Republic of the Philippines
Presidential Electoral Tribunal
Manila

FERDINAND "BONGBONG" R. MARCOS, JR.,
Protestant,

-versus-

MARIA LEONOR "LENI DAANG MATUWID" G. ROBREDO,
Protestee.

PET Case No. 005

Present:

PERALTA, *Chief Justice,*
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
HERNANDO,
CARANDANG*,
LAZARO-JAVIER*,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS,
GAERLAN, and
ROSARIO. *JJ.*

Promulgated:
November 17, 2020

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RESOLUTION

PER CURIAM:

For resolution of this Tribunal is protestant's Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen; II. Re-raffle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case and the Office of the Solicitor General's Omnibus Motion (Motion for Inhibition of

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* On wellness leave.
* On wellness leave.

Associate Justice Marvic M.V.F. Leonen and Reraffle).

Unanimously, we deny these Motions to Inhibit.

On November 9, 2020, protestant filed a "Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen; II. Re-raffle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case." He alleges that since October 2019, the protest has "remained in limbo."[1]

He further alleges that the pronouncements of Associate Justice Marvic M.V.F. Leonen (Justice Leonen) "in a number of landmark cases, his previous employment history as well as the manner in which he has handled the election protest. . . will prove that he will not be a fair and impartial *ponente*."[2]

To bolster his point, protestant underscores Justice Leonen's dissenting opinion in *Ocampo v. Enriquez*,[3] or the Marcos burial case, which supposedly shows Justice Leonen's bias and partiality against protestant and his family.[4]

Additionally, protestant surmises that this protest is the "perfect venue for Associate Justice Leonen to exact vengeance."[5] He narrates that when Justice Leonen was the country's Chief Peace Negotiator, protestant, who was then the head of the Senate Committee on Local Governments, blocked the creation of the Bangsamoro Juridical Entity, which Justice Leonen envisioned and worked for.[6]

Protestant also draws attention to a news article[7] written by a certain Jomar Canlas (Canlas), which stated that Justice Leonen circulated his 25-page Reflections back in July 10, 2017 recommending the dismissal of this protest, thereby showing his prejudgment. The Reflections supposedly lobbied for the dismissal of the protest even before it was deliberated upon and even before Justice Leonen became part of the "panel".[8]

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1 Strong Manifestation with Extremely Urgent Omnibus Motion, p. 5.
2 Id. at 6.
3 798 Phil. 227, 519–637 (2016) [Per J. Peralta, En Banc].
4 Strong Manifestation with Extremely Urgent Omnibus Motion, pp. 6–8.
5 Id. at 8.
6 Id. at 8–10. Protestant cited a newspaper article written by a certain Mario Gio Samonte, *Why hasn't Bongbong learned from his father?* published in The Manila Times on October 11, 2020
7 Jomar Canlas, *Justice prejudged Marcos poll protest,* THE MANILA TIMES, October 12, 2020 <https://www.manilatimes.net/2020/10/12/second-headline/justice-prejudged-marcos-poll-protest/779459/> (last accessed on November 17, 2020).
8 Strong Manifestation with Extremely Urgent Omnibus Motion, pp. 11–12.

Protestant claims the delay in the resolution of this election protest, which hardly moved from the time Justice Leonen took over as *ponente* and was marked by "one deferment after another through a series of resets and 'call-against'"[9] clearly showed Justice Leonen's bias and partiality.

Moreover, protestant avers that the referral of certain matters to the Office of the Solicitor General and the Commission on Elections only a year after the protest was raffled to Justice Leonen, showed the latter's ignorance of the law as referral to these offices should have been done the moment the protest was raffled to him.[10] As such, this only served to further delay its resolution.[11]

Protestant cites a portion of Justice Leonen's speech during the 5th National Congress of the National Union of Peoples Congress as further proof of his partiality:

> Just because you are for due process of law does not mean that you are for one party. . . It might take the tribunal some time to reach a conclusion since "you would want. . . everyone to be able to argue [their] case first.[12]

Protestant underscores that delaying the resolution of this election protest is against public policy because it "disregards the sanctity of votes and the popular choice of the people."[13] He cites Republic Act No. 1793,[14] which requires for an election protest to be decided within twenty (20) months after it is filed, as the standard for the expeditious resolution of election protests.[15]

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9 Id. at 14.
10 Id. at 15.
11 Id. at 16.
12 Id. at 15 *citing* Jerome Aning, Patricia Denise M. Chiu, *Leonen explains deferred ruling on VP poll protest,* INQUIRER.NET, October 20, 2019 <https://newsinfo.inquirer.net/1179607/leonen-explains-deferred-ruling-on-vp-poll-protest> (last accessed on November 17, 2020).
13 Id. at 16.
14 An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Protests Contesting the Election of the President-Elect and the Vice-President-Elect of the Philippines and Providing for the Manner of Hearing the Same (1957).
15 Rep. Act No. 1793 partly provides:
SECTION 3. The Presidential Electoral Tribunal shall decide the contest within twenty months after it is filed, and within said period shall declare who among the parties has been elected, or, in the proper case, that none has been elected, and in case of a tie between the candidates for president or for vice-president involved in the contest, one of them shall be chosen President or Vice-President, as the case may be, by a majority vote of the members of the Congress in joint session assembled.
The party who, in the judgment, has been declared elected, shall have the right to assume the office as soon as the judgment becomes final which shall be ten days after promulgation. The promulgation shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys, personally or by registered mail or by telegraph. No motion shall be entertained for the reopening of a case but only for the reconsideration of a decision under the evidence already of record, No party may file more than one motion for reconsideration, copy of which shall be served upon the adverse party who shall answer it within five days after the receipt thereof. Any petition for reconsideration shall be resolved within ten days after it is submitted for resolution. As soon as a decision becomes final, a copy thereof shall be furnished both houses of the Congress.

Protestant thus asks for the following reliefs from this Tribunal:

> **WHEREFORE,** premises considered and with the utmost esteem to the honorable Tribunal, movant respectfully prays that it:
>
> 1. **CONSIDER, DECIDE** and **GRANT** the instant respectful *Strong Manifestation with Extremely Urgent Omnibus Motion for Inhibition* of **Associate Justice Mario Victor F. Leonen;**
>
> 2. **ORDER THE IMMEDIATE RE-RAFFLE** of the instant election protest; and
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> 3. **RESOLVE ALL PENDING INCIDENTS** in the above-entitled case.
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> Other reliefs, just and equitable under the premises, are likewise prayed for.[16] (Emphasis in the original)

On the same day, the Office of the Solicitor General, led by Solicitor General Jose C. Calida (Solicitor General), filed a similar motion arguing that ever since the protest was raffled to Justice Leonen, "the people has been suspended in animation for close to a year."[17] The Solicitor General suggests that this inordinate delay manifests Justice Leonen's bias and partiality against protestant.[18]

Claiming to act as the People's Tribune, the Solicitor General moves for Justice Leonen's inhibition for the best interest of the State and the People. He avers that the expeditious resolution of the protest will finally reveal the real winner in the vice-presidential elections.[19]

Echoing the protestant, the Solicitor General also states that Justice Leonen's strongly-worded dissent in the Marcos burial case shows his bias and partiality.[20] He submits that "[t]here is also a need to investigate some reports about [Justice Leonen's] activities and actuations that destroy the reputation and trust of the people to an impartial Presidential Electoral Tribunal."[21]

