

The Solicitor General's Opening Statement During  
the Supreme Court Oral Arguments on the Marcos  
Burial Cases

**Arguments for the State**

Honorable Chief Justice and Associate Justices:

At this moment in our history, I recall a scene from Julius Caesar where Marc Antony spoke to his countrymen: "*I come to bury Caesar, not to praise him; The evil that men do lives after them, the good is oft interred in their bones.*" Inspired by these lines, I now come before you to allow the State to bury the remains of former President Ferdinand Marcos at the *Libingan ng Mga Bayani*, not to honor him as a hero, although by military standards he is, but to accord him the simple mortuary rites befitting a former president, commander-in-chief, war veteran and soldier.

This solemn duty now falls upon the shoulders of President Rodrigo Roa Duterte who is tasked to implement the guidelines governing the *Libingan*. As the father of this nation, President Duterte desires to begin the long overdue healing of our nation and to exorcise the ghosts of enmity and bitterness that prevent us from moving forward.

Unfortunately, the wisdom and propriety of President Duterte's well-intentioned desire to put a closure to this divisive issue has pinched the nerves of some who cannot forget their travails during the martial law era. In just a few days, 7 petitions were filed seeking to overturn the orders of the President.

I beg that your Honors should not be swayed by the epithets and *ad hominem* arguments of petitioners. Neither should you allow the momentum for national reconciliation and unity to be stalled.

Time constraints prevent me from discussing all the issues in the Advisory. However, let me just point out that our procedural defenses are sufficient enough to throw out the petitions. These are: 1) violation of the elementary principles of hierarchy of courts and exhaustion of administrative remedies; and 2) lack of *locus standi* to invoke judicial review. Based on these alone, the petitions must be dismissed.

Let me now proceed to the meat of the matter. In this oral defense, the State will concentrate on four essential points.

*First Point.* **THE WISDOM OF INTERRING MARCOS AT THE LIBINGAN IS A POLITICAL QUESTION.**

Well-settled is the rule that a mere existence of a controversy will not authorize the exercise by the courts of its power of review. An issue submitted before this Honorable Court must be susceptible of judicial determination. Hence, excluded from judicial review are questions of policy or wisdom, otherwise referred to as political questions (*Mamba v. Lara, G.R. No. 165109, 14 December 2009*).

The term political question connotes a question of policy. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure (*Belgica v. Executive Secretary Ochoa, et al., G.R. No. 208566, 19 November 2013*).

We respectfully submit that the instant controversy is beyond the ambit of judicial review as it involves an intrusion into the executive wisdom behind the interment of Marcos at the *Libingan*. As stated earlier, the underlying policy of President Duterte in ordering the interment of Marcos at the *Libingan* is to promote national healing.

The same policy was manifested when he declared a unilateral ceasefire with the CPP/NPA/NDF and when he implored this Honorable Court and the lower courts to grant temporary liberty to NDF Consultants for purposes of the peace negotiations in Oslo, Norway. We give credit to the judiciary for its harmonious cooperation with the presidency in propelling the peace talks by allowing the NDF consultants to post bail.

Interestingly, petitioner Satur Ocampo was one of them. Not one finger was ever raised to question the constitutionality of the grant of temporary liberty to these NDF Consultants who, in the first place, were supposed to stand under public pillory for their crimes against the People.

President Duterte's decision to inter the remains of Marcos at the *Libingan* should be dovetailed to his war against corruption and dangerous drugs, and his recent dealings with the CPP/NPA/NDF. *All these are geared towards real change by attuning the heart of this nation to the harmonics of peace, reconciliation and unity.*

Even the House of Representatives of the Fifteenth Congress shared the same sentiments when 218 of its members

adopted **House Resolution No. 1135** urging former President Aquino to allow the burial of the remains of Marcos at the *Libingan*. Our congressmen chorused that such burial will be a “*magnanimous act of reconciliation which will strengthen the bonds of solidarity among the Filipino people.*”

Even petitioner Teddy Baguilat agreed in allowing Marcos to be buried at the *Libingan* because he co-authored the Resolution.

