated May 28, 1967.

Cemetery at Fort Wm Mckinley, Rizal Province” so as to minimize the expenses for the maintenance and upkeep, and to make the remains accessible to the widows, parents, children, relatives, and friends.

On October 27, 1954, President Magsaysay issued Proclamation No. 86, which changed the name of Republic Memorial Cemetery to *Libingan Ng Mga Bayani* to symbolize “*the cause for which our soldiers have died*” and to “*truly express the nation’s esteem and reverence for her war dead.*”¹³⁰

On July 12, 1957, President Carlos P. Garcia issued Proclamation No. 423, which reserved for military purposes, under the administration of the AFP Chief of Staff, the land where LNMB is located. The LNMB was part of a military reservation site then known as Fort Wm McKinley (now known as Fort Andres Bonifacio).

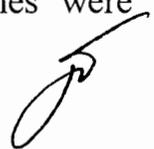
On May 28, 1967, Marcos issued Proclamation No. 208, which excluded the LNMB from the Fort Bonifacio military reservation and reserved the LNMB for national shrine purposes under the administration of the National Shrines Commission (NSC) under the DND.

On September 24, 1972, Marcos, in the exercise of his powers as the AFP Commander-in-Chief, and pursuant to Proclamation No. 1081 dated September 21, 1972, and General Order No. 1 dated September 22, 1972, as amended, issued Presidential Decree (P.D.) No. 1 which reorganized the Executive Branch of the National Government through the adoption of the Integrated Reorganization Plan (IRP). Section 7, Article XV, Chapter I, Part XII thereof abolished the NSC and its functions together with applicable appropriations, records, equipment, property and such personnel as may be necessary were transferred to the NHI under the Department of Education (DEC). The NHI was responsible for promoting and preserving the Philippine cultural heritage by undertaking, *inter alia*, studies on Philippine history and national heroes and maintaining national shrines and monuments.¹³¹

Pending the organization of the DEC, the functions relative to the administration, maintenance and development of national shrines were tentatively integrated into the PVAO in July 1973.

¹³⁰ See Whereas Clause of Proclamation No. 86.

¹³¹ Section 1, Article XV, Chapter I, Part XII of the IRP.



On January 26, 1977, President Marcos issued P.D. No. 1076. Section 7, Article XV, Chapter I, Part XII of the IRP was repealed on the grounds that “*the administration, maintenance and development of national shrines consisting of military memorials or battle monuments can be more effectively accomplished if they are removed from the [DEC] and transferred to the [DND] by reason of the latter’s greater capabilities and resources*” and that “*the functions of the [DND] are more closely related and relevant to the charter or significance of said national shrines.*” Henceforth, the PVAO – through the Military Shrines Service (MSS), which was created to perform the functions of the abolished NSC – would administer, maintain and develop military memorials and battle monuments proclaimed as national shrines.

On July 25, 1987, President Corazon C. Aquino issued the Administrative Code. The Code retains PVAO under the supervision and control of the Secretary of National Defense.¹³² Among others, PVAO shall administer, develop and maintain military shrines.¹³³ With the approval of PVAO Rationalization Plan on June 29, 2010, pursuant to E.O. No. 366 dated October 4, 2004, MSS was renamed to Veterans Memorial and Historical Division, under the supervision and control of PVAO, which is presently tasked with the management and development of military shrines and the perpetuation of the heroic deeds of our nation's veterans.

As a national military shrine, the main features, structures, and facilities of the LNMB are as follows:

1. **Tomb of the Unknown Soldiers** – The main structure constructed at the center of the cemetery where wreath laying ceremonies are held when Philippine government officials and foreign dignitaries visit the LNMB. The following inscription is found on the tomb: “*Here lies a Filipino soldier whose name is known only to God.*” Behind the tomb are three marble pillars representing the three main island groups of the Philippines – Luzon, Visayas and Mindanao. Buried here were the remains of 39,000 Filipino soldiers who were originally buried in Camp O'Donnell Concentration Camp and Fort Santiago, Intramuros, Manila.
2. **Heroes Memorial Gate** – A structure shaped in the form of a large concrete tripod with a stairway leading to an upper view deck and a metal sculpture at the center. This is the first imposing structure one sees upon entering the grounds of the cemetery complex.
3. **Black Stone Walls** – Erected on opposite sides of the main entrance road leading to the Tomb of the Unknown Soldiers and just near the Heroes Memorial are two

¹³² Book IV, Title VIII, Subtitle II, Chapter 1, Sec. 18.

¹³³ Book IV, Title VIII, Subtitle II, Chapter 5, Sec. 32(4).

12-foot high black stone walls which bear the words, "*I do not know the dignity of his birth, but I do know the glory of his death.*" that General Douglas MacArthur made during his sentimental journey to the Philippines in 1961.

4. **Defenders of Bataan and Corregidor Memorial Pylon** – Inaugurated on April 5, 1977 by Secretary Renato S. De Villa in memory of the defenders of Bataan and Corregidor during World War II. This monument is dedicated as an eternal acknowledgment of their valor and sacrifice in defense of the Philippines.
5. **Korean Memorial Pylon** – A towering monument honoring the 112 Filipino officers and men who, as members of the Philippine Expeditionary Forces to Korea (PEFTOK), perished during the Korean War.
6. **Vietnam Veterans Memorial Pylon** – Dedicated to the members of the Philippine contingents and Philippine civic action groups to Vietnam (PHILCON-V and PHILCAG-V) who served as medical, dental, engineering construction, community and psychological workers, and security complement. They offered tremendous sacrifices as they alleviated human suffering in war-ravaged Vietnam from 1964-1971. Inscribed on the memorial pylon are the words: "*To build and not to destroy, to bring the Vietnamese people happiness and not sorrow, to develop goodwill and not hatred.*"
7. **Philippine World War II Guerillas Pylon** – Erected by the Veterans Federation of the Philippines as a testimony to the indomitable spirit and bravery of the Filipino guerillas of World War II who refused to be cowed into submission and carried on the fight for freedom against an enemy with vastly superior arms and under almost insurmountable odds. Their hardship and sufferings, as well as their defeats and victories, are enshrined in this memorial.¹³⁴

Contrary to the dissent, P.D. No. 105¹³⁵ does not apply to the LNMB. Despite the fact that P.D. No. 208 predated P.D. No. 105,¹³⁶ the LNMB was not expressly included in the national shrines enumerated in the latter.¹³⁷ The proposition that the LNMB is implicitly covered in the catchall phrase "*and others which may be proclaimed in the future as National Shrines*" is erroneous because:

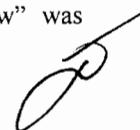
(1) As stated, Marcos issued P.D. No. 208 prior to P.D. No. 105.

¹³⁴ See Annex to the Manifestation of the AFP Adjutant General and <http://server.pvao.mil.ph/PDF/shrines/libingan.pdf> (last accessed on October 25, 2016).

¹³⁵ P.D. No. 105 is an issuance of Marcos, acting as the AFP Commander-in-Chief and by virtue of his powers under the Martial Law. It was not a law that was enacted by the Congress.

¹³⁶ P.D. No. 208 was signed on May 28, 1967 while P.D. No. 105 was signed on January 24, 1973.

¹³⁷ Among those named were the birthplace of Dr. Jose Rizal in Calamba, Laguna, Talisay, Dapitan City, where the hero was exiled for four years, Fort Santiago, Manila, where he was imprisoned in 1896 prior to his execution; Talaga, Tanauan, Batangas where Apolinario Mabini was born, Pandacan, Manila, where Mabini's house in which he died, is located; Aguinaldo Mansion in Kawit, Cavite, where General Emilio Aguinaldo, first President of the Philippines, was born, and where Philippine Independence was solemnly proclaimed on June 12, 1898; and Batan, Aklan, where the "Code of Kalantiyaw" was promulgated in 1433.



(2) Following the canon of statutory construction known as *ejusdem generis*,¹³⁸ the LNMB is not a site “*of the birth, exile, imprisonment, detention or death of great and eminent leaders of the nation.*” What P.D. No. 105 contemplates are the following national shrines: Fort Santiago (“*Dambana ng Kalayaan*”), all battlefield areas in Corregidor and Bataan, the site of First Mass in the Philippines, Aguinaldo Shrine or Freedom Shrine, Fort San Antonio Abad National Shrine, Tirad Pass National Shrine, Ricarte Shrine, Aglipay Shrine, Liberty Shrine, “Red Beach” or the landing point of General Douglas MacArthur and the liberating forces, Dapitan City, General Leandro Locsin Fullon National Shrine, and Mabini Shrine. Excluded are the military memorials and battle monuments declared as national shrines under the PVAO, such as: Mt. Samat National Shrine, Kiangnan War Memorial Shrine, Capas National Shrine, Ricarte National Shrine, Balantang Memorial Cemetery National Shrine, Balete Pass National Shrine; USAFIP, NL Military Shrine and Park, and the LNMB.