The Solicitor General asserts that Justice Leonen showed his "loathsome attitude"[22] towards the entire Marcos family in his dissenting opinion in the Marcos burial case when he accused the whole Marcos family as beneficiaries of ill-gotten wealth despite their age, status, and lack of participation. The Solicitor General continues that Justice Leonen's obvious

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16 Id. at 18.
17 OSG Omnibus Motion, p. 2.
18 Id.
19 Id. at 4.
20 Id. at 2.
21 Id.
22 Id. at 8.

disdain over President Rodrigo Duterte's order to allow the burial of former President Ferdinand E. Marcos (President Marcos) in the Libingan ng mga Bayani as a symbol of closure, healing, and reconciliation, shows his deeply-rooted, personal hatred of the whole Marcos family.[23] He states:

> It is all too clear that Justice Leonen's scornful remarks in his dissent, comprising 94 pages and containing a litany of expressions beyond the legal issues presented in the Marcos burial cases, established his hatred towards the Marcos family, to which protestant belongs.[24]

The Solicitor General concludes that Justice Leonen prejudged the participation of the entire Marcos family in plunder when they were exiled.[25]

Next, the Solicitor General emphasizes that undue delay characterized the proceedings under the previous and current members in charge: "The inaction of the current Member-in-Charge, the Honorable Justice Leonen, for the past 11 months, coupled with his expressed disdain to the members of the Marcos family, duly recorded in his opinions as Associate Justice, compel us, with due respect, to move for his inhibition."[26]

Further, the Solicitor General asseverates that Justice Leonen's partiality and delay in resolving the current petition has resulted to impairment of public trust in the judiciary. Again echoing the protestant, the Solicitor General also referred to Canlas' news article which criticized Justice Leonen for circulating his Reflections to other members of this Tribunal before he became part of the "panel".[27]

The Solicitor General then insists that Justice Leonen's partiality against the Marcoses, as well as his lack of competence and probity, was shown when he penned *Chavez v. Marcos*.[28]

He puts forth that *Chavez* only centered on the collateral issue of the propriety of inhibition and did not touch upon the violation of former First Lady Imelda Marcos' right to double jeopardy or right to a speedy disposition of the case.[29] The Solicitor General laments that although "[t]he petition of Chavez was eventually denied[,] Mrs. Marcos, despite her acquittal, *lost* as she was constrained to re-litigate for an additional period of more than ten (10) years."[30]

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23 Id. at 9–12.
24 Id. at 13.
25 Id. at 13.
26 Id. at 2.
27 Id. at 21.
28 Id. at 14–16.
29 Id. at 16.
30 Id.

Finally, the Solicitor General cites Republic Act No. 1793[31] and Batas Pambansa Blg. 884[32] which both require the immediate resolution of pending presidential and vice-presidential challenges before this Tribunal as legal bases for his accusation of undue delay against Justice Leonen.[33]

Citing *Pimentel v. Salanga,*[34] the Solicitor General posits that when there is a "suggestion. . . that [a judge] might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstance reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired[.]"[35]

The Solicitor General proposes that in the absence of a clear criteria for mandatory inhibition, the following non-exclusive parameters should be considered for voluntary inhibition:

> (a) there is a recorded suggestion that the judge may be partial or bias[ed] in any way; (b) the exercise of the discretion whether to inhibit would impair the people's faith or confidence in the courts of justice; (c) the probability that the losing party might nurture or entertain a thought that the judge had unfairly titled the scales of justice against him; (d) availability of another judge to take over the case, and (e) inhibition does not result to appreciable prejudice to the parties.[36]

He then concludes that "the totality of facts and circumstances require inhibition by Justice Leonen."[37] Additionally, he calls on the rest of this Tribunal to push for Justice Leonen's inhibition: "[T]he general sentiment of the other Members of the Court may be considered given the settled approach on matters of inhibition. . . It has been held that in the event that a judge may be unable to discern for himself his inability to meet the test of the cold neutrality required of him, the Supreme Court has seen to it that he should disqualify himself."[38]

As a parting shot, the Solicitor General remarks that "[t]he resulting inhibition may even allow the Justice to focus on his reported unresolved docket of cases."[39]

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31 An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Protests Contesting the Election of the President-Elect and the Vice President-Elect of the Philippines and Providing for the Manner of Hearing the Same (1957).

32 An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Election Contests in the Office of President and Vice President of the Philippines, Appropriating Funds therefor and for Other Purposes (1985).

33 OSG Omnibus Motion, p. 24.

34 128 Phil. 176 (1967) [Per J. Sanchez, En Banc].

35 OSG Omnibus Motion, p. 28.

36 Id. at 30

37 Id. at 31.

38 Id. at 30–31.

39 Id. at 33.

The Solicitor General thus prayed as follows:

> **WHEREFORE**, premises considered, the Office of the Solicitor General (OSG) prays, with utmost respect to the Honorable Members of the Tribunal, that they:
>
> 1. **DECIDE** and **GRANT** the instant Omnibus Motion for Inhibition of Associate Justice Marvic M.V.F. Leonen; and
>
> 2. **ORDER THE IMMEDIATE RERAFFLE** of the instant election protest case to another Member of the Tribunal.
>
> Such other forms of relief that are just and equitable under the premises are likewise prayed for.[40]

In her Countermanifestation to protestant's motion for inhibition and re-raffle, protestee points out that this Tribunal, in its August 28, 2018 Resolution in relation to protestant's motion for the inhibition of Justice Caguioa, had sternly warned protestant to refrain from making any further "unfounded and inappropriate accusation"[41] as similar accusations will be dealt with more severely.

She then underscores that despite the previous warning he received, protestant once again followed "the same frivolous route in his Extremely Urgent Motion for Inhibition."[42]

Protestee stresses that the accusations leveled against Justice Leonen were of the same import as the accusations protestant also threw at Justice Caguioa when the latter was Member-in-Charge.[43] To illustrate the illogical reasoning of protestant's arguments, she listed[44] the basic personal facts on the sitting Justices who also served as Tribunal members. She then stated that following protestant's train of thought, she should also ask for the inhibition of the Tribunal members who voted for President Marcos' burial in the Libingan ng mga Bayani; those who had possible ties with protestant and the Solicitor General; and those who were appointed by President Duterte, a recognized ally of protestant and his family, as these would show their bias and partiality towards protestant.[45]

The sole issue for this Tribunal's resolution is whether or not Associate Justice Marvic Mario Victor F. Leonen should inhibit from this election protest.

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40 Id. at 33–34.
41 Counter Manifestation, pp. 2–3.
42 Id. at 6.
43 Id. at 8.
44 Id. at 8–10.
45 Id. at 10–11.

This is not the first time the protestant attempted to move for the inhibition of the member-in-charge of this case. This should however be the last time.

In this Tribunal's August 28, 2018 Resolution, where protestant similarly moved to inhibit the then Member-in-Charge of the case, we warned that "any unfounded and inappropriate accusation made in the future will be dealt with more severely."[46]

In his second motion for inhibition protestant is joined by the Solicitor General, who is not a party to the case but is acting as the People's Tribune. Protestant and the Solicitor General raised the same arguments, and prayed for the same reliefs.

Nonetheless, as we emphasized in the first inhibition case filed before this Tribunal, "[t]his Court will not require a judge to inhibit himself in the absence of clear and convincing evidence to overcome the presumption that he will dispense justice in accordance with law and evidence."[47]

I

Rule 8, Section 1 of the Internal Rules of the Supreme Court[48] is clear:

RULE 8

Inhibition and Substitution of Members of the Court

SECTION 1. *Grounds for Inhibition.* — A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:

> (a) the Member of the Court was the *ponente* of the decision or participated in the proceedings in the appellate or trial court;
> (b) the Member of the Court was counsel, partner or member of a law firm that is or was the counsel in the case subject to Section 3(c) of this rule;
> (c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;
> (d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;
> (e) the Member of the Court was executor, administrator, guardian or trustee in the case; and

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46 *Marcos v. Robredo*, P.E.T. Case No. 005, August 28, 2018 [Resolution, Per Curiam].