Where does a president derive his authority to direct the interment of the remains of deceased presidents at the *Libingan*? It comes from at least 3 sources: : 1) power to reserve lands of public domain for public use under Book III, Title I, Chapter 4, Section 14 of the Administrative Code<sup>1</sup>; 2) power of control over executive departments, bureaus, and offices, specifically the PVAO, under Article VII, Sec. 17 of the 1987 Constitution<sup>2</sup> and echoed in Section 38, Chapter 37, Book IV of the Administrative Code<sup>3</sup>; and 3) residual powers of the presidency.

President Duterte’s directive to inter the remains of Marcos at the *Libingan* falls under the president’s residual powers under the Constitution, which powers are implicit in and correlative to the paramount duty residing in that office to safeguard and protect general welfare (*Marcos vs. Manglapus, G.R. No. 88211 [1989]*). The case of *Sanlakas et al vs. Executive Secretary Reyes, et al., G.R. 159085, Feb. 3, 2004*) further cements the residual power of the President in our jurisprudence when this Honorable Court ruled: “**The powers**

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

<sup>2</sup> **SECTION 17.** The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

<sup>3</sup> **SECTION 38.** Definition of Administrative Relationships. — Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

(1) Supervision and Control. — **Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate**; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies the word “control” shall encompass supervision and control as defined in this paragraph. x x x

**of the President are not limited to what are expressly enumerated in the article on the Executive Department and in scattered provisions of the Constitution. This is so, notwithstanding the avowed intent of the members of the Constitutional Commission of 1986 to limit the powers of the President.”** Thus, whatever power inherent in the government that is neither legislative nor judicial has to be executive. The power to inter the remains of Marcos at *Libingan* clearly belongs to the executive.

Notably, former Presidents exercised the same residual power when they decided on the fate of Marcos’ remains during their respective terms. Specifically, residual power was manifested when former President Corazon Aquino barred the return of the remains to the Philippines from Hawaii; when former President Ramos overturned President Cory and allowed the return of said remains subject to certain conditions; when former President Estrada expressed his intention to allow the burial of Marcos at the *Libingan* so that the “*decade long turmoil over the issue will subside*”; and when former President Benigno Aquino Sr. opted to ignore House Resolution No. 1135. If the prerogatives of these former Presidents were respected by this Honorable Court, so must it be with President Duterte.

Since it is indubitable that the act of President Duterte is a political question, hence, non-justiceable, the next question is: did he gravely abuse his discretion so as to warrant this Honorable Court’s exercise of its power of judicial review under the Constitution?

The answer is “NO”. Petitioners cannot rightfully ascribe grave abuse of discretion on the President because his directive is firmly and legally grounded on the standards laid down in P.D. 1076, as amended by the Administrative Code. In addition, this directive is consistent with AFP REGULATIONS G 161-375 dated September 11, 2000.

Grave abuse of discretion has consistently been defined as “the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility”.<sup>4</sup> In layman’s language, the gravity of the abuse of discretion must approximate the whims and caprices of an emperor like Caligula and the hostility of a despot like Polpot.

The qualifications and disqualifications laid down under

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<sup>4</sup> *Lagua v. Court of Appeals*, G.R. No. 173390, 27 June 2012

AFP REGULATIONS G 161-375 are so crystal clear that the President only exercises minimal discretion in deciding who may be buried thereat. As such, the room is too little for the President to abuse said discretion.

This now leads me to my *Second Point*. **MARCOS IS QUALIFIED TO BE INTERRED AT THE LIBINGAN.**

Under AFP Regulations G 161-375, Marcos is qualified to be interred at the *Libingan* under paragraphs 3(a), (b), (f), (h), (i) and, (j). Specifically, he was a Medal of Valor Awardee, a former President and Commander-in-Chief, a war veteran, and a Statesman.

It is of judicial notice that Marcos was the President of the Philippines from December 30, 1965 to February 25, 1986. As President, Ferdinand Marcos also served as the Commander-in-Chief of the AFP.

Likewise, prior to becoming President and Commander-in-Chief, Marcos served as a member of the Philippine Congress from 1949 to 1959. He was also a member of the Senate from 1959 to 1965, even serving as Senate President during his last three years therein.

Marcos is also a recognized military and war veteran, not to mention an awardee of a Medal of Valor through General Orders No. 167 dated October 16, 1968. The pertinent records to prove all of these are attached as Annexes "8" to "11" and "13" of the Consolidated Comment.