(3) Since its establishment, the LNMB has been a military shrine under the jurisdiction of the PVAO. While P.D. No. 1 dated September 24, 1972 transferred the administration, maintenance and development of national shrines to the NHI under the DEC, it never actually materialized. Pending the organization of the DEC, its functions relative to national shrines were tentatively integrated into the PVAO in July 1973. Eventually, on January 26, 1977, Marcos issued P.D. No. 1076. The PVAO, through the MSS, was tasked to administer, maintain, and develop military memorials and battle monuments proclaimed as national shrines. The reasons being that “*the administration, maintenance and development of national shrines consisting of military memorials or battle monuments can be more effectively accomplished if they are removed from the [DEC] and transferred to the [DND] by reason of the latter’s greater capabilities and resources*” and that “*the functions of the [DND] are more closely related and relevant to the charter or significance of said national shrines.*”

¹³⁸ Under the principle of *ejusdem generis*, “where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned.”

The purpose and rationale of the principle was explained by the Court in *National Power Corporation v. Angas* as follows:

The purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms. [2 Sutherland, *Statutory Construction*, 3rd ed., pp. 395-400]. (See *Pelizloy Realty Corp. v. The Province of Benguet*, 708 Phil. 466, 480-481 [2013], as cited in *Alta Vista Golf and Country Club v. City of Cebu*, G.R. No. 180235, January 20, 2016)



The foregoing interpretation is neither narrow and myopic nor downright error. Instead, it is consistent with the letter and intent of P.D. No. 105.

Assuming that P.D. No. 105 is applicable, the descriptive words “*sacred and hallowed*” refer to the LNMB as a place and not to each and every mortal remains interred therein. Hence, the burial of Marcos at the LNMB does not diminish said cemetery as a revered and respected ground. Neither does it negate the presumed individual or collective “heroism” of the men and women buried or will be buried therein. The “*nation’s esteem and reverence for her war dead,*” as originally contemplated by President Magsaysay in issuing Proclamation No. 86, still stands unaffected. That being said, the interment of Marcos, therefore, does not constitute a violation of the physical, historical, and cultural integrity of the LNMB as a national military shrine.

At this juncture, reference should be made to Arlington National Cemetery (*Arlington*), which is identical to the LNMB in terms of its prominence in the U.S. It is not amiss to point that our armed forces have been patterned after the U.S. and that its military code produced a salutary effect in the Philippines’ military justice system.¹³⁹ Hence, relevant military rules, regulations, and practices of the U.S. have persuasive, if not the same, effect in this jurisdiction.

As one of the U.S. Army national military cemeteries,¹⁴⁰ the Arlington is under the jurisdiction of the Department of the Army.¹⁴¹ The Secretary of the U.S. Army has the responsibility to develop, operate, manage, administer, oversee, and fund the Army national military cemeteries in a manner and to standards that fully honor the service and sacrifices of the deceased members of the armed forces buried or inurned therein, and shall prescribe such regulations and policies as may be necessary to administer the cemeteries.¹⁴² In addition, the Secretary of the U.S. Army is empowered to appoint an advisory committee, which shall make periodic reports and recommendations as well as advise the Secretary with respect to the administration of the cemetery, the erection of memorials at the cemetery, and master planning for the cemetery.¹⁴³

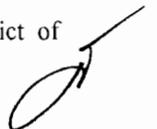
¹³⁹ See *Cudia v. The Superintendent of the Philippine Military Academy (PMA)*, G.R. No. 211362, February 24, 2015, 751 SCRA 469, 542.

¹⁴⁰ Also includes the United States Soldiers’ and Airmen’s National Cemetery in the District of Columbia.

¹⁴¹ See 32 C.F.R. § 553.3 and 10 U.S.C.A. § 4721.

¹⁴² *Id.*

¹⁴³ 10 U.S.C.A. § 4723.



Similar to the Philippines, the U.S. national cemeteries are established as national shrines in tribute to the gallant dead who have served in the U.S. Armed Forces.¹⁴⁴ The areas are protected, managed and administered as suitable and dignified burial grounds and as significant cultural resources.¹⁴⁵ As such, the authorization of activities that take place therein is limited to those that are consistent with applicable legislation and that are compatible with maintaining their solemn commemorative and historic character.¹⁴⁶

The LNMB is considered as a national shrine for military memorials. The PVAO, which is empowered to administer, develop, and maintain military shrines, is under the supervision and control of the DND. The DND, in turn, is under the Office of the President.

The presidential power of control over the Executive Branch of Government is a self-executing provision of the Constitution and does not require statutory implementation, nor may its exercise be limited, much less withdrawn, by the legislature¹⁴⁷. This is why President Duterte is not bound by the alleged 1992 Agreement¹⁴⁸ between former President Ramos and the

¹⁴⁴ 36 C.F.R. § 12.2.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ See *National Electrification Administration v. COA*, 427 Phil. 464, 485 (2002).

¹⁴⁸ On August 19, 1992, the Government of the Republic of the Philippines, represented by Department of Interior and Local Government (*DILG*) Secretary Rafael M. Alunan III, and the family of the late President Marcos, represented by his widow, Mrs. Imelda R. Marcos, agreed on the following conditions and procedures by which the remains of the former President shall be brought back to and interred in the Philippines:

I

It is hereby agreed that the remains of former President Ferdinand E. Marcos shall be allowed to be brought back to the Philippines from Hawaii, USA on 1 September 1992.

II

That the remains shall be brought directly from Hawaii, USA to Laoag, Ilocos Norte by means of an aircraft which shall fly directly to its port of destination at Laoag International Airport, Laoag, Ilocos Norte. It shall be understood that once the aircraft enters the Philippine area of responsibility, stopover for whatever reason in any airport other than the airport of destination shall be allowed only upon prior clearance from the Philippine Government.

III

That the family of the late President Marcos undertakes to fix a wake period of nine (9) days beginning 1 September 1992 to allow friends, relatives and supporters to pay their courtesy, last respect and homage to the former President at the Marcos family home at Batac, Ilocos Norte. It shall undertake further to maintain peaceful and orderly wake and/or help and cooperate with the local government authorities ensure that the same will not be used to foment and promote civil disorder.

IV

That the remains shall be buried [temporarily interred] on the 9th of September 1992 at the family burial grounds at Batac, Ilocos Norte, provided that any transfer of burial grounds shall be with prior clearance from the Philippine Government taking into account the prevailing socio-political climate.

V

The government shall provide appropriate military honors during the wake and interment, the details of which shall be arranged and finalized by and between the parties

Marcos family to have the remains of Marcos interred in Batac, Ilocos Norte. As the incumbent President, he is free to amend, revoke or rescind political agreements entered into by his predecessors, and to determine policies which he considers, based on informed judgment and presumed wisdom, will be most effective in carrying out his mandate.

Moreover, under the Administrative Code, the President has the power to reserve for public use and for specific public purposes any of the lands of the public domain and that the reserved land shall remain subject to the specific public purpose indicated until otherwise provided by law or proclamation.¹⁴⁹ At present, there is no law or executive issuance specifically excluding the land in which the LNMB is located from the use it was originally intended by the past Presidents. The allotment of a cemetery plot at the LNMB for Marcos as a former President and Commander-in-Chief,¹⁵⁰ a legislator,¹⁵¹ a Secretary of National Defense,¹⁵² a military personnel,¹⁵³ a

thereto.

VI

The Government shall ensure that the facilities at Laoag International Airport will allow for a safe landing as well as processing of incoming passengers, their cargoes and/or existing laws and regulations.

On August 26, 1992, DILG Secretary Alunan informed Mrs. Marcos of the government's decision that former President Marcos be accorded honors befitting a war veteran, and a former member of the AFP which, in general terms, includes the following: Flag Draped Coffin, Vigil Guards during the wake, Honor Guard, Firing Detail, Taps, and Pallbearers composed of retired generals under his command.

On August 25, 1993, Roque R. Ablan Jr. wrote DILG Secretary Alunan, confirming the previous arrangements between him and Mrs. Marcos, and also the arrangements made by Ablan before President Fidel V. Ramos on the following matters:

1. Direct flight of the remains of the late Pres. Marcos from Honolulu to Laoag.
2. That there will be an interim burial of the late Pres. Marcos in Batac, Ilocos Norte until such time when President Ramos will feel that the healing period would have been attain[ed] and that he shall be transferred to Manila for final burial.
3. That the remains will not be paraded to the other provinces.
4. That [Ablan] discussed this with Mrs. Marcos this morning and that she had given me full authority to assure the government that everything will be in accordance with the memo of understanding, and the pronouncement made by President Ramos that the remains can stay at the Don Mariano Marcos State University provided no government expenditures will be incurred and that the place will not be disturbed.