47 *Chavez v. Marcos*, G.R. No. 185484, June 27, 2018, 868 SCRA 251, 253 [Per J. Leonen, Third Division] *citing Pagoda Philippines, Inc. v. Universal Canning, Inc.*, 509 Phil. 339 (2005) [Per J. Panganiban, Third Division].

48 Adm. Matter No. 10-4-20-SC (2010).

> (f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.
>
> A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.
>
> The inhibiting Member must state the precise reason for the inhibition.

None of protestant and the Solicitor General's arguments cited a clear ground to warrant Justice Leonen's inhibition under the Rules. There were no prior proceedings where he may have participated. He had no professional engagement with, pecuniary interest relative to, or relation within the sixth degree of consanguinity or affinity to any of the parties or their counsels.

Protestant urges Justice Leonen to voluntarily inhibit. However, a movant seeking the inhibition of a magistrate is duty-bound to present clear and convincing evidence of bias to justify such request.[49]

Protestant failed to do so.

II

This Tribunal's actions on pending matters before it are not always publicized. There is no requirement to keep the parties abreast with all its internal proceedings, especially on administrative matters which do not directly concern them.

Alleging delay in this case, protestant cited Republic Act No. 1793, Section 3, which provides:

> SECTION 3. The Presidential Electoral Tribunal ***shall decide the contest within twenty months after it is filed***, and within said period shall declare who among the parties has been elected, or, in the proper case, that none has been elected, and in case of a tie between the candidates for president or for vice-president involved in the contest, one of them shall be chosen President or Vice-President, as the case may be, by a majority vote of the members of the Congress in joint session assembled.
>
> The party who, in the judgment, has been declared elected, shall have the right to assume the office as soon as the judgment becomes final which shall be ten days after promulgation. The promulgation shall be

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[49] *Marcos v. Robredo*, P.E.T. Case No. 005, August 28, 2018, [Resolution, Per Curiam] *citing Republic v. Sereno*, G.R. No. 237428, May 11, 2018, 863 SCRA 1 [Per J. Jardeleza, En Banc].

> made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys, personally or by registered mail or by telegraph. No motion shall be entertained for the reopening of a case but only for the reconsideration of a decision under the evidence already of record, No party may file more than one motion for reconsideration, copy of which shall be served upon the adverse party who shall answer it within five days after the receipt thereof. Any petition for reconsideration shall be resolved within ten days after it is submitted for resolution. As soon as a decision becomes final, a copy thereof shall be furnished both houses of the Congress. (Emphasis supplied).

The provision which protestant cited is no longer good law.

Atty. Macalintal v. Presidential Electoral Tribunal[50] extensively discussed this Tribunal's history.

Republic Act No. 1793 was passed in 1957, "[t]o fill in the void in the 1935 Constitution[.]"[51] At that time, there was no institution tasked to resolve election contests for the positions of President and Vice-President.

Under the 1973 Constitution, Republic Act No. 1793 was impliedly repealed since the President will not be directly voted by the citizens anymore but will come from the members of National Assembly. Further, "the position of Vice-President was constitutionally non-existent."[52]

When the direct election of the President and the Vice-President were restored, the National Assembly passed Batas Pambansa Blg. 884, otherwise known as "An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear, and Decide Election Contests in the Office of the President and Vice-President of the Philippines, Appropriating Funds Therefor and For Other Purposes."[53]

Finally, under the 1986 Constitution, this Tribunal ceased to be a mere statutory creation and became a constitutional institution:

> A plain reading of Article VII, Section 4, paragraph 7, readily reveals a grant of authority to the Supreme Court sitting *en banc*. In the same vein, although the method by which the Supreme Court exercises this authority is not specified in the provision, *the grant of power does not contain any limitation on the Supreme Court's exercise thereof.* The Supreme Court's *method* of deciding presidential and vice-presidential election contests, through the PET, is actually a derivative of the exercise of the prerogative conferred by the aforequoted constitutional provision.

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50 650 Phil. 326 (2010) [Per J. Nachura, En Banc].
51 Id. at 347.
52 Id. at 348.
53 Id. at 348–349.

> Thus, the subsequent directive in the provision for the Supreme Court to "promulgate its rules for the purpose."[54] (Emphasis supplied.)

Administrative Matter No. 10-4-29-SC, otherwise known as The 2010 Rules of the Presidential Electoral Tribunal governs this Tribunal's proceedings. The relevant provision reads:

> RULE 67. *Procedure in Deciding Contests.* — In rendering its decision, the Tribunal shall follow the procedure prescribed for the Supreme Court in Sections 13 and 14, Article VIII of the Constitution.

The Constitutional provisions cited in Rule 67 state:

> ARTICLE VIII
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> Judicial Department
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> . . . .
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> SECTION 13. The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Member who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor. The same requirements shall be observed by all lower collegiate courts.
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> SECTION 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.
>
> No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

There is no rule requiring that an election protest should be decided within twenty (20) months[55] or twelve (12) months.[56] The allegation of undue delay is severely unfounded.

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[54] Id. at 353.

[55] Strong Manifestation with Extremely Urgent Omnibus Motion, p. 2.
Rep. Act No. 1793 partly provides:
SECTION 3. The Presidential Electoral Tribunal shall decide the contest within twenty months after it is filed, and within said period shall declare who among the parties has been elected, or, in the proper case, that none has been elected, and in case of a tie between the candidates for president or for vice-president involved in the contest, one of them shall be chosen President or Vice-President, as the case may be, by a majority vote of the members of the Congress in joint session assembled.
The party who, in the judgment, has been declared elected, shall have the right to assume the office as soon as the judgment becomes final which shall be ten days after promulgation. The promulgation shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys, personally or by registered mail or by telegraph. No motion shall be entertained for the reopening of a case but only for the reconsideration of a decision under the evidence already of record, No party may file more than one motion for reconsideration, copy of which shall be served upon the adverse party who shall answer it within five days after the receipt thereof. Any petition for

In this Tribunal's October 15, 2019 Resolution,[57] the parties were informed of the results of the revision and appreciation of ballots in the 5,415 clustered precincts in the pilot provinces. In the interest of due process, the parties were directed to submit a Memorandum containing their comments and positions on specifically delineated issues within 20 working days.[58]

In separate Motions, the parties requested for time to view, photocopy, and secure hard copies of the voluminous records of the case. This Tribunal granted their prayers in its November 5, 2019 Resolution where the parties were directed to submit their Memoranda 20 days after completion of their requested photocopying.

Accordingly, the parties each submitted a Memorandum dated December 19, 2019. Both were noted in this Tribunal's January 7, 2020 Resolution. Thereafter, several incidents concerning the contracts of this Tribunal's personnel were resolved with dispatch.

In their respective Memoranda, the parties made serious factual allegations that warranted verification from the Commission on Elections. They also raised constitutional issues which led this Tribunal to require the Solicitor General's comment for a fair and full resolution of this protest.