In fact, since April 9, 1994, the Philippine Veterans Affairs Office has been giving private respondent Imelda Romualdez Marcos a monthly pension of Php5,000.00, as the surviving spouse of a deceased veteran, pursuant to R.A. No. 6948, as amended by R.A. No. 7696. In addition, Imelda Marcos also receives a monthly pension of Php25,000.00 from the AFP, as a surviving spouse of a Medal of Valor Awardee.

Marcos suffers no impediment to be interred at the *Libingan* under the subject Regulation. He was neither dishonorably discharged from the service nor convicted by final judgment of an offense involving moral turpitude.

The *Lagman*, *Rosales* and *Saquisag* petitions state that agreement between the government represented by former

Secretary Rafael Alunan III and the Heirs of Marcos represented by Imelda Marcos bars the latter from burying the remains of President Marcos at the Libingan. They claim that it was a binding contract that must be honored by the State. However, the Memorandum of Understanding provides that the remains shall be temporarily interred 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 social-political climate. Thus, President Duterte is not bound by its terms because, as the current sitting President, he has the prerogative to determine and adopt executive policies in line with the changing times.

As a matter of fact, even the Congress recognizes this executive prerogative as evinced by the previous adoption of House Resolution No.1135. Otherwise, why would Congress urge then President Benigno Aquino to inter Marcos at the *Libingan* if Aquino was already hogtied by the alleged FVR Agreement? If the Congress thought that it was not bound by the alleged FVR agreement, why should President Duterte be?

**THIRD POINT. REPUBLIC ACT NO. 289 IS A DEFUNCT LAW THAT CANNOT MODIFY THE CLEAR LANGUAGE OF AFP REGULATIONS G 161-375.**

True, R.A. No. 289<sup>5</sup> authorizes 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. The National Pantheon was supposed to be a building to be erected at East Avenue in Quezon City pursuant to Proclamation No. 431 issued by President Quirino on December 23, 1953.

However, efforts on the part of President Quirino to create the National Pantheon failed to materialize. The National Pantheon never existed.

In fact, after the initial seed money of 1 million pesos, the Congress, from 1949 up to the present, did not bother to appropriate any fund for the full implementation of R.A. No. 289. That is 67 years of abandonment.

Moreover, worthy of note is that on July 5, 1954, then President Magsaysay issued Proclamation No. 42 revoking the previous issuances of President Quirino (Proclamation No. 431

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<sup>5</sup> Entitled "An Act Providing for the Construction of a National Pantheon for Presidents of the Philippines, National Heroes and Patriots of the Country."

and 422) that reserved a parcel of land for the National Pantheon. By virtue of Proclamation No. 42, the land, which was originally reserved for the National Pantheon, was re-allotted for a national park to be known as the “*Quezon Memorial Park*.”

Without a doubt, the inaction on the part of Congress and the withdrawal of the reservation of land for the Pantheon by President Magsaysay are clear expressions of the legislative and executive will to abandon R.A. No. 289 altogether.

Furthermore, as discussed in the Consolidated Comment, the *Libingan* is not the National Pantheon referred to in R.A. No. 289. As such, R.A. No. 289 and AFP Regulations G 161-375 are separate and distinct from each other.

In contrast, AFP Regulations G 161-375, not to mention the previous issuances governing the *Libingan*, is currently implemented and backed up with the necessary appropriations from Congress. Presently, the *Libingan* is located at Fort Bonifacio in Taguig City, a parcel of land of the public domain which used to be a military reservation site and later transformed into a national shrine for military memorials.

Let me repeat: R.A. No. 289 is a defunct law. It is separate and distinct from AFP Regulations G 161-375. Therefore, its provisions cannot be overstretched so as to modify the clear language of AFP Regulations G 161-375.

Finally, my **FOURTH POINT. THE INTERMENT OF MARCOS AT THE LIBINGAN IS NOT VIOLATIVE OF INTERNATIONAL LAWS AND NORMS BECAUSE THE STATE HAS ALREADY ENACTED AND MADE AVAILABLE THE REQUIRED LEGISLATIONS AND JUDICIAL REMEDIES.**

The petitioners adopted four flawed premises in their arguments: *first*, the *Libingan ng mga Bayani* is reserved for heroes; *second*, Marcos was not and can never be considered as a hero; *third*, the burial of Marcos at the *Libingan* has the effect of redeeming his image to make him a hero; and *fourth*, the image of Marcos as a hero will defeat the spirit of the 1987 Philippine Constitution and denigrate the sacrifices of the true heroes of Martial law. From these flawed premises, they then concluded that this alleged modification of history will violate the Philippines’ obligations under international law and norms.