Ablan also informed DILG Secretary Alunan of the following details: (1) the remains of former President Marcos would arrive in Laoag City, Ilocos Norte on September 7, 1993; (2) from the airport, the remains would be brought to the Laoag City Cathedral, and after the mass, it would be brought to the Capitol for public viewing; (3) on the next day, the remains would be brought to Batac where it should be placed side by side with the late Doña Josefa Edralin Marcos; (4) that on September 9, Doña Josefa Marcos would be buried in the cemetery besides Governor Elizabeth Marcos Roca; and (5) on September 10, the late President Marcos would be buried in the mausoleum.

On September 10, 1993, the coffin of former President Marcos was opened inside the mausoleum and was subsequently placed inside a transparent glass for viewing.

¹⁴⁹ Book III, Title I, Chapter 4, Section 14 of the Administrative Code.

¹⁵⁰ From December 30, 1965 until February 25, 1986 when he and his immediate family members were forcibly exiled in the USA because of the EDSA People Power Revolution.

¹⁵¹ He was an Assemblyman (1949 to 1959) and a Senator (1959-1965), serving as Senate President during his last three (3) years.

¹⁵² From December 31, 1965 to January 20, 1967.

¹⁵³ On November 15, 1941, Marcos was called and inducted to the United States Armed Forces in the Far East (*USAFFE*) as Third Lieutenant. From November 16, 1941 to April 8, 1942, he was assigned as

veteran,¹⁵⁴ and a Medal of Valor awardee,¹⁵⁵ whether recognizing his contributions or simply his status as such, satisfies the public use requirement. The disbursement of public funds to cover the expenses incidental to the burial is granted to compensate him for valuable public services rendered.¹⁵⁶ Likewise, President Duterte's determination to have Marcos' remains interred at the LNMB was inspired by his desire for national healing and reconciliation. Presumption of regularity in the performance of official duty prevails over petitioners' highly disputed factual allegation that, in the guise of exercising a presidential prerogative, the Chief Executive is actually motivated by *utang na loob* (*debt of gratitude*) and *bayad utang* (*payback*) to the Marcoses. As the purpose is not self-evident, petitioners have the burden of proof to establish the factual basis of their claim. They failed. Even so, this Court cannot take cognizance of factual issues since We are not a trier of facts.

C. AFP Regulations on the LNMB

A review of the regulations issued by the AFP Chief of Staff as to who may and may not be interred at the LNMB underscores the nature and purpose of the LNMB as an active military cemetery/grave site.

On May 13, 1947, the Chief of Staff of the Philippine Army, by the direction of the President and by order of the Secretary of National Defense, issued General Orders No. 111, which constituted and activated, as of said date, the Graves Registration Platoon as a unit of the Philippine Army.

On February 2, 1960, the AFP Chief of Staff, by order of the Secretary of National Defense, issued AFP Regulations G 161-371 (Administrative and Special Staff Services, Grave Registration Service), which provided that the following may be interred in the LNMB: (a) World War II dead of the AFP and recognized guerillas; (b) Current dead of the AFP; (c) Retired

assistant G-2 of the 21st (Lightning) Division of the USAFFE, where he attained the rank of First Lieutenant. He was then promoted to the rank of Colonel under Special Orders No. 68 dated September 25, 1962. In Special Orders No. 264 dated June 11, 1963 and General Orders No. 265 dated May 19, 1964, he remained listed as Colonel. (See Annex "13" of the Consolidated Comment filed by the OSG).

¹⁵⁴ The PVAO recognized Marcos as a member of the retired army personnel. Based on a Certification dated August 18, 2016 issued by PVAO's Records Management Division Chief, respondent Imelda Romualdez Marcos is receiving ₱5,000.00 as Old Age Pension, being the surviving spouse of a retired veteran under R.A. No. 6948, as amended. (See Annex "12" of the Consolidated Comment filed by the OSG).

¹⁵⁵ During his military career, Marcos was awarded a Medal of Valor through General Orders No. 167 dated October 16, 1968 "*for extraordinary gallantry and intrepidity at the risk of life, above and beyond the call of duty in a suicidal action against overwhelming enemy forces at the junction of Salian River and Abo-Abo River, Bataan, on or about 22 January 1942.*" (See Annex "14" of Consolidated Comment filed by the OSG).

¹⁵⁶ See *Yap v. Commission on Audit*, 633 Phil. 174, 188 (2010).



military personnel of the AFP; (d) Remains of former members of the AFP who died while in the active service and in the Retired List of the AFP now interred at different cemeteries and other places throughout the Philippines or the Secretary of National Defense; and (e) Others upon approval of the Congress of the Philippines, the President of the Philippines or the Secretary of National Defense. The regulation also stated that the AFP Quartermaster General will be responsible for, among other matters, the efficient operation of the Graves Registration Service; the interment, disinterment and reinterment of the dead mentioned above; and preservation of military cemeteries, national cemeteries, and memorials.

On July 31, 1973, the AFP Chief of Staff, by order of the Secretary of National Defense, issued AFP Regulations G 161-372 (Administration and Operation of AFP Graves Registration Installations), which superseded AFP Regulations G 161-371. It provided that the following may be interred in the LNMB: (a) Deceased Veterans of the Philippine Revolution of 1896/World War I; (b) Deceased World War II members of the AFP and recognized guerillas; (c) Deceased military personnel of the AFP who died while in the active duty; (d) Deceased retired military personnel of the AFP; (e) Deceased military personnel of the AFP interred at different cemeteries and other places outside the LNMB; and (f) Such remains of persons as the Commander-in-Chief of the AFP may direct. The remains of the following were not allowed to be interred in the LNMB: (a) The spouse of an active, or retired, deceased military personnel, recognized guerillas who himself/herself is not a military personnel; and (b) AFP personnel who were retireable but separated/reverted/ discharged for cause, or joined and aided the enemy of the Republic of the Philippines, or were convicted of capital or other criminal offenses, involving moral turpitude. The regulation also stated that the Quartermaster General shall be responsible for, among other matters, the efficient operation of the AFP graves registration installations; the interment, disinterment and reinterment of deceased military personnel mentioned above; and the preservation of military cemeteries, proper marking and official recording of graves therein.

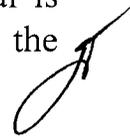
On April 9, 1986, AFP Chief of Staff Fidel V. Ramos, by order of National Defense Minister, issued AFP Regulations G 161-373 (Allocation of Cemetery Plots at the *Libingan Ng Mga Bayani*), which superseded AFP Regulations G 161-372. It enumerated a list of deceased person who may be interred at the LNMB, namely: (a) Medal of Valor Awardees; (b) Presidents or Commanders-in-Chief, AFP; (c) Ministers of National Defense; (d) Chiefs of Staff, AFP; (e) General/Flag Officers of the AFP; (f) Active and retired military personnel of the AFP; (g) Veterans of Philippine Revolution of 1896, WWI, WW II and recognized guerillas; and (h) Government



Dignitaries, Statesmen, National Artist and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, *Batasang Pambansa* or the Minister of National Defense. The regulation also stated that the Quartermaster General shall be responsible for the allocation of specific section/areas for the said deceased persons, while the Commanding Officer of the Quartermaster Graves Registration Company shall be charged with the preparation of grave sites, supervision of burials at LNMB and the registration of graves.

On March 27, 1998, the AFP Chief of Staff, by order of the Secretary of National Defense, issued AFP Regulations G 161-374 (Allocation of Cemetery Plots at the *Libingan Ng Mga Bayani*), which superseded AFP Regulations G 161-373. It provided that the following may be interred in the LNMB: (a) Medal of Valor Awardees; (b) Presidents or Commanders-in-Chief, AFP; (c) Secretaries of National Defense; (d) Chiefs of Staff, AFP; (e) General/Flag Officers of the AFP; (f) Active and retired military personnel of the AFP; (g) Veterans of Philippine Revolution of 1890, WWI, WWII and recognized guerillas; (h) Government Dignitaries, Statesmen, National Artists and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, Congress or Secretary of National Defense; and (i) Former Presidents, Secretaries of Defense, CSAFP, Generals/Flag Officers, Dignitaries, Statesmen, National Artists, widows of former Presidents, Secretaries of National Defense and Chief of Staff. The remains of the following were not allowed to be interred in the LNMB: (a) Personnel who were dishonorably separated/reverted/discharged from the service; and (b) Authorized personnel who were convicted by final judgment of an offense involving moral turpitude. Like AFP Regulations G 161-373, it stated that the Quartermaster General shall be responsible for the allocation of specific section/areas for the deceased persons, whereas the Commanding Officer of the Quartermaster Graves Registration Unit shall be charged with the preparation of grave sites, supervision of burials, and the registration of graves.