Contrary to the protestant and the Solicitor General's actuations, the directives for the Commission on Elections and the Solicitor General were not in response to opinion pieces, which this Tribunal does not heed. In this Tribunal's August 28, 2018 Resolution, we denied protestant's similar motion and ruled that "an opinion piece in a news website and an unauthenticated video circulating on social media websites are not credible

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reconsideration shall be resolved within ten days after it is submitted for resolution. As soon as a decision becomes final, a copy thereof shall be furnished both houses of the Congress.

56 Batas Pambansa Blg. 884 partly states:
SECTION 4. The Tribunal must decide the contest within twelve months after it is filed. In case of a tie between the candidates for President and/or for Vice-President involved in the contest, the Tribunal shall notify the Batasang Pambansa of such fact, in which case the President or Vice-President, as the case may be, shall be chosen by a vote of a majority of all the Members of the Batasang Pambansa in session assembled.
The promulgation of the judgment shall be made on a date previously fixed, notice of which shall be served in advance upon the parties or their attorneys, personally or by special registered mail or by telegram. No motion shall be entertained for the opening of a case but only for the reconsideration of a decision based on the evidence already of record. No party may file more than one motion for reconsideration, copy of which shall be served upon the adverse party who shall answer it within five days after the receipt thereof. Any petition for reconsideration must be resolved within ten days after it is submitted for resolution. As soon as a decision becomes final, a copy thereof shall be furnished the Batasang Pambansa through the Speaker, and the Commission on Elections through its Chairman, in addition to the copies for the contestants or their attorneys.

57 *Marcos v. Robredo,* P.E.T. Case No. 005. October 15, 2019, <https://sc.judiciary.gov.ph/7752/> [Per Curiam, Presidential Electoral Tribunal].

58 Id. at 54–55.

and admissible supporting evidence; *they are not even worthy of cognizance by the Court.*"[59]

This Tribunal has not changed its stance on the matter.

III

A litigant's right to seek inhibition must be balanced with the judge's sacred duty to decide cases without fear of repression.[60] At its core, deliberating with fellow justices to decide a case is this Court's most basic function:

> **RULE 13**
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> *Decision-Making Process*
>
> . . . .
>
> SECTION 3. *Actions and Decisions, How Reached.* — The actions and decisions of the Court whether *en banc* or through a Division, shall be arrived at as follows:
>
> (a) *Initial action on the petition or complaint.* — After a petition or complaint has been placed on the agenda for the first time, the Member-in-Charge shall, except in urgent cases, submit to the other Members at least three days before the initial deliberation in such case, a summary of facts, the issue or issues involved, and the arguments that the petitioner presents in support of his or her case. The Court shall, in consultation with its Members, decide on what action it will take.
> (b) *Action on incidents.* — The Member-in-Charge shall recommend to the Court the action to be taken on any incident during the pendency of the case.
> (c) *Decision or Resolution.* — When a case is submitted for decision or resolution, the Member-in-Charge shall have the same placed in the agenda of the Court for deliberation. He or she shall submit to the other Members of the Court, at least seven days in advance, a report that shall contain the facts, the issue or issues involved, the arguments of the contending parties, and the laws and jurisprudence that can aid the Court in deciding or resolving the case. In consultation, the Members of the Court shall agree on the conclusion or conclusions in the case, unless the said Member requests a continuance and the Court grants it.
>
> SECTION 4. *Continuance in Deliberations.* — The deliberation on a case may be adjourned to another date to enable the Member who requested it to further study the case; provided, however, that the total period of continuances in the deliberation shall not exceed three months from the date it was first adjourned, unless the Court for good reason extends such period.

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59 *Marcos v. Robredo*, P.E.T. Case No. 005, August 28, 2018, p. 10 [Resolution, Per Curiam].
60 Id. at 2.

The immediately preceding rule shall likewise apply to actions on motions for reconsideration of the decisions and resolutions of the Court, unless a Member, whose vote in the original decision of a divided Court matters, is about to retire. In such a situation, the action on the motion for reconsideration submitted for resolution shall be made before his or her retirement.

SECTION 5. *Decision-making process.* — a) A Member who disagrees with the report and the recommended action of theMember-in-Charge may submit to the Chief Justice or Division Chairperson, furnishing a copy to other Members, his or her reflections, setting forth the reason or reasons for such disagreement.

b) A Member who agrees with the recommended action but based on different reason or reasons may, observing thesame procedure, submit his or her reflections stating such reason or reasons.

c) Unless the Court allows a longer period, the reflections must be submitted within a maximum period of one month from the date the Member-in-Charge's report is presented to the Court.

d) After the submission of the reflections, the Member-in-Charge may request for a vote on the report and thereflections or for time to respond to such reflections within a maximum period of two weeks. Voting shall take place when thefinal versions of the report and the reflections shall have been submitted.

e) The Court shall then assign to a Member the writing of its opinion based on the result of the voting. The Member assigned shall submit the majority opinion and the other Members may submit his or her dissenting, separate, or concurring opinions based solely on the final versions voted upon.

f) The majority opinion together with the other opinions shall be simultaneously filed with the Chief Justice or theDivision Chairperson and promulgated as official Court actions in the case.

g) Considering the collegial nature of the Court actions, a Member's vote during the final deliberation on a case cannot be unilaterally changed.[61]

This Court is a collegial body. The Supreme Court acts on a pending incident or resolves a case either *en banc* or in division. Decisions are not rendered in a Justice's individual capacity, but are, instead, arrived at through a majority vote of the Supreme Court's members. The Member-in-Charge simply recommends the action to be taken.[62]

The Solicitor General insists that Justice Leonen exhibited lack of competence and probity when he penned the Third Division's decision in

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[61] S. CT. INT. RULES, secs. 3, 4, and 5.

[62] *Marcos v. Robredo*, P.E.T. Case No. 005, August 28, 2018, p. 6 [Resolution, Per Curiam].

Chavez v. Marcos.[63] In effect, what he wants this Tribunal to accept is that Former Chief Justice Lucas Bersamin, Associate Justices Presbitero Velasco, Jr., Samuel Martires, Francis H. Jardeleza, and Leonen were all incompetent and lacking in probity because in *Chavez*, the then Third Division rendered the decision and merely spoke through Justice Leonen.

When the Supreme Court resolves a case in division, it is not a separate entity from the Supreme Court *en banc*. The Supreme Court *en banc* is not an appellate court where decisions by its divisions may be appealed. Thus, the Solicitor General's imputation of incompetence and lack of probity extends to all the members of the Supreme Court when *Chavez* was promulgated.

When sitting as the Presidential Electoral Tribunal, all Justices of the Supreme Court act as one body. The order asking the Commission on Elections and the Solicitor General to comment was not Justice Leonen's directive. Rather, it was this Tribunal's. When protestant and the Solicitor General argue that Justice Leonen was grossly ignorant in issuing these Orders, in effect, what they are saying is that this Tribunal was grossly ignorant of the law.[64] This is disrespectful and discourteous to this Tribunal.

We regret to find ourselves repeating earlier statements made when we denied protestant's similar motion as he tirelessly insists on the same arguments. "Unless protestant can prove with tangible evidence how a single Member was able to maneuver the will of 14 other Members into blindly following him with regard to all matters referred to the Tribunal, it is best that he maintain his arguments within the realm of reality."[65]

Lawyers for litigants at the highest level of our judicial system are expected to have a better knowledge of our workings. They do a disservice to their clients when they mislead them and the public that the Supreme Court is less than a collegial body. That the protestant's mistaken view of this court is joined by no less than the Solicitor General is deeply disturbing.