Their syllogistic premises are logically false, and hence, the conclusions derived therefrom are not only *non-sequitur* but also incorrect.

*First*, as discussed above, the history of and the applicable guidelines pertaining to the *Libingan* will show that its name is a **misnomer**. As there is no standard or a body defining what a hero is, petitioners cannot insist that the *Libingan* is for heroes only. In reality, the *Libingan* which is located in a military reservation is a military cemetery with some civilians accommodated in it.

The interment of the remains of Marcos does not and will not confer upon him the title of a “hero”, worthy of emulation. Despite its name, the long history of the *Libingan* tells us that its purpose has neither been to confer the people buried thereat with the title of “hero” nor to require that only those buried therein should be treated as “heroes.”

As a matter of fact, the records will show that even widows of AFP Chiefs of Staff and national artists are interred at the *Libingan*. It is absurd that these persons were allowed to be interred at the *Libingan* and yet a former President would be disqualified.

*Second*, the interment of Marcos at the *Libingan* is not an attempt to re-write history, as the petitioners paints it to be. History is best written in the hearts of men rather than in recycled papers.

President Duterte’s decision to bury Marcos at the *Libingan* is a mere acknowledgment that he is a former President and Commander-in-Chief, war veteran, and Medal of Valor awardee, and nothing more.

*Third*, as exhaustively discussed in the Consolidated Comment, the State has already complied with the pertinent international laws and norm through the enactment and availability of legislations and judicial remedies, including, but not limited to, the following: 1) **R.A. No. 9851** (Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity); 2) **R.A. No. 10353** (Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity); 3) **R.A. No. 9745** (Anti-Torture Act of 2009); 4) **R.A. No. 9201**, (National Human Rights Consciousness Week Act of 2002); and 5) **R.A. No. 10368** (Human Rights Victims Reparation and



Recognition Act of 2013); and (6) Rules regarding *Writ of Habeas Corpus* and the *Writ of Amparo*.

With these, the State has shown to the world that it is determined to protect and preserve the essential human rights embodied in the International Convention on Civil and Political Rights, as well as in the UN Principles of Reparation and UN Principles on Impunity.

The 1987 Constitution itself contains provisions that ensure the promotion and protection of human rights through the creation of an independent Commission on Human Rights.

Lastly, petitioners failed to establish the imperative for this Honorable Court to issue an injunctive writ. Again, as discussed in the Consolidated Comment, petitioners do not have a clear legal right to prevent the interment of Marcos. The circumstance that petitioners experienced during martial law does not necessarily give them a right *in esse* that would warrant the issuance of an injunctive writ in this case.

On the contrary, it is the State that will suffer irreparable injury if an injunctive writ is issued because it will unduly curtail the current administration's momentum in fostering unity, healing and reconciliation among Filipinos regardless of tribe, ideologies and political persuasion.

As a final word, the interment of the remains of Marcos at the *Libingan* is one of the many facets of the *psyche* transformation of this country, paralleled by President Duterte's war against corruption and dangerous drugs, and the peace negotiations with the CPP/NPA/NDF. Furthermore, the resounding voice of **16,601,997** Filipinos that catapulted a mayor from Davao City to President of this nation is just too deafening to be ignored. The **14,155,344** votes that Bongbong Marcos garnered in the last election shows that there is no more national trauma as regards the dictatorship of his father and namesake. Our nation is in dire need of change. The people elected President Duterte to be their agent of change. Thus, this Honorable Court must heed this clarion call and give President Duterte enough latitude in the exercise of his political discretion in this case. Let me close with a quote from the Merchant of Venice where Portia begged Shylock not to exact a pound of flesh from his debtor:

“The quality of mercy is not strain'd,  
It droppeth as the gentle rain from heaven

Upon the place beneath: it is twice blest;  
It blesseth him that gives and him that takes:  
Tis mightiest in the mightiest;"

If Jesus who was battered and bloodied on the cross could freely forgive the sins of humanity, the petitioners should also have the humility to forgive those who sinned against them. God bless the Philippines.