Finally, on September 11, 2000, the AFP Chief of Staff, by the order of the Secretary of National Defense, issued AFP Regulations G 161-375 (Allocation of Cemetery Plots at the *Libingan Ng Mga Bayani*), which superseded AFP Regulations G 161-374. The regulation stated that the Chief of Staff shall be responsible for the issuance of interment directive for all active military personnel for interment, authorized personnel (such as those former members of the AFP who laterally entered or joined the Philippine Coast Guard [*PCG*] and the Philippine National Police [*PNP*]), and retirees, veterans and reservists enumerated therein. The Quartermaster General is tasked to exercise over-all supervision in the implementation of the



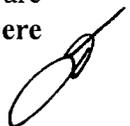
regulation and the Commander ASCOM, PA through the Commanding Officer of Grave Services Unit is charged with the registration of the deceased/graves, the allocation of specific section/area at the LNMB for interment of deceased, the preparation of grave sites, and the supervision of burials.

Under AFP Regulations G 161-375, the following are eligible for interment at the LNMB: (a) Medal of Valor Awardees; (b) Presidents or Commanders-in-Chief, AFP; (c) Secretaries of National Defense; (d) Chiefs of Staff, AFP; (e) General/Flag Officers of the AFP; (f) Active and retired military personnel of the AFP to include active draftees and trainees who died in line of duty, active reservists and CAFGU Active Auxiliary (CAA) who died in combat operations or combat related activities; (g) Former members of the AFP who laterally entered or joined the PCG and the PNP; (h) Veterans of Philippine Revolution of 1890, WWI, WWII and recognized guerillas; (i) Government Dignitaries, Statesmen, National Artists and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, Congress or the Secretary of National Defense; and (j) Former Presidents, Secretaries of Defense, Dignitaries, Statesmen, National Artists, widows of Former Presidents, Secretaries of National Defense and Chief of Staff. Similar to AFP Regulations G 161-374, the following are not qualified to be interred in the LNMB: (a) Personnel who were dishonorably separated/reverted/discharged from the service; and (b) Authorized personnel who were convicted by final judgment of an offense involving moral turpitude.

In the absence of any executive issuance or law to the contrary, the AFP Regulations G 161-375 remains to be the sole authority in determining who are entitled and disqualified to be interred at the LNMB. Interestingly, even if they were empowered to do so, former Presidents Corazon C. Aquino and Benigno Simeon C. Aquino III, who were themselves aggrieved at the Martial Law, did not revise the rules by expressly prohibiting the burial of Marcos at the LNMB. The validity of AFP Regulations G 161-375 must, therefor, be sustained for having been issued by the AFP Chief of Staff acting under the direction of the Secretary of National Defense, who is the alter ego of the President.

x x x In *Joson v. Torres*, we explained the concept of the alter ego principle or the doctrine of qualified political agency and its limit in this wise:

Under this doctrine, which recognizes the establishment of a single executive, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, **except in cases where**



the Chief Executive is required by the Constitution or law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the Secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive presumptively the acts of the Chief Executive. (Emphasis ours, citation omitted.)¹⁵⁷

It has been held that an administrative regulation adopted pursuant to law has the force and effect of law and, until set aside, is binding upon executive and administrative agencies, including the President as the chief executor of laws.¹⁵⁸

1. Qualification under the AFP Regulations

AFP Regulations G 161-375 should not be stricken down in the absence of clear and unmistakable showing that it has been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Neither could it be considered *ultra vires* for purportedly providing incomplete, whimsical, and capricious standards for qualification for burial at the LNMB.

To compare, We again refer to the U.S. Army regulations on Arlington. In the U.S., the Secretary of the Army, with the approval of the Secretary of Defense, determines eligibility for interment or inurnment in the Army national military cemeteries.¹⁵⁹ Effective October 26, 2016, the rule¹⁶⁰ is as follows:

Only those who qualify as a primarily eligible person or a derivatively eligible person are eligible for interment in Arlington National Cemetery, unless otherwise prohibited as provided for in §§ 553.19¹⁶¹–553.20,¹⁶²

¹⁵⁷ *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, G.R. No. 180771 & 181527, December 8, 2015.

¹⁵⁸ *Almario, et al. v. Executive Secretary, et al.*, *supra* note 46, at 166.

¹⁵⁹ 10 U.S.C.A. § 4722.

¹⁶⁰ 32 C.F.R. § 553.12

¹⁶¹ The following persons are not eligible for interment, inurnment, or memorialization in an Army National Military Cemetery:

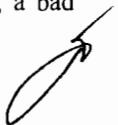
(a) A father, mother, brother, sister, or in-law solely on the basis of his or her relationship to a primarily eligible person, even though the individual is:

(1) Dependent on the primarily eligible person for support; or

(2) A member of the primarily eligible person's household.

(b) A person whose last period of service was not characterized as an honorable discharge (e.g., a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal), regardless of whether the person:

(1) Received any other veterans' benefits; or



provided that the last period of active duty of the service member or veteran ended with an honorable discharge.

(a) Primarily eligible persons. The following are primarily eligible persons for purposes of interment:

(1) Any service member who dies on active duty in the U.S. Armed Forces (except those service members serving on active duty for training only), if the General Courts Martial Convening Authority grants a

(2) Was treated at a Department of Veterans Affairs hospital or died in such a hospital.

(c) A person who has volunteered for service with the U.S. Armed Forces, but has not yet entered on active duty.

(d) A former spouse whose marriage to the primarily eligible person ended in divorce.

(e) A spouse who predeceases the primarily eligible person and is interred or inurned in a location other than Arlington National Cemetery, and the primarily eligible person remarries.

(f) A divorced spouse of a primarily eligible person.

(g) Otherwise derivatively eligible persons, such as a spouse or minor child, if the primarily eligible person was not or will not be interred or inurned at Arlington National Cemetery.

(h) A service member who dies while on active duty, if the first General Courts Martial Convening Authority in the service member's chain of command determines that there is clear and convincing evidence that the service member engaged in conduct that would have resulted in a separation or discharge not characterized as an honorable discharge (e.g., a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal) being imposed, but for the death of the service member.

(i) Animal remains. If animal remains are unintentionally commingled with human remains due to a natural disaster, unforeseen accident, act of war or terrorism, violent explosion, or similar incident, and such remains cannot be separated from the remains of an eligible person, then the remains may be interred or inurned with the eligible person, but the identity of the animal remains shall not be inscribed or identified on a niche, marker, headstone, or otherwise. (See 32 C.F.R. § 553.19)

¹⁶² (a) Prohibition. Notwithstanding §§ 553.12–553.16, 553.18, and 553.22, pursuant to 10 U.S.C. 985 and 38 U.S.C. 2411, the interment, inurnment, or memorialization in an Army National Military Cemetery of any of the following persons is prohibited:

(1) Any person identified in writing to the Executive Director by the Attorney General of the United States, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a Federal capital crime and whose conviction is final (other than a person whose sentence was commuted by the President).

(2) Any person identified in writing to the Executive Director by an appropriate State official, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a State capital crime and whose conviction is final (other than a person whose sentence was commuted by the Governor of the State).

(3) Any person found under procedures specified in § 553.21 to have committed a Federal or State capital crime but who has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution. Notice from officials is not required for this prohibition to apply.

(4) Any person identified in writing to the Executive Director by the Attorney General of the United States or by an appropriate State official, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a Federal or State crime causing the person to be a Tier III sex offender for purposes of the Sex Offender Registration and Notification Act, who for such crime is sentenced to a minimum of life imprisonment and whose conviction is final (other than a person whose sentence was commuted by the President or the Governor of a State, as the case may be).

(b) Notice. The Executive Director is designated as the Secretary of the Army's representative authorized to receive from the appropriate Federal or State officials notification of conviction of capital crimes referred to in this section.

(c) Confirmation of person's eligibility.

(1) If notice has not been received, but the Executive Director has reason to believe that the person may have been convicted of a Federal capital crime or a State capital crime, the Executive Director shall seek written confirmation from:

(i) The Attorney General of the United States, with respect to a suspected Federal capital crime; or

(ii) An appropriate State official, with respect to a suspected State capital crime.

(2) The Executive Director will defer the decision on whether to inter, inurn, or memorialize a decedent until a written response is received. (See 32 C.F.R. § 553.20).



certificate of honorable service.