III. A.

Protestant and the Solicitor General misconstrue what bias and impartiality mean. Bias means a preconceived notion, which may be favorable or unfavorable to a party. Bias does not pertain to an instance when this Tribunal does not rule however you wish it to.

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63 OSG Omnibus Motion, p. 16.

64 Strong Manifestation with Extremely Urgent Omnibus Motion, p. 15.

65 *Marcos v. Robredo*, P.E.T. Case No. 005, August 28, 2018, p. 6 [Per Curiam, Presidential Electoral Tribunal].

In the same manner, protestant and the Solicitor General mistakenly equate impartiality with "tabula rasa" or the theory that people are born as blank slates, with our knowledge only formed along the way through our experiences and perceptions. Impartiality does not entail tabula rasa.

The absence of relationships or lack of opinion on any subject is not what makes a person impartial. Rather, it is the acknowledgment of initial or existing impressions, and the ability to be humble and open enough to rule in favor of where evidence may lie.

Human beings are naturally predisposed to formulate opinions, which may form into biases or inclinations, as it is inherent in our survival as a species to make constant value judgments on what is beneficial or detrimental to us. Instead of a constant state of absolute neutrality, it is the exhibition of openness to alter one's initial opinion that signifies impartiality. Impartiality does not mean coming to the court as a blank slate, which is inherently impossible. When Justices are appointed to the Supreme Court, they bring with them their experiences, philosophy, and values. What the job requires is the independence of the mind, not a completely blank slate.

Protestant's claims that Justice Leonen lobbied for the dismissal of his protest is belied by this Tribunal's October 15, 2019 Resolution[66] which released the results of the revision and appreciation of ballots from protestant's pilot provinces. The final tally showed an increase of protestee's lead over protestant:

> Thus, based on the final tally after revision and appreciation of the votes in the pilot provinces, protestee Robredo maintained, as in fact she increased, her lead with 14,436,337 votes over protestant Marcos who obtained 14,157,771 votes. After the revision and appreciation, the lead of protestee Robredo increased from 263,473 to 278,566.[67]

Despite the results of the revision and appreciation process, Justice Leonen did not vote for the immediate dismissal of this protest. Instead, he joined the majority in directing the parties to file their respective memoranda on the results and on protestant's Third Cause of Action to protect the parties' right to due process. This Tribunal stated:

> Before the Tribunal proceeds to make a ruling on the effects of the results of the revision and appreciation of the votes for the pilot provinces on the Protestant's Second Cause of Action as articulated in the Preliminary Conference Order, the Parties will be required to submit their position stating their factual and legal basis (*sic*).

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66 *Marcos v. Robredo,* P.E.T. Case No. 005. October 15, 2019, <https://sc.judiciary.gov.ph/7752/> [Per Curiam, Presidential Electoral Tribunal].

67 Id. at 58.

> Likewise, the Tribunal deems it essential to meet due process requirements to require protestant and protestee to now provide their position in relation to the Third Cause of Action also articulated in the Preliminary Conference Order. The Tribunal notes the pending Motion for Technical Examination dated July 10, 2017 and Extremely Urgent Manifestation of Grave Concern with Omnibus Motion dated December 10, 2018, as well as protestee's Manifestation dated October 14, 2019, and the earlier deferments made by the Tribunal of the various issues related to the Third Cause of Action.
>
> This controversy has spawned very serious but unfounded and careless speculations on the part of many partisan observers who, on the basis of incomplete information, would rather latch on to their favorite conspiratorial theories rather than critically examine the facts and the law involved in this case. This Tribunal, however, will comply with its constitutionally mandated duty allowing the parties the opportunity to examine the results of the revision and appreciation of the pilot provinces as well as comment so that they are fully and fairly heard on all the related legal issues. Based on the submissions of the parties, the Tribunal can therefore confidently and judiciously deliberate on the proper course of action as clarified by the actual position of the parties on the common issues that we have identified.[68]

Clearly, Justice Leonen's votes in the present case do not support protestant's narrative of a partial and vengeful magistrate who had already prejudged protestant and his entire family.

III. B.

Protestant and the Solicitor General's ground to inhibit Justice Leonen for dissenting in *Ocampo v. Enriquez*[69] fails to persuade..

First, *protestant is not President Marcos*. They are two different people. All the quoted portions of Justice Leonen's opinion which are allegedly biased against President Marcos are irrelevant here.

Second, when Justice Leonen analyzed the arguments, weighed the evidence, and arrived at a conclusion in that case, he was not exhibiting bias. Rather, he was exercising his judicial function. To put in elementary terms, he was simply doing his job.

In the same manner, when the other Justices voted for the majority, they were not exhibiting bias but merely exercising their judicial functions.

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[68] Id.

[69] 798 Phil. 227, 519–637 (2016) [Per J. Peralta, En Banc].

Protestant and the Solicitor General posit that by not joining the majority in *Ocampo*, Justice Leonen can no longer be impartial in the present case. Following their logic, the rest of the Supreme Court in *Ocampo,* who voted either with or against the majority, would likewise be incapable of being impartial in this case and will always vote as he or she did in *Ocampo* in future cases involving the Marcos family. This would then lead to an absurd scenario where all the justices will have to inhibit for either voting for or against a party when a new case is filed against that party.

This conclusion is plainly unacceptable.

Protestant and the Solicitor General quote heavily from Justice Leonen's dissenting opinion in *Ocampo*, claiming that the quoted portions demonstrate Justice Leonen's bias against protestant.

In particular, protestant and the Solicitor General take exception to Justice Leonen's explanation on why former President Marcos should not have been buried in the Libingan ng mga Bayani, namely: that he was not a hero;[70] that he invented his supposed medals of honor;[71] that he allowed his family, associates, and cronies to plunder the Philippine coffers;[72] that even the Supreme Court, throughout the decades, has identified him to be an authoritarian and dictator, and held that Swiss deposits in the amount of US$658,175,373.60 under the name of the Marcoses had been ill-gotten wealth, to be forfeited in favor of the government;[73] and that the abuses during his regime caused suffering for millions of Filipinos.[74] Both protestant and the Solicitor General also claim that Justice Leonen's prejudice against protestant is apparent because his dissenting opinion mentioned the accountability of President Marcos' relatives for certain offenses committed during his regime.[75]

Justice Leonen's description of President Marcos' regime and its effect on the nation was based on law, history, and jurisprudence. The Supreme Court has repeatedly described the Marcos regime as authoritarian; referred to "the Marcoses and their cronies"; acknowledged the illegal wealth the Marcoses stashed away which the government has been attempting to recover; and noted the suffering the Marcos regime had wrought on the Filipino people.

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70 Strong Manifestation with Extremely Urgent Omnibus Motion, p. 6.
71 Id. at 7.
72 OSG Omnibus Motion, pp. 7–8.
73 Id. at 9.
74 Id. at 7–8.
75 OSG Motion for Inhibition, p. 11; and Strong Manifestation with Extremely Urgent Omnibus Motion, p. 7.

In *Mijares v. Ranada*[76], the Supreme Court lamented the nation's pains in the aftermath of the Marcos regime:

> Our martial law experience bore strange unwanted fruits, and we have yet to finish weeding out its bitter crop. While the restoration of freedom and the fundamental structures and processes of democracy have been much lauded, according to a significant number, the changes, however, have not sufficiently healed the colossal damage wrought under the oppressive conditions of the martial law period. The cries of justice for the tortured, the murdered, and the *desaparecidos* arouse outrage and sympathy in the hearts of the fair-minded, yet the dispensation of the appropriate relief due them cannot be extended through the same caprice or whim that characterized the ill-wind of martial rule. The damage done was not merely personal but institutional, and the proper rebuke to the iniquitous past has to involve the award of reparations due within the confines of the restored rule of law.[77]

Similarly, in *Marcos v. Manglapus*,[78] the Supreme Court noted the hardships the nation faced in rebuilding itself after the Marcos regime, and recognized the government's efforts to recover the illegal wealth "stashed away by the Marcoses in foreign jurisdictions":

> This case is unique. It should not create a precedent, for the case of 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 seeks to return, is in a class by itself.
>
> . . . .
>
> We cannot also lose sight of the fact that the country is only now beginning to recover from the hardships brought about by the plunder of the economy attributed to the Marcoses and their close associates and relatives, many of whom are still here in the Philippines in a position to destabilize the country, while the Government has barely scratched the surface, so to speak, in its efforts to recover the enormous wealth stashed away by the Marcoses in foreign jurisdictions. Then, We cannot ignore the continually increasing burden imposed on the economy by the excessive foreign borrowing during the Marcos regime, which stifles and stagnates development and is one of the root causes of widespread poverty and all its attendant ills. The resulting precarious state of our economy is of common knowledge and is easily within the ambit of judicial notice.[79]

Galman v. Sandiganbayan,[80] illustrated how President Marcos' use of his authoritarian powers corrupted the judicial process and rule of law:

> Last August 21st, our nation marked with solemnity and for the first time in freedom the third anniversary of the treacherous assassination of foremost opposition leader former Senator Benigno "Ninoy" Aquino,

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76 495 Phil. 372 (2005) [Per J. Tinga, Second Division].
77 Id. at 375.
78 258 Phil. 479 (1989) [Per J. Cortes, En Banc].
79 Id. at 492–509.
80 228 Phil. 42 (1986) [Per C.J. Teehankee, En Banc].

> Jr. imprisoned for almost eight years since the imposition of martial law in September, 1972 by then President Ferdinand E. Marcos, he was sentenced to death by firing squad by a military tribunal for common offenses alleged to have been committed long before the declaration of martial law and whose jurisdiction over him as a civilian entitled to trial by judicial process by civil courts he repudiated....
>
> The record shows suffocatingly that from beginning to end, the then President used, or more precisely, misused the overwhelming resources of the government and his authoritarian powers to corrupt and make a mockery of the judicial process in the Aquino-Galman murder cases. As graphically depicted in the Report, *supra,* and borne out by the happenings (*res ipsa loquitura*), since the resolution prepared by his "Coordinator," Manuel Lazaro, his Presidential Assistant on Legal Affairs, for the Tanodbayan's dismissal of the cases against all accused was unpalatable (it would summon the demonstrators back to the streets) and at any rate was not acceptable to the Herrera prosecution panel, the unholy scenario for acquittal of all 26 accused after the rigged trial as ordered at the Malacañang conference, would accomplish the two principal objectives of satisfaction of the public clamor for the suspected killers to be charged in court and of giving them through their acquittal the legal shield of double jeopardy.[81]

Quoting Justice Leonen's dissenting opinion that the law "implies that not only was [Ferdinand E. Marcos] the President that presided over. . . violations, but that he and his spouse, relatives, associates, cronies, and subordinates were active participants,"[82] the Solicitor General argues that Justice Leonen seems to suggest that certain Marcos relatives bear some accountability for what transpired during President Marcos' regime.[83] However, this suggestion is not new in our system of laws and jurisprudence.

Republic v. Sandiganbayan[84] recognized the gargantuan task the government faced in relation to the Marcoses and their illegal wealth—referring to the Marcoses, and not only to President Marcos:

> The EDSA revolution in February 1986 swept the Marcoses out of power. One of the first official acts of then President Corazon C. Aquino was the creation of the Presidential Commission on Good Government (PCGG) under E.O No. 1. It was given the difficult task of recovering the illegal wealth of the Marcoses, their family, subordinates and close associates. In due time, the Marcoses and their cronies had to face a flurry of cases, both civil and criminal, all designed to recover the Republic's wealth allegedly plundered by them while in power.[85]

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81 Id. at 53–83.
82 OSG Omnibus Motion, p. 11.
83 OSG Omnibus Motion, p. 13.
84 300 Phil. 765 (1994) [Per J. Puno, En Banc].
85 Id. at 769.

Moreover, the assessment in Justice Leonen's dissenting opinion is supported not only by jurisprudence, but by Republic Act No. 10368, or the Human Rights Victims Reparation and Recognition Act of 2013. Indeed, the Solicitor General omitted the extensive discussion on the Human Rights Victims Reparation and Recognition Act of 2013 which immediately preceded Justice Leonen's statement regarding the accountability of the Marcoses. This discussion is reproduced here:

> Republic Act No. 10368 provides for both government policy in relation to the treatment of Martial Law victims as well as these victims' reparation and recognition. It creates a Human Rights Victims' Claims Board and provides for its powers. Among the powers of the Board is to "approve with finality all eligible claims" under the law.
>
> This law provides for the process of recognition of Martial Law victims. There are victims who are allowed to initiate their petitions, those who are conclusively presumed, and those who may be *motu proprio* be recognized by the Board even without an initiatory petition.
>
> Republic Act No. 10368 codifies four (4) obligations of the State in relation to the Martial Law regime of Ferdinand E. Marcos:
>
> First, to recognize the heroism and sacrifices of victims of summary execution, torture, enforced or involuntary disappearance, and other gross violations of human rights;
>
> Second, to restore the honor and dignity of human rights victims;
>
> Third, to provide reparation to human rights victims and their families; and
>
> Fourth, to ensure that there are effective remedies to these human rights violations.
>
> Based on the text of this law, human rights violations during the "regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986" are recognized. Despite his claim of having won the snap elections for President in 1985, Ferdinand E. Marcos was unceremoniously spirited away from Malacañang to Hawaii as a result of the People's uprising now known as "People Power." The legitimacy of his ouster from power was subsequently acknowledged by this Court in *Lawyers' League for a Better Philippines* and in *In re Saturnino Bernardez*, which were both decided in 1986.
>
> This recognition of human rights violations is even clearer in the law's definition of terms in Republic Act No. 10368, Section 3 (b):
>
> > (b) Human rights violation refers to any act or omission committed during the period from September 21, 1972 to February 25, 1986 by persons acting in an official capacity and/or agents of the State, but shall not be limited to the following:

(1) Any search, arrest and/or detention without a valid search warrant or warrant of arrest issued by a civilian court of law, including any warrantless arrest or detention carried out pursuant to the declaration of Martial Law by former President Ferdinand E. Marcos as well as any arrest, detention or deprivation of liberty carried out during the covered period on the basis of an Arrest, Search and Seizure Order (ASSO), a Presidential Commitment Order (PCO), or a Preventive Detention Action (PDA) and such other similar executive issuances as defined by decrees of former President Ferdinand E. Marcos, or in any manner that the arrest, detention or deprivation of liberty was effected;

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

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

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

(5) Any act of force, intimidation or deceit causing unjust or illegal takeover of a business, confiscation of property, detention of owner/s and or their families, deprivation of livelihood of a person by agents of the State, including those caused by Ferdinand E. Marcos, his spouse Imelda R. Marcos, their immediate relatives by consanguinity or affinity, as well as those persons considered as among their close relatives,

> associates, cronies and subordinates under Executive Order No. 1, issued on February 28, 1986 by then President Corazon C. Aquino in the exercise of her legislative powers under the Freedom Constitution;'
>
> (6) Any act or series of acts causing, committing and/or conducting the following:
>
> > "i) Kidnapping or otherwise exploiting children of persons suspected of committing acts against the Marcos regime;
> >
> > "(ii) Committing sexual offenses against human rights victims who are detained and/or in the course of conducting military and/or police operations; and
> >
> > "(iii) Other violations and/or abuses similar or analogous to the above, including those recognized by international law."