(2) Any veteran retired from a Reserve component who served a period of active duty (other than for training), is carried on the official retired list, and is entitled to receive military retired pay.

(3) Any veteran retired from active military service and entitled to receive military retired pay.

(4) Any veteran who received an honorable discharge from the Armed Forces prior to October 1, 1949, who was discharged for a permanent physical disability, who served on active duty (other than for training), and who would have been eligible for retirement under the provisions of 10 U.S.C. 1201 had the statute been in effect on the date of separation.

(5) Any veteran awarded one of the following decorations:

(i) Medal of Honor;¹⁶³

(ii) Distinguished Service Cross, Air Force Cross, or Navy Cross;

(iii) Distinguished Service Medal;

(iv) Silver Star; or

(v) Purple Heart.

(6) Any veteran who served on active duty (other than active duty for training) and who held any of the following positions:

(i) President or Vice President of the United States;

(ii) Elected member of the U.S. Congress;

(iii) Chief Justice of the Supreme Court of the United States or Associate Justice of the Supreme Court of the United States;

(iv) A position listed, at the time the person held the position, in 5 U.S.C. 5312¹⁶⁴ or 5313¹⁶⁵ (Levels I and II of the Executive Schedule); or

¹⁶³ The medal of honor awarded posthumously to a deceased member of the armed forces who, as an unidentified casualty of a particular war or other armed conflict, is interred in the Tomb of the Unknowns at Arlington National Cemetery, Virginia, is awarded to the member as the representative of the members of the armed forces who died in such war or other armed conflict and whose remains have not been identified, and not to the individual personally. (10 U.S.C.A. § 1134)

¹⁶⁴ Includes the Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Transportation, United States Trade Representative, Secretary of Energy, Secretary of Education, Secretary of Veterans Affairs, Secretary of Homeland Security, Director of the Office of Management and Budget, Commissioner of Social Security, Social Security Administration, Director of National Drug Control Policy, Chairman and Board of Governors of the Federal Reserve System, and Director of National Intelligence.

¹⁶⁵ Includes the Deputy Secretary of Defense, Deputy Secretary of State, Deputy Secretary of State for Management and Resources, Administrator of Agency for International Development, Administrator of the National Aeronautics and Space Administration, Deputy Secretary of Veterans Affairs, Deputy Secretary of Homeland Security, Under Secretary of Homeland Security for Management, Deputy Secretary of the Treasury, Deputy Secretary of Transportation, Chairman of Nuclear Regulatory Commission, Chairman of Council of Economic Advisers, Director of the Office of Science and Technology, Director of the Central Intelligence Agency, Secretary of the Air Force, Secretary of the Army, Secretary of the Navy, Administrator of Federal Aviation Administration, Director of the National Science Foundation, Deputy Attorney General, Deputy Secretary of Energy, Deputy Secretary of Agriculture, Director of the Office of Personnel Management, Administrator of Federal Highway Administration, Administrator of the Environmental Protection Agency, Under Secretary of Defense for Acquisition, Technology, and Logistics, Deputy Secretary of Labor, Deputy Director of the Office of Management and Budget, Independent Members of Thrift Depositor Protection Oversight Board, Deputy Secretary of Health and Human Services, Deputy Secretary of the Interior, Deputy Secretary of Education, Deputy Secretary of Housing and Urban Development, Deputy Director for Management of Office of Management and Budget, Director of the Federal Housing Finance Agency, Deputy Commissioner of Social Security, Social Security Administration, Administrator of the Community Development Financial Institutions Fund, Deputy Director of National Drug Control Policy, Members and Board of Governors of the Federal Reserve System, Under Secretary of Transportation for Policy, Chief Executive Officer of Millennium Challenge



(v) Chief of Mission of a Category 4, 5, or 5+ post if the Department of State classified that post as a Category 4, 5, or 5+ post during the person's tenure as Chief of Mission.

(7) Any former prisoner of war who, while a prisoner of war, served honorably in the active military service, and who died on or after November 30, 1993.

(b) Derivatively eligible persons. The following individuals are derivatively eligible persons for purposes of interment who may be interred if space is available in the gravesite of the primarily eligible person:

(1) The spouse of a primarily eligible person who is or will be interred in Arlington National Cemetery. A former spouse of a primarily eligible person is not eligible for interment in Arlington National Cemetery under this paragraph.

(2) The spouse of an active duty service member or an eligible veteran, who was:

(i) Lost or buried at sea, temporarily interred overseas due to action by the Government, or officially determined to be missing in action;

(ii) Buried in a U.S. military cemetery maintained by the American Battle Monuments Commission; or

(iii) Interred in Arlington National Cemetery as part of a group burial (the derivatively eligible spouse may not be buried in the group burial gravesite).

(3) The parents of a minor child or a permanently dependent adult child, whose remains were interred in Arlington National Cemetery based on the eligibility of a parent at the time of the child's death, unless eligibility of the non-service connected parent is lost through divorce from the primarily eligible parent.

(4) An honorably discharged veteran who does not qualify as a primarily eligible person, if the veteran will be buried in the same gravesite as an already interred primarily eligible person who is a close relative, where the interment meets the following conditions:

(i) The veteran is without minor or unmarried adult dependent children;

(ii) The veteran will not occupy space reserved for the spouse, a minor child, or a permanently dependent adult child;

(iii) All other close relatives of the primarily eligible person concur with the interment of the veteran with the primarily eligible person by signing a notarized statement;

(iv) The veteran's spouse waives any entitlement to interment in Arlington National Cemetery, where such entitlement might be based on the veteran's interment in Arlington National Cemetery. The Executive Director may set aside the spouse's waiver, provided space is available in the same gravesite, and all close relatives of the primarily eligible person concur;

(v) Any cost of moving, recasketing, or revaulting the remains will be paid from private funds.

There is a separate list of eligible with respect to the inurnment of cremated remains in the Columbarium,¹⁶⁶ interment of cremated remains in the Unmarked Area,¹⁶⁷ and group burial.¹⁶⁸ As a national military cemetery,

¹⁶⁶ The following persons are eligible for inurnment in the Arlington National Cemetery Columbarium, unless otherwise prohibited as provided for in §§ 553.19–553.20, provided that the last period of active duty of the service member or veteran ended with an honorable discharge.

(a) Primarily eligible persons. The following are primarily eligible persons for purposes of inurnment:

(1) Any person eligible for interment in Arlington National Cemetery, as provided for in § 553.12(a).

(2) Any veteran who served on active duty other than active duty for training.

(3) Any member of a Reserve component of the Armed Forces who dies while:

(i) On active duty for training or performing full-time duty under title 32, United States Code;

(ii) Performing authorized travel to or from such active duty for training or full-time duty;

(iii) On authorized inactive-duty training, including training performed as a member of the Army National Guard of the United States or the Air National Guard of the United States; or

(iv) Hospitalized or receiving treatment at the expense of the Government for an injury or disease incurred or contracted while on such active duty for training or full-time duty, traveling to or from such active duty for training or full-time duty, or on inactive-duty training.

(4) Any member of the Reserve Officers' Training Corps of the United States, Army, Navy, or Air Force, whose death occurs while:

(i) Attending an authorized training camp or cruise;

(ii) Performing authorized travel to or from that camp or cruise; or

(iii) Hospitalized or receiving treatment at the expense of the Government for injury or disease incurred or contracted while attending such camp or cruise or while traveling to or from such camp or cruise.

(5) Any citizen of the United States who, during any war in which the United States has been or may hereafter be engaged, served in the armed forces of any government allied with the United States during that war, whose last service ended honorably by death or otherwise, and who was a citizen of the United States at the time of entry into that service and at the time of death.

(6) Commissioned officers, United States Coast and Geodetic Survey (now National Oceanic and Atmospheric Administration) who die during or subsequent to the service specified in the following categories and whose last service terminated honorably:

(i) Assignment to areas of immediate military hazard.

(ii) Served in the Philippine Islands on December 7, 1941.

(iii) Transferred to the Department of the Army or the Department of the Navy under certain statutes.

(7) Any commissioned officer of the United States Public Health Service who served on full-time duty on or after July 29, 1945, if the service falls within the meaning of active duty for training as defined in 38 U.S.C. 101(22) or inactive duty training as defined in 38 U.S.C. 101(23) and whose death resulted from a disease or injury incurred or aggravated in line of duty. Also, any commissioned officer of the Regular or Reserve Corps of the Public Health Service who performed active service prior to July 29, 1945 in time of war; on detail for duty with the Armed Forces; or while the service was part of the military forces of the United States pursuant to Executive order of the President.

(8) Any Active Duty Designee as defined in this part.

(b) Derivatively eligible persons. Those connected to an individual described in paragraph (a) of this section through a relationship described in § 553.12(b). Such individuals may be inurned if space is available in the primarily eligible person's niche. (32 C.F.R. § 553.13).

¹⁶⁷ (a) The cremated remains of any person eligible for interment in Arlington National Cemetery as described in § 553.12 may be interred in the designated Arlington National Cemetery Unmarked Area.

(b) Cremated remains must be interred in a biodegradable container or placed directly into the ground without a container. Cremated remains are not authorized to be scattered at this site or at any location within Arlington National Cemetery.

(c) There will be no headstone or marker for any person choosing this method of interment. A permanent register will be maintained by the Executive Director.

(d) Consistent with the one-gravesite-per-family policy, once a person is interred in the Unmarked Area, any derivatively eligible persons and spouses must be interred in this manner. This includes spouses who are also primarily eligible persons. No additional gravesite, niche, or memorial marker in a memorial area will be authorized. (32 C.F.R. § 553.14).

¹⁶⁸ (a) The Executive Director may authorize a group burial in Arlington National Cemetery

eligibility standards for interment, inurnment, or memorialization in Arlington are based on **honorable military service**.¹⁶⁹ Exceptions to the eligibility standards for new graves, which are rarely granted, are for those persons who have made **significant contributions that directly and substantially benefited the U.S. military**.¹⁷⁰

Judging from the foregoing, it is glaring that the U.S. Army regulations on Arlington and the AFP Regulations G 161-375 on the LNMB, as a general rule, recognize and reward the military services or military related activities of the deceased. Compared with the latter, however, the former is actually less generous in granting the privilege of interment since only the spouse or parent, under certain conditions, may be allowed “if space is available in the gravesite of the primarily eligible person.”

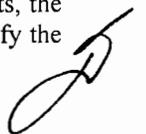
It is not contrary to the “well-established custom,” as the dissent described it, to argue that the word “*bayani*” in the LNMB has become a misnomer since while a symbolism of heroism may attach to the LNMB as a national shrine for military memorial, the same does not automatically attach to its feature as a military cemetery and to those who were already laid or will be laid therein. As stated, the purpose of the LNMB, both from the legal and historical perspectives, has neither been to confer to the people buried there the title of “hero” nor to require that only those interred therein should be treated as a “hero.” In fact, the privilege of internment at the LNMB has been loosen up through the years. Since 1986, the list of eligible includes not only those who rendered active military service or military-related activities but also non-military personnel who were recognized for their significant contributions to the Philippine society (such as government dignitaries, statesmen, national artists, and other deceased persons whose interment or reinterment has been approved by the Commander-in-Chief, Congress or Secretary of National Defense). In 1998, the widows of former Presidents, Secretaries of National Defense and Chief of Staff were added to the list. Whether or not the extension of burial privilege to civilians is unwarranted and should be restricted in order to be consistent with the original purpose of the LNMB is immaterial and irrelevant to the issue at bar since it is indubitable that Marcos had rendered significant active military service and military-related activities.

whenever several people, at least one of whom is an active duty service member, die during a military-related activity and not all remains can be individually identified.

(b) Before authorizing a group burial that includes both United States and foreign decedents, the Executive Director will notify the Department of State and request that the Department of State notify the appropriate foreign embassy. (32 C.F.R. § 553.15).

¹⁶⁹ 32 C.F.R. § 553.22(a).

¹⁷⁰ *Id.*



Petitioners did not dispute that Marcos was a former President and Commander-in-Chief, a legislator, a Secretary of National Defense, a military personnel, a veteran, and a Medal of Valor awardee. For his alleged human rights abuses and corrupt practices, we may disregard Marcos as a President and Commander-in-Chief, but we cannot deny him the right to be acknowledged based on the other positions he held or the awards he received. In this sense, We agree with the proposition that Marcos should be viewed and judged in his totality as a person. While he was not all good, he was not pure evil either. Certainly, just a human who erred like us.

Our laws give high regard to Marcos as a Medal of Valor awardee and a veteran. R.A. No. 9049¹⁷¹ declares the policy of the State “*to consistently honor its military heroes in order to strengthen the patriotic spirit and nationalist consciousness of the military.*”¹⁷² For the “*supreme self-sacrifice and distinctive acts of heroism and gallantry,*”¹⁷³ a Medal of Valor awardee or his/her dependents/heirs/beneficiaries are entitled to the following social services and financial rewards:

1. Tax-exempt lifetime monthly gratuity of Twenty Thousand Pesos (₱20,000.00), which is separate and distinct from any salary or pension that the awardee currently receives or will receive from the government of the Philippines;¹⁷⁴
2. Precedence in employment in government agencies or government-owned or controlled corporation, if the job qualifications or requirements are met;
3. Priority in the approval of the awardee’s housing application under existing housing programs of the government;
4. Priority in the acquisition of public lands under the Public Land Act and preferential right in the lease of pasture lands and exploitation of natural resources;
5. Privilege of obtaining loans in an aggregate amount not exceeding Five Hundred Thousand Pesos (₱500,000.00) from government-owned or controlled financial institutions without having to put up any collateral or constitute any pledge or mortgage to secure the payment of the loan;
6. Twenty (20%) percent discount from all establishments relative to utilization of transportation services, hotels and similar lodging

¹⁷¹ Approved on March 22, 2001 and published in national newspapers of general circulation on April 9, 2001 as well as in the Official Gazette on July 9, 2001. It repealed P.D. No. 1687 dated March 24, 1980.

¹⁷² Sec. 1 of R.A. No. 9049.

¹⁷³ *Id.*

¹⁷⁴ In the event of the awardee's death, the gratuity shall accrue in equal shares and with the right of accretion to the surviving spouse until she remarries and to the children, legitimate, or adopted or illegitimate, until they reach the age of eighteen (18) or until they marry, whichever comes earlier.

- establishments, restaurants, recreation and sport centers and purchase of medicine anywhere in the country;
7. Twenty (20%) percent discount on admission fees charged by theaters, cinema houses and concert halls, circuses, carnivals and other similar places of culture, leisure and amusement;
 8. Free medical and dental services and consultation in hospital and clinics anywhere in the country;
 9. Exemption from the payment of tuition and matriculation fees in public or private schools, universities, colleges and other educational institutions in any pre-school, baccalaureate or post-graduate courses such as or including course leading to the degree of Doctor of Medicine (*MD*), Bachelor of Laws (*LLB*), and Bachelor of Science in Nursing (*BSN*) or allied and similar courses; and
 10. If interested and qualified, a quota is given to join the cadet corps of the Philippine Military Academy or otherwise priority for direct commission, call to active duty (*CAD*) and/or enlistment in regular force of the AFP.

On the other hand, in recognizing their patriotic services in times of war and peace for the cause of freedom and democracy; for the attainment of national unity, independence, and socioeconomic advancement; and for the maintenance of peace and order,¹⁷⁵ R.A. No. 6948, as amended,¹⁷⁶ grants our veterans¹⁷⁷ and their dependents or survivors with pension (old age, disability, total administrative disability, and death) and non-pension (burial, education, hospitalization, and medical care and treatment) benefits as well as provisions from the local governments. Under the law, the benefits may be withheld if the Commission on Human Rights certifies to the AFP General Headquarters that the veteran has been found **guilty by final judgment** of a gross human rights violation **while in the service**, but this factor shall not be considered taken against his next of kin.¹⁷⁸

¹⁷⁵ Sec. 1 of R.A. No. 6948.

¹⁷⁶ Amended by R.A. Nos. 7696, 9396, and 9499.

¹⁷⁷ A veteran refers to "any person who: (1) rendered military service in the land, sea or air forces of the Philippines during the revolution against Spain, the Philippine-American War, and World War II, including Filipino citizens who served with the Allied Forces in Philippine territory; (2) was a member of the Philippine Expeditionary Forces sent to the Korean War and the Philippine Civic Action Group sent to the Vietnam War; (3) rendered military service in the Armed Forces of the Philippines (AFP) and has been honorably discharged or retired after at least twenty (20) years total cumulative active service or sooner separated while in the active service in the AFP due to death or disability arising from a wound or injury received or sickness or disease incurred in line of duty."(Sec. 2 [a] of R.A. No. 6948, as amended by R.A. No. 9396).

¹⁷⁸ Sec. 25 of R.A. No. 6948.

2. Disqualification under the AFP Regulations

Aside from being eligible for burial at the LNMB, Marcos possessed none of the disqualifications stated in AFP Regulations G 161-375. He was neither convicted by final judgment of the offense involving moral turpitude nor dishonorably separated/reverted/discharged from active military service.

Petitioners, however, protest that a narrow interpretation of the AFP regulations disregards historical context and the rule on statutory construction. They urge the Court to construe statutes not literally but according to their spirit and reason.

It is argued that Marcos committed offenses involving moral turpitude for his gross human rights violations, massive graft and corruption, and dubious military records, as found by foreign and local courts as well as administrative agencies. By going into exile, he deliberately evaded liability for his actions. And by allowing death to overtake him, he inevitably escaped the prospect of facing accountability for his crimes. They also contend that his removal in the 1986 popular uprising is a clear sign of his discharge from the AFP. The People Power Revolution was the direct exercise of the Filipinos' power to overthrow an illegitimate and oppressive regime. As a sovereign act, it necessarily includes the power to adjudge him as dishonorably discharged from the AFP.

Furthermore, according to petitioners, to limit the application of the disqualifying provisions of AFP Regulations G 161-375 only to soldiers would be unfair (since, unlike Presidents, soldiers have an additional cause for disqualification) and lead to absurd results (because soldiers who were dishonorably discharged would be disqualified for acts that are less atrocious than that committed by Marcos). Also, the AFP regulations would place Marcos in the same class as the other Philippine Presidents when in fact he is a class of his own, *sui generis*. The other Presidents were never removed by People Power Revolution and were never subject of laws declaring them to have committed human rights violations. Thus, the intended burial would be an act of similarly treating persons who are differently situated.

Despite all these ostensibly persuasive arguments, the fact remains that Marcos was not convicted by final judgment of any offense involving moral turpitude. No less than the 1987 Constitution mandates that a person shall not be held to answer for a criminal offense without due process of law and that, “[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by



himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf."¹⁷⁹ Even the U.N. principles on reparation and to combat impunity cited by petitioners unequivocally guarantee the rights of the accused, providing that:

XIII. Rights of others

27. Nothing in this document is to be construed as derogating from internationally or nationally protected rights of others, in particular the right of an accused person to benefit from applicable standards of due process.

x x x

PRINCIPLE 9. GUARANTEES FOR PERSONS IMPLICATED

Before a commission identifies perpetrators in its report, the individuals concerned shall be entitled to the following guarantees:

- (a) The commission must try to corroborate information implicating individuals before they are named publicly;
- (b) The individuals implicated shall be afforded an opportunity to provide a statement setting forth their version of the facts either at a hearing convened by the commission while conducting its investigation or through submission of a document equivalent to a right of reply for inclusion in the commission's file.

To note, in the U.S., a person found to have committed a Federal or State capital crime (*i.e.*, a crime which a sentence of imprisonment for life or death penalty may be imposed) but who has not been convicted by reason of not being available for trial due to death or flight to avoid prosecution, may be ineligible for interment, inurnment, or memorialization in an Army national military cemetery. Nevertheless, such ineligibility must still observe the procedures specified in § 553.21.¹⁸⁰

¹⁷⁹ Section 14, Article III.

¹⁸⁰ (a) Preliminary inquiry. If the Executive Director has reason to believe that a decedent may have committed a Federal capital crime or a State capital crime but has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution, the Executive Director shall submit the issue to the Army General Counsel. The Army General Counsel or his or her designee shall initiate a preliminary inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information.

(b) Decision after preliminary inquiry. If, after conducting the preliminary inquiry described in paragraph (a) of this section, the Army General Counsel or designee determines that credible evidence exists suggesting the decedent may have committed a Federal capital crime or State capital crime, then further proceedings under this section are warranted to determine whether the decedent committed such crime. Consequently the Army General Counsel or his or her designee shall present the personal representative with a written notification of such preliminary determination and a dated, written notice of the personal representative's procedural options.

(c) Notice and procedural options. The notice of procedural options shall indicate that, within

The various cases cited by petitioners, which were decided with finality by courts here and abroad, have no bearing in this case since they are merely **civil** in nature; hence, cannot and do not establish moral turpitude.

Also, the equal protection clause is not violated. Generally, there is no property right to safeguard because even if one is eligible to be buried at the LNMB, such fact would only give him or her the *privilege* to be interred therein. Unless there is a favorable recommendation from the Commander-in-Chief, the Congress or the Secretary of National Defense, no *right* can be said to have ripen. Until then, such *inchoate* right is not legally demandable and enforceable.

fifteen days, the personal representative may:

- (1) Request a hearing;
- (2) Withdraw the request for interment, inurnment, or memorialization; or
- (3) Do nothing, in which case the request for interment, inurnment, or memorialization will be considered to have been withdrawn.

(d) Time computation. The fifteen-day time period begins on the calendar day immediately following the earlier of the day the notice of procedural options is delivered in person to the personal representative or is sent by U.S. registered mail or, if available, by electronic means to the personal representative. It ends at midnight on the fifteenth day. The period includes weekends and holidays.

(e) Hearing. The purpose of the hearing is to allow the personal representative to present additional information regarding whether the decedent committed a Federal capital crime or a State capital crime. In lieu of making a personal appearance at the hearing, the personal representative may submit relevant documents for consideration.

(1) If a hearing is requested, the Army General Counsel or his or her designee shall conduct the hearing.

(2) The hearing shall be conducted in an informal manner.

(3) The rules of evidence shall not apply.

(4) The personal representative and witnesses may appear, at no expense to the Government, and shall, in the discretion of the Army General Counsel or his or her designee, testify under oath. Oaths must be administered by a person who possesses the legal authority to administer oaths.

(5) The Army General Counsel or designee shall consider any and all relevant information obtained.

(6) The hearing shall be appropriately recorded. Upon request, a copy of the record shall be provided to the personal representative.

(f) Final determination. After considering the opinion of the Army General Counsel or his or her designee, and any additional information submitted by the personal representative, the Secretary of the Army or his or her designee shall determine the decedent's eligibility for interment, inurnment, or memorialization. This determination is final and not appealable.

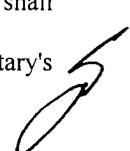
(1) The determination shall be based on evidence that supports or undermines a conclusion that the decedent's actions satisfied the elements of the crime as established by the law of the jurisdiction in which the decedent would have been prosecuted.

(2) If an affirmative defense is offered by the decedent's personal representative, a determination as to whether the defense was met shall be made according to the law of the jurisdiction in which the decedent would have been prosecuted.

(3) Mitigating evidence shall not be considered.

(4) The opinion of the local, State, or Federal prosecutor as to whether he or she would have brought charges against the decedent had the decedent been available is relevant but not binding and shall be given no more weight than other facts presented.

(g) Notice of decision. The Executive Director shall provide written notification of the Secretary's decision to the personal representative. (See 32 C.F.R. § 553.21; Effective: October 26, 2016).



Assuming that there is a property right to protect, the requisites of equal protection clause are not met.¹⁸¹ In this case, there is a real and substantial distinction between a military personnel and a former President. The conditions of dishonorable discharge under the Articles of War¹⁸² attach only to the members of the military. There is also no substantial distinction between Marcos and the three Philippine Presidents buried at the LNMB (Presidents Quirino, Garcia, and Macapagal). All of them were not convicted of a crime involving moral turpitude. In addition, the classification between a military personnel and a former President is germane to the purposes of Proclamation No. 208 and P.D. No. 1076. While the LNMB is a national shrine for **military** memorials, it is also an active **military** cemetery that recognizes the **status or position** held by the persons interred therein.

Likewise, Marcos was honorably discharged from military service. PVAO expressly recognized him as a retired veteran pursuant to R.A. No. 6948, as amended. Petitioners have not shown that he was dishonorably discharged from military service under AFP Circular 17, Series of 1987 (Administrative Discharge Prior to Expiration of Term of Enlistment) for violating Articles 94, 95 and 97 of the Articles of War.¹⁸³ The NHCP study¹⁸⁴

¹⁸¹ The requirements for a valid and reasonable classification are: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class. (*Ferrer, Jr. v. Bautista*, G.R. No. 210551, June 30, 2015, 760 SCRA 652, 709-710).

¹⁸² Commonwealth Act No. 408 dated September 14, 1938, as amended.

¹⁸³ ARTICLE 94. *Various Crimes*. – Any person subjected to military law who commits any crime, breach of law or violation of municipal ordinance, which is recognized as an offense of a penal nature and is punishable under the penal laws of the Philippines or under municipal ordinances, on a Philippine Army reservation, shall be punished as a court-martial may direct; *Provided*, That in time of peace, officers and enlisted men of the Philippine Constabulary shall not be triable by courts-martial for any felony, crime, breach of law or violation of municipal ordinances committed under this Article.

ARTICLE 95. *Frauds Against the Government Affecting Matters and Equipments*. – Any person subject to military law who, having charge, possession, custody, or control of any money or other property of the Commonwealth of the Philippines, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any paper certifying the receipt of any property of the Commonwealth of the Philippines furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained and with intent to defraud the Philippines; or

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the Commonwealth of the Philippines furnished or intended for the military service thereof; or

Who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition, clothing subsistence stores, or other property of the Commonwealth of the Philippines, such soldier, officer, or other person not having lawful right to sell or pledge the same;

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge, or by any or all of said penalties. And if any person, being guilty of any of the offenses aforesaid while in the military service of the Philippines, received his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed. And if any officer, being guilty, while in the military service of the Philippines of embezzlement



is incomplete with respect to his entire military career as it failed to cite and include the official records of the AFP.

With respect to the phrase “[p]ersonnel who were dishonorably separated/reverted/discharged from the service,” the same should be viewed in light of the definition provided by AFP Regulations G 161-375 to the term “active service” which is “[s]ervice rendered by a military person as a Commissioned Officer, enlisted man/woman, probationary officer, trainee or draftee in the Armed Forces of the Philippines **and** service rendered by him/her as a civilian official or employee in the Philippine Government **prior to the date of his/her separation or retirement from the Armed Forces of the Philippines, for which military and/or civilian service he/she shall have received pay from the Philippine Government, and/or such others as may be hereafter be prescribed by law as active service (PD 1638, as amended).**”¹⁸⁵ To my mind, the word “service” should be construed as that rendered by a military person in the AFP, including civil service, from the time of his/her commission, enlistment, probation, training or drafting, up to the date of his/her separation or retirement from the AFP. Civil service after honorable separation and retirement from the AFP is outside the context of “service” under AFP Regulations G 161-375.

Hence, it cannot be conveniently claimed that Marcos' ouster from the presidency during the EDSA Revolution is tantamount to his dishonorable separation, reversion or discharge from the military service. The fact that the President is the Commander-in-Chief of the AFP under the 1987

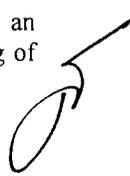
of ration savings, post exchange, company, or other like funds, or of embezzlement of money or other property entrusted to his charge by an enlisted man or men, receives his discharge, or is dismissed, or is dropped from the rolls, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not been so discharged, dismissed, or dropped from the rolls.

ARTICLE 97. *General Article.* – Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline and all conduct of a nature to bring discredit upon the military service shall be taken cognizance of by a general or special or summary court-martial according to the nature and degree of the offense, and punished at the discretion of such court. (Commonwealth Act No. 408 dated September 14, 1938, as amended by P.D. 1166 dated June 24, 1977)

Article 94 is under the jurisdiction of civil courts while Articles 95 to 97, as service-connected crimes or offenses, are under the jurisdiction of the court-martial (See R.A. No. 7055, Approved on June 20, 1991)

¹⁸⁴ On July 12, 2016, the NHCP published its study, entitled “*Why Ferdinand E. Marcos Should Not Be Buried At The Libingan Ng Mga Bayani*,” concluding that Marcos' military record is fraught with myths, factual inconsistencies, and lies. The NHCP study demonstrated that: (1) Marcos lied about receiving U.S. Medals (Distinguished Service Cross, Silver Star, and Order of Purple Heart); (2) his guerilla unit, the *Ang Mga Maharlika*, was never officially recognized and neither was his leadership of it; (3) U.S. officials did not recognize Marcos' rank promotion from Major in 1944 to Lt. Col. by 1947; and (4) some of Marcos' actions as a soldier were officially called into question by the upper echelons of the U.S. Military, such as his command of the Allas Intelligence Unit (described as “usurpation”), his commissioning of officers (without authority), his abandonment of USAFIP-NL presumably to build an airfield for Gen. Roxas, his collection of money for the airfield (described as “illegal”), and his listing of his name on the roster of different units (called a “malicious criminal act”).

¹⁸⁵ Emphasis supplied.



Constitution only enshrines the principle of supremacy of civilian authority over the military. Not being a military person who may be prosecuted before the court martial, the President can hardly be deemed “*dishonorably separated/reverted/discharged from the service*” as contemplated by AFP Regulations G 161-375. Dishonorable discharge through a successful revolution is an extra-constitutional and direct sovereign act of the people which is beyond the ambit of judicial review, let alone a mere administrative regulation.

It is undeniable that former President Marcos was forced out of office by the people through the so-called EDSA Revolution. Said political act of the people should not be automatically given a particular legal meaning other than its obvious consequence – that of ousting him as president. To do otherwise would lead the Court to the treacherous and perilous path of having to make choices from multifarious inferences or theories arising from the various acts of the people. It is not the function of the Court, for instance, to divine the exact implications or significance of the number of votes obtained in elections, or the message from the number of participants in public assemblies. If the Court is not to fall into the pitfalls of getting embroiled in political and oftentimes emotional, if not acrimonious, debates, it must remain steadfast in abiding by its recognized guiding stars – clear constitutional and legal rules – not by the uncertain, ambiguous and confusing messages from the actions of the people.

Conclusion

In sum, there is no clear constitutional or legal basis to hold that there was a grave abuse of discretion amounting to lack or excess of jurisdiction which would justify the Court to interpose its authority to check and override an act entrusted to the judgment of another branch. Truly, the President's discretion is not totally unfettered. “Discretion is not a free-spirited stallion that runs and roams wherever it pleases but is reined in to keep it from straying. In its classic formulation, 'discretion is not unconfined and vagrant' but 'canalized within banks that keep it from overflowing.’”¹⁸⁶ At bar, President Duterte, through the public respondents, acted within the bounds of the law and jurisprudence. Notwithstanding the call of human rights advocates, the Court must uphold what is legal and just. And that is not to deny Marcos of his rightful place at the LNMB. For even the Framers of our Constitution intend that full respect for human rights is available at any stage of a person's development, from the time he or she becomes a person to the time he or she leaves this earth.¹⁸⁷

¹⁸⁶ *Almario, et al. v. Executive Secretary, et al.*, *supra* note 46, at 163.

¹⁸⁷ Vol. IV Record, September 19, 1986, pp. 829-831; See also Bernas, Joaquin G., S.J., *The Intent of*



There are certain things that are better left for history – not this Court – to adjudge. The Court could only do so much in accordance with the clearly established rules and principles. Beyond that, it is ultimately for the people themselves, as the sovereign, to decide, a task that may require the better perspective that the passage of time provides. **In the meantime, the country must move on and let this issue rest.**

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


DIOSDADO M. PERALTA
Associate Justice

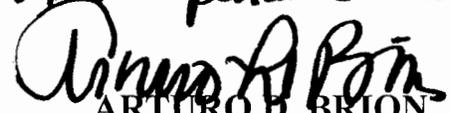
WE CONCUR:

*See Dissenting Opinion
in separate*
MARIA LOURDES P. A. SERENO
Chief Justice

*See Dissenting Opinion
Antonio T. Carpio*
ANTONIO T. CARPIO
Associate Justice

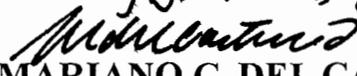
*I concur in the ponencia and
also in the opinion of Justice Mendoza*
PRESBITERO J. VELASCO, JR.
Associate Justice

*I concur in the ponencia and separate
opinion of Justice Mendoza*
Teresito Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

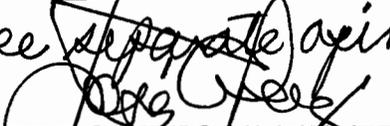
with Separate Concurring Op.

ARTURO B. BRION
Associate Justice

See Separate Opinion


LUCAS P. BERSAMIN
Associate Justice

*I join the separate opinion
of J. Mendoza*

MARIANO C. DEL CASTILLO
Associate Justice

See separate opinion


JOSE PORTUGAL PEREZ
Associate Justice

See Separate Opinion

JOSE CATRAL MENDOZA
Associate Justice

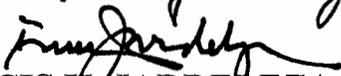
INHIBITED/NO PART


BIENVENIDO L. REYES
Associate Justice

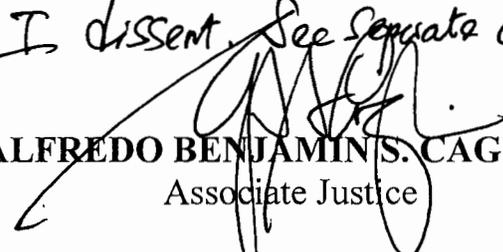
*I join the separate opinion of
J. Mendoza*
ESTELA M. PERLAS-BERNABE
Associate Justice

I dissent. See separate opinion


MARVIC M.V.F. LEONEN
Associate Justice

I join dissent of J. Caguioa

FRANCIS H. JARDELEZA
Associate Justice

I dissent. See Separate Opinion


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


MARIA LOURDES P. A. SERENO
Chief Justice