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

> (c) Human Rights Violations Victim (HRVV) refers to a person whose human rights were violated by persons acting in an official capacity and/or agents of the State as defined herein. In order to qualify for reparation under this Act, the human rights violation must have been committed during the period from September 21, 1972 to February 25, 1986: Provided however, That victims of human rights violations that were committed one (1) month before September 21, 1972 and one (1) month after February 25, 1986 shall be entitled to reparation under this Act if they can establish that the violation was committed:
>
> > (1) By agents of the State and/or persons acting in an official capacity as defined hereunder;
> > (2) For the purpose of preserving, maintaining, supporting or promoting the said regime; or
> > (3) To conceal abuses during the Marcos regime and/or the effects of Martial Law.

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

> (d) Persons Acting in an Official Capacity and/or Agents of the State. — The following persons shall be deemed persons acting in an official capacity and/or agents of the State under this Act:
>
> > (1) Any member of the former Philippine Constabulary (PC), the former Integrated National Policy (INP), the Armed Forces of the Philippines (AFP) and the Civilian Home Defense Force (CHDF) from September 21, 1972 to February 25, 1986 as well as any civilian agent attached thereto: and any member of a paramilitary group even if one is not organically part of the PC, the INP, the AFP or the CHDF so long as it is shown that the group was organized, funded, supplied with equipment, facilities and/or resources, and/or indoctrinated, controlled and/or supervised by any person acting in an official capacity and/or agent of the State as herein defined;
> >
> > (2) Any member of the civil service, including persons who held elective or appointive public office at any time from September 21, 1972 to February 25, 1986;
> >
> > (3) Persons referred to in Section 2 (a) of Executive Order No. 1, creating the Presidential Commission on Good Government (PCGG), issued on February 28, 1986 and related laws by then President Corazon C. Aquino in the exercise of her legislative powers under the Freedom Constitution, ***including former President Ferdinand E. Marcos, spouse Imelda R. Marcos, their immediate relatives by consanguinity or affinity, as well as their close relatives, associates, cronies and subordinates;*** and
> >
> > (4) Any person or group/s of persons acting with the authorization, support or acquiescence of the State during the Marcos regime.[86] (Emphasis supplied)

Like the cases before that have referred generally to the Marcoses and their cronies, and the need to recover their illegally gotten wealth, Republic Act No. 10368 itself expressly mentions President Marcos, Imelda R. Marcos, and their immediate relatives by consanguinity or affinity, as well as their close relatives. Thus, the conclusion in Justice Leonen's dissenting opinion, that Republic Act No. 10368 implies that Marcos' spouse, relatives,

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[86] Id. at 578–586.

associates, cronies, and subordinates were active participants is based on the text of Republic Act No. 10368.

Justice Leonen's dissenting opinion did not introduce in this jurisdiction the terminology and concepts objected to in the Motions for Inhibition.

III. C.

We are deeply disturbed that the Solicitor General gravely imputes gross ignorance of the law to the Supreme Court when it ruled in *Chavez v. Marcos*.[87]

To recall, *Chavez* involved 33 consolidated criminal cases filed against Imelda R. Marcos (Imelda), among others, for violations of Section 4 of Central Bank Circular No. 960, in relation to Section 34 of Republic Act No. 265, or the Central Bank Act. It was decided in Imelda's favor, who was acquitted of the charges.

This favorable ruling notwithstanding, the Solicitor General claims that Justice Leonen's "partiality against the Marcoses has led to a Decision in *Francisco I. Chavez v. Imelda R. Marcos* which exhibits lack of competence and probity."[88] It is unclear how *Chavez* lacked competence and probity and why it solely falls on Justice Leonen's shoulders.

Further, the Solicitor General assails "why and how the acquittal led to a full-blown Supreme Court case." He also asserts that the issues resolved in *Chavez* were "unexpected," but allegedly did not discuss a number of issues raised in Imelda's favor. However, he failed to elaborate on these points.

Finally, despite *Chavez* having been decided in Imelda's favor, the Solicitor General asserts that she ultimately lost because she had to re-litigate the case for more than ten (10) years. No legal or factual basis is cited to substantiate this claim, nor was there any ground to find Justice Leonen responsible for the alleged 10-year "re-litigation".

Each case has its own unique set of facts and circumstances. Some cases may appear to be similar but have different outcomes. Further, courts need not rule on every conceivable issue, particularly when the issue does not affect the result.[89]

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87 G.R. No. 185484, June 27, 2018, 868 SCRA 251 [Per J. Leonen, Third Division].
88 OSG Omnibus Motion, p.14.
89 *See Macababbad, Jr. v. Masirag* 596 Phil. 76 (2009) [Per J. Brion, Second Division].

To move for the inhibition of a justice because of a perceived notion of bias or partiality against a party based on past decisions would not hold water. Ironically, it was protestant himself who gave evidence of Justice Leonen's impartiality when he cited a case where Justice Leonen voted for members of the Marcos family.

III. D.

Drafts yet to be voted on are confidential because they merely form part of the internal deliberations of the Supreme Court, and may later change. They may be adopted by the Member-in-Charge, ripen to a concurring or dissenting opinion, or withdrawn altogether. Until the members of the Court vote on a matter, a position in a draft is temporary. Therefore, drafts for the Court's deliberations should not be taken against any Justice who, again, is *simply doing his or her job*.

We stress that certain information "contained in the records of cases before the Supreme Court are considered confidential and exempt from disclosure."[90] In a February 14, 2012 Notice in response to the Impeachment Prosecution Panel's request for access to court records, the Supreme Court stated that its internal rules prohibited the disclosure of the following information:

> **(1)** the result of the ***raffle of cases***, **(2)** ***the actions taken by the Court*** on each case included in the agenda of the Court's session, and ***(3) the deliberations of the Members in court sessions on cases and matters pending before it.***[91] (Emphasis supplied)

Court deliberations are generally considered to be privileged communication,[92] making it one of the exceptions to the constitutional right to information.[93]

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90 *In Re: Production of Court Records and Documents and the Attendance of Court officials and employees as witnesses under the subpoenas of February 10, 2012 and the various letters for the Impeachment Prosecution Panel dated January 19 and 25, 2012*, p. 12 (February 14, 2012) [Per Curiam, En Banc].

91 *In Re: Production of Court Records and Documents and the Attendance of Court officials and employees as witnesses under the subpoenas of February 10, 2012 and the various letters for the Impeachment Prosecution Panel dated January 19 and 25, 2012*, p. 12 (February 14, 2012) [Per Curiam, En Banc].

92 Internal Rules of the Supreme Court, Rule 10, Section 2- Confidentiality of court sessions - Court sessions are executive in character, with only the Members of the Court present. Court deliberations are confidential and shall not be disclosed to outside parties, except as may be provided herein or as authorized by the Court.

93 *Department of Foreign Affairs v. BCA International Corp.*, G.R. No. 210858, [June 29, 2016] [Per J. Carpio, Second Division].

In *In Re: Production of Court Records and Documents and the Attendance of Court Officials and Employees as Witnesses*,[94] the Supreme Court, citing Justice Abad's concurring opinion in *Arroyo v. De Lima,* explained that the deliberative process privilege was necessary to precipitate a free discussion of issues among its members without fear of criticism or humiliation in case a member went against the popular opinion:

> Justice Abad discussed the rationale for the rule in his concurring opinion to the Court Resolution in Arroyo v. De Lima (TRO on Watch List Order case): the rules on confidentiality will enable the Members of the Court to "freely discuss the issues without fear of criticism for holding unpopular positions" or fear of humiliation for one's comments. The privilege against disclosure of these kinds of information/communication is known as deliberative process privilege, involving as it does the deliberative process of reaching a decision. "Written advice from a variety of individuals is an important element of the government's decision-making process and that the interchange of advice could be stifled if courts forced the government to disclose those recommendations;" the privilege is intended "to prevent the 'chilling' of deliberative communications."[95] (Citations omitted)

The deliberative process privilege is not exclusive to the Judiciary and is enjoyed by any agency or body whose functions involve deliberations or candid discussions before arriving at a final policy or resolution.[96] Aside from allowing an unfettered exchange of ideas, *Department of Foreign Affairs v. BCA International Corp*[97] also explained that the deliberative process privilege is necessary to prevent "public confusion from premature disclosure of agency opinions before the agency establishes final policy."[98]

We note that unauthorized disclosure, sharing, publication, or use of confidential documents or any of its contents is classified as a grave offense. The Tribunal could have proceeded to the issuance of show cause orders against the Solicitor General and Canlas for procuring, aiding and encouraging the leakage of sensitive and confidential materials. However, in order that this Tribunal may be in a better position to focus on the merits of the issues raised by the parties in this already contentious case, the Tribunal for now sees fit to remind the parties that the deliberative process privilege enjoys absolute confidentiality and exhorts them to accord it respect.

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94 February 14, 2012 [Per Curiam, En Banc].

95 *In Re: Production of Court Records and Documents and the Attendance of Court officials and employees as witnesses under the subpoenas of February 10, 2012 and the various letters for the Impeachment Prosecution Panel dated January 19 and 25, 2012*, February 14, 2012, <https://www.officialgazette.gov.ph/downloads/2012/02feb/20120214-Notice-of-Resolution.pdf> 14 [Per Curiam, En Banc].

96 *Department of Foreign Affairs v. BCA International Corp.*, 788 Phil. 704, 735 (2016) [Per J. Carpio, Second Division].

97 *Department of Foreign Affairs v. BCA International Corp.*, 788 Phil. 704 (2016) [Per J. Carpio, Second Division].

98 Id. at 735.

IV

The standing asserted by the Solicitor General should be reviewed. "People's Tribune" is not to be hoisted wantonly in big ticket cases involving private parties.

People's Tribune has been defined as:

> [A]n instance when the Solicitor takes a position adverse and contrary to the Government's because it is incumbent upon him to present to the Court what he considers would legally uphold government's best interest, although the position may run counter to a client's position.[99]

The Office of the Solicitor General is the law office of the government. Its default client is the Republic of the Philippines, but ultimately, "the distinguished client of the Office of the Solicitor General is the people themselves."[100] Its status as People's Tribune is properly invoked only if the Republic of the Philippines is a party litigant to the case.

Here, the Republic of the Philippines is not a party litigant. Protestant filed this election protest in his bid to oust the elected Vice President. Simply, this involves private individuals only. Yet the Solicitor General comes to this Tribunal without, at the very least, asking for leave of court as courtesy to this Tribunal.

Basic procedure dictates that parties must move for leave if they seek any action from this Tribunal. With more reason should a nonparty file the appropriate motion to intervene in a case not concerning them.

This Tribunal reminds the Office of the Solicitor General that it has been previously admonished that "[i]n future cases, however, the Office of the Solicitor General should be more cautious in entering its appearance to this Court as the People's Tribune to prevent further confusion as to its standing."[101]

If indeed the Solicitor General was genuinely concerned about the protracted resolution of the protest and its effect on the people who "deserves nothing less,"[102] then he should have confined the issue to the supposed delay in the resolution of the protest, as this was the only matter with relevance to the public. Instead, the Solicitor General imputed

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99 1987ADM. CODE, ch. 12, title III, book IV, sec. 35.

100 *Gonzales v. Chavez*, 282 Phil. 858, 889 (1992) [Per J. Romero, En Banc].

101 J. Leonen, Dissenting Opinion in *Umali v. Judicial and Bar Council*, 814 Phil. 253, 319–320 (2017) [Per J. Velasco, Jr., En Banc].

102 OSG Omnibus Motion, p. 24.

impartiality and incompetence not only against a sitting member of this Tribunal but also against the entire body.

We echo the Solicitor General's arguments and counsel him to "conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired."[103] Lamenting a decision he posits as unfavorable to a particular family[104] and lackadaisically invoking People's Tribune are not hallmarks of a high-ranking government official on whom public trust is reposed.

The Solicitor General should have been more circumspect before he cited unsubstantiated news articles. The parties are likewise cautioned to refrain from using language that undermines the credibility and respect due to this Tribunal.

When the Motions for Inhibition were heard by the Tribunal, there was a unanimous vote to issue a show cause order against the Solicitor General and Canlas. However, when the Resolution was being finalized, the member-in-charge sent a letter to the other members of the Tribunal to appeal for the withdrawal of the show cause order. The letter reads:

> Dear Chief Justice and Colleagues:
>
> In order that this Court be in a better position to focus on the merits of the issues raised by the parties in this already contentious contest, I propose to remove the show cause orders as a result of the Motion for Inhibition filed by the Office of the Solicitor General in the *per curiam* Resolution denying the inhibition. Any matter relating to the participation of the Solicitor General may be addressed separately at a much later time upon the Court *En Banc*'s collective discretion.
>
> Should you have any objection to this approach, kindly inform the undersigned before the Court *En Banc* deliberations.
>
> Forgiveness is often the more decent consequence to another's misunderstanding. It will certainly not diminish us.
>
> Thank you.

The resolution of the electoral protest is of utmost importance. Thus, the member-in-charge urged the Tribunal to focus on the merits of the case and suggested that matters not directly related to the issues in the electoral protest, such as the Office of the Solicitor General's statement that it is acting as the People's Tribune and its breach of confidentiality, may be addressed separately at a much later time.

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[103] OSG Omnibus Motion, p. 29.
[104] OSG Omnibus Motion, p. 16.

For now, the Tribunal recognizes that forgiveness and toleration may be the most decent response to misguided acts done due to counsel's and the Solicitor General's misunderstandings. The parties, their counsels, and all others acting for and on their behalf are all put on notice to be more circumspect in their pleadings and in their public pronouncements. All counsels including the Solicitor General are reminded to attend to their cases with the objectivity and dignity demanded by our profession and keep their passions and excitement in check.

IN VIEW OF THE FOREGOING, this Tribunal resolves to **DENY** protestant's Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen; II. Re-raffle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case dated November 9, 2020.

The Office of the Solicitor General's Omnibus Motion (Motion for Inhibition of Associate Justice Marvic M.V.F. Leonen and Reraffle) also dated November 9, 2020 is **NOTED WITHOUT ACTION**.

The protestee's Countermanifestation (to the Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen; II. Re-raffle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case dated November 9, 2020) is **NOTED**.

Let a copy of this Resolution be also personally served on the Office of the Solicitor General.

SO ORDERED.

DIOSDADO M. PERALTA
Chief Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

On wellness leave
ROSMARI D. CARANDANG
Associate Justice

On wellness leave
AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice