BALANCING POWER AND RIGHTS: A SHORT ESSAY ON THE POWER OF CONGRESSIONAL INVESTIGATION AND *KURATONG BALELENG*[*]

Vicente Paolo B. Yu III[**]

I. INTRODUCTION

A long line of jurisprudence and commentaries have traced the development of case law concerning the legislative power to conduct investigations in aid of legislation.

This essay will attempt to point out that this power, although well discussed in the United States, from whence the Philippines got the precedents for its own case law on the subject, still has to be further discussed and developed in the Philippines in the light of recent events that have brought investigations by the legislature to the forefront of public attention and scrutiny. More specifically, we shall attempt to posit certain questions that hopefully will provide the impetus for future studies on the topic.

II. THE NATURE OF THE LEGISLATIVE POWER OF INVESTIGATION

It has often been pointed out that the legislative power of investigation is one that is inherent[1] in the exercise of legislative

---

[*]Second Place Entry, 1995 Philippine Law Journal Editorial Board Examination.

[**]Ll. B. (1997) (U.P. College of Law); Vice-Chairperson, 1995-1996 Philippine Law Journal Student Editorial Board.

[1]*See inter alia* HORACE E. READ *et al.*, CASES AND OTHER MATERIALS IN LEGISLATION 356 (1959); Watkins v. United States, 354 U.S. 178, 77 S. Ct. 1173 (1957); Jack Gose, *The Limits of Congressional Investigating Power*, 10 WASH. L. REV. 61, 70 (1935); Joaquin R. Roces, *The Congressional Power of Investigation*, 1

power under a constitutional system mandating the separation of powers among different branches of government. This is premised on the assertion that for the legislature to be able to exercise its constitutional functions effectively, it must have sufficient information upon which it can base its policy decisions as embodied by enacted legislation and resolutions. As the Philippine Supreme Court points out:

> In other words, the power of inquiry — with process to enforce it — is an essential and appropriate auxiliary in the legislative function. a legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information — which is not infrequently true — recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed.[2]

One common point of agreement among the various legal writers on the subject is that the legislative power of investigation has at least two functions: (1) information gathering; and (2) review of the performance of agencies subject to legislative control and to evaluate the merit of existing statutes.[3] However, some writers have asserted that there is another function of the power to investigate, that is, that it can also be used to inform the public about certain issues and thus enable the latter to decide for themselves how to tackle such issues in the event that the legislators themselves have not yet considered probable legislative action thereon.[4] These functions of legislative investigation hence cover and are applicable to virtually all constitutionally valid legislative actions.

U.E. L.J. 260, 275 (1959); Arnault v. Nazareno, 87 PHIL. 29, 45 (1950); Zeev Segal, *The Power to Probe into Matters of Vital Public Importance*, 58 TULANE L. REV. 941, 941 (1984).

[2]Arnault v. Nazareno, *supra* note 1, at 45.

[3]READ, *supra* note 1, at 358-359. *See also* Roces, *supra* note 1, at 262-267.

[4]*See inter alia* READ *supra* note 1, at 360; Paul J. Liacos, *Rights of Witnesses Before Congressional Committees*, 33 B.U. L. REV. 337, 346 (1953).

The exercise of this power has also been described as broad but not unlimited.[5] The limitations, among others, being the constitutional rights of individuals being investigated or called upon to testify before the legislative committee conducting the investigation and the principle of separation of powers.[6] Among the rights most frequently invoked and commented upon in jurisprudence and commentaries on the matter are the right of the witness not to incriminate herself[7] and the various personal freedoms, *i.e.* of speech, the press, religion, political belief and association, guaranteed by both the United States and the Philippine Constitutions in their respective Bill of Rights.

The United States Supreme Court has also held that the legislative power to investigate is limited to areas in which the legislature can validly legislate and does not extend to inquiring into the private affairs of individuals.[8] This implies that Congress cannot conduct an investigation simply to embarrass or degrade a private individual by reason of her actuations in her private life. Indeed, a witness has the right to refuse to answer degrading questions that will tend to embarrass her or her family or reputation.[9] Legislative investigations must be conducted with a view towards furthering the legislature's capability to enact wise and beneficent legislation.[10]

---

[5] JUAN RIVERA, THE CONGRESS OF THE PHILIPPINES 58 (1962); Barsky v. United States, 167 F.2d 241 (1948), *reprinted partially in* JULIUS COHEN, MATERIALS AND PROBLEMS IN LEGISLATION 511-534, 513 (1949); Quinn v. United States, 349 U.S. 155, 161 (1955) *quoted in* THOMAS I. EMERSON and DAVID HABER, POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES 696 (1958); Liacos, *supra* note 4, at 349; Baremblatt v. United States, 360 U.S. 109, 3 L.Ed. 2d 1115, 69 S. Ct. 1081 (1959), *quoted in Bengzon, Jr. v. Senate Blue Ribbon Committee,* GR No. 89914, November 20, 1991, 203 SCRA 767, 784 (1991); *Watkins v. United States,* 354 U.S. 178, 77 S. Ct. 1173 (1957), *reprinted in* READ *supra* note 1, at 368-369.

[6] *See* Segal, *supra* note 1, at 961; Barsky v. United States, *supra* note 5 at 515; Bengzon, Jr. v. Senate Blue Ribbon Committee, *supra* note 5 at 777; Baremblatt v. United States, *supra* note 5, at 784.

[7] *See* READ, *supra* note 1, at 424.

[8] *See* Liacos, *supra* note 4, at 349; Quinn v. United States, *supra* note 5 at 696; Watkins v. United States, 354 US 178, 77 S.Ct. 1173 (1957), *reprinted in* READ, *supra* note 1, at 368-369.

[9] *See* 88 ALR 2d. 304 for a discussion of this right.

[10] *See inter alia,* Roces, *supra* note, 1 at 262-263; JOAQUIN BERNAS, 2 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 132 (1988); Liacos, *supra* note 4, at 341.

The United States case law on the legislative power of investigation has been adopted virtually *in toto* by the Philippine Supreme Court. A distinction however was made by the Philippine Supreme Court between the relative scope of the investigative power of the United States and Philippine legislatures. Our Supreme Court pointed out that because of the differing distribution of legislative powers under the their respective Constitutions, the Philippine national legislature has in effect a broader field in which the power of legislative investigation may be exercised as compared to that of the United States Congress.[11]

It has been stated that the power of investigation by the legislature has been recognized in the Philippines since before the establishment of the Philippine Commonwealth in 1935.[12] Like the United States Constitution, the various Philippine Organic Acts and 1935 Philippine Constitution made no express mention of the existence of the legislative power to conduct investigations. However, as pointed out earlier, Philippine jurisprudence, by virtue of the adoption of United States jurisprudence on the matter, has recognized the existence of this power as being an inherent part of the general power of the legislature to enact legislation.

III. CONGRESSIONAL INVESTIGATIONS IN THE PHILIPPINES

It was only in the 1973 Philippine Constitution that the congressional power to investigate was given explicit constitutional recognition.[13] This constitutional recognition was subsequently carried over into the 1987 Philippine Constitution, in Article VI, Section 21 thereof, providing as follows:

> SEC. 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

---

[11]Arnault v. Nazareno, *supra* note 1, at 45-46.

[12] RIVERA, *supra* note 5, at 57.

[13]1973 PHIL. CONST., Art. VIII, Sec. 12(2).

Pursuant to the above constitutional provision, the two houses of the Philippine Congress passed and published their respective Rules of Procedure Governing Inquiries in Aid of Legislation.[14] These rules constitute *de facto* standing authorization for both bodies of Congress and their respective committees and subcommittees to conduct investigations or inquiries in aid of legislation and provide for the scope and extent of such investigations.[15] These investigations may be done *motu propio* by the committee or subcommittee or by virtue of a petition filed or information given by any member of that particular chamber or any member of the public.

Both sets of rules generally provide for the following rights of witnesses called upon by the investigating chamber, committee or subcommittee: (1) the right to counsel[16]; and (2) the privilege against self-incrimination[17]. In contrast with these rights of witnesses, the rules also provide the investigating body with the power to summon witnesses and take their testimony and issue *subpoena* and *subpoena*

---

[14]Both sets of rules are entitled RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION. That of the House of Representatives was adopted on 2 September 1987 (hereinafter HOUSE RULES) while that of the Senate was adopted on 7 August 1987 (hereinafter SENATE RULES).

[15]The HOUSE RULES state that: "*Inquiries may be initiated and/or conducted by a Committee motu propio on any matter already within its jurisdiction such as bills, resolutions, speeches or other communications referred to it or on order of the House of Representatives or as endorsed by the Speaker, upon petition filed or information given by any Member of the House of Representatives or by any person with legitimate interest in the matter proposed for inquiry, in the matter hereinafter provided.*" (HOUSE RULES, Sec. 2). The SENATE RULES on the other state that "*[s]uch inquiries may refer to the implementation or re-examination of any law or in connection with any proposed legislation or the formulation of future legislation. They may also extend to any and all matters vested by the Constitution in Congress and/or in the Senate alone.*" (SENATE RULES, Sec. 1).

[16]In both the House and the Senate, counsel for the witness is limited to only the giving of legal advice to the witness as to her legal rights. The counsel cannot engage in oral debate with the members of the investigating committee. *See* HOUSE RULES, Sec. 11; and SENATE RULES, Sec. 13.

[17]For a summarization of the ways that a witness can remain silent and ultimately avoid possible sanction for a contempt citation in legislative investigations, see OTIS H. STEPHENS and GREGORY J. RATHJEN, THE SUPREME COURT AND THE ALLOCATION OF CONSTITUTIONAL POWER 148 (1980).

duces tecum.[18] The legislative body as a whole, or its committees or subcommittees, may also cite recalcitrant or defiant witnesses for contempt.[19]

One key aspect of the rules provide for the power of the investigating body to compel recalcitrant witnesses to give testimony through the instrument of providing for an executive session or meeting if the interrogation of the witness would have national security ramifications.[20] Unless approved by the investigating body, any testimony or materials presented during such executive session or committee cannot be made public.

A question here arises as to what the rules mean by not allowing testimony or materials in executive sessions or meetings to be "*made public.*" What would be the evidentiary value of such materials or testimony in a court of law in a criminal proceeding involving the witness compelled to testify arising out of or subsequent to the legislative investigation? Can they be used: (1) against the witness-accused herself; or (2) as leads in the gathering of other evidence against the witness-accused?

Indeed, can this procedural rule pertaining to the confidentiality of testimonies and materials given in legislative executive sessions or meetings be considered as a *de facto* immunity statute (albeit limited in coverage) for the affected witnesses, giving them absolute immunity from subsequent criminal prosecution arising out of acts or transactions covered or referred to by such testimonies or

---

[18]SENATE RULES, Sec. 16; HOUSE RULES, Sec. 11. Note here that "*a witness may not be compelled to testify before a committee not properly constituted.*" READ, *supra* note 1, at 362. For another discussion on this power to subpoena witnesses, see also *Watkins v. United States*, *supra* note 7, at 369.

[19]SENATE RULES, Sec. 17; HOUSE RULES, Sec. 13. For other materials concerning a legislative committee's contempt power, *see* also Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panglunsod ng Dumaguete, 155 SCRA 421, 430 (1987), GR No. L-72492, November 5, 1987; Liacos, *supra* note 4, at 352-353; Marshall v. Gordon, 243 US 521, 37 S. Ct. 448, 61 L.Ed. 888 (1917) *quoted in id.*, at 352; Gose, *supra* note 1; Jordan L. Ring, *Congressional Investigations: From the Viewpoint of a Law Student*, 106 CONG. REC. *reprinted in* 9 M.L.Q. L. Q'LY 267, 270 (1959).

[20]SENATE RULES, Sec. 10; HOUSE RULES, Sec. 7.

materials? If so, what would be the constitutional validity of such a rule? If valid, does it then constitute an exception to the constitutionally guaranteed privilege against self-incrimination?

These are some of the questions that go through one's mind when considering, for example, the effects of the investigation on the *Kuratong Baleleng* controversy conducted by a Joint Committee of the Senate composed of the Committee on Justice and Human Rights, the Committee on National Defense and Security, and the Committee on Crime.[21] Considerations of legal principles and concepts cannot be fully realized without attempting to situate and apply them to concrete situations arising from real incidents.

IV. ON THE *KURATONG BALELENG* KILLINGS

There is no doubt that the investigation was validly undertaken by the Joint Committee as an exercise of their legislative power to investigate in aid of legislation. We must note that the test for considering the constitutional validity of the undertaking of a particular legislative investigation is that the investigation's object must bear some reasonable relation (or materiality or pertinence) to the exercise by the legislative body of its legislative function[22], i.e. whether pertaining to the enactment of new laws or the review of existing ones with a view towards amendment thereof, in order to further the general objective of government of providing for the general welfare of the people.

---

[21]According to the Joint Committee Report, the inquiry "*was in response to a plea against the reported continuing extra-judicial killings of purportedly known criminals.... Upon receipt of the sworn statement of SPO2 Eduardo E. de los Reyes, alleging the summary killings of persons under the custody of the Philippine National Police, the Committee [on Justice and Human Rights] resolved to investigate on its own initiative.*" On 24 May 1995, Sen. Tatad filed P.S. Resolution No. 1142 "*directing the appropriate committees to inquire in aid of legislation into the killing of 11 persons by agents of the Presidential Anti-Crime Commission.*" The resolution was referred to the Committee and the Committee on Crime. A further referral was made to the Committee on National Defense and Security. The three Committees held public hearings on May 26, 1995. *See* S. JOINT REP. No. 1021, 9th Cong., 3rd Sess. at 1-2 (1995).

[22]For discussions of the test for the validity of congressional investigations, *see inter alia* Watkins v. United States, *supra* note 7, at 368-369; Arnault v. Nazareno, *supra* note 1, at 48 and 55.

Clearly, the assumption by the Joint Committee of jurisdiction to investigate the killings that occurred along Commonwealth Avenue in Quezon City on 18 May 1995 was validly done in accordance with the Senate Rules of Procedure Governing Inquiries in Aid of Legislation[23]. As pointed out in the Joint Committee's report, primary jurisdiction was assumed by the Senate Committee on Justice and Human Rights "pursuant to its duty to oversee `the implementation of the provisions of the Constitution on human rights.'"[24] Subsequently, referral of the authorizing resolution, P.S. Resolution No. 1142 filed by Senator Francisco S. Tatad, to the Committee on Crime and the Committee on National Defense and Security authorized said committees to assume concurrent jurisdiction over the investigation together with the Committee on Justice and Human Rights.

The very objects of the investigation, that is, to: (1) see "whether the policy of `salvaging' under the martial law regime lingers till the present, resulting in extra-judicial killings," and (2) see "how legislation can help improve the PNP in the performance of its duty to maintain peace and order" shows quite clearly the intent of the investigating body to obtain information and ascertain facts that could help it enact future legislation and check on the implementation of present legislation relating to law enforcement and human rights. This is clearly covered by the Constitutional provision and case law stating to the effect that legislative investigations must be in line with the exercise of legislative functions.

V. LEGISLATIVE INVESTIGATIONS IN VIEW OF *KURATONG BALELENG*

Having established the validity of the investigation in question, we go now to the questions posited above.

I

What do the Senate and House of Representatives' Rules of Procedure Governing Inquiries in Aid of Legislation mean by not

---

[23]*See* SENATE RULES, Secs. 2 and 4 in relation to Sec. 6.

[24]S. JOINT REP. No. 1021, *supra* note 18 at 1 *citing* RULES OF THE SENATE, Rule 10, Section 11(8).

allowing testimony or materials in executive sessions or meetings to be "made public"?

From the language of the relevant provisions in said Rules[25], it would seem that the intent of both houses of Congress was to protect the confidentiality of testimonies and materials taken during executive sessions and meetings -- but only up to a certain extent. The determination of when and, most probably, the extent to which such confidentiality has ceased is left to the discretion of the investigating committee. This of course necessitates the implied conclusion that the possibility of having such testimonies and materials being made of public knowledge is ever present.

Hence, it would seem that making the testimonies or materials obtained from witnesses during an executive session or meeting "public" refers to making known to the general public the details of such testimonies or materials. It does not, to our mind, refer to giving the legislature the power to withhold or not enter into the public record such testimonies and materials as to prevent access thereto and usage thereof by other government agencies in the Executive or Judicial Branches for legitimate and legal purposes, i.e. in the pursuit of justice in criminal cases.

To hold otherwise would mean that the Legislature has greater powers than it has under our present system of government mandating the separation of powers among three different branches of government. It would mean that the Legislature or its committees, by merely convening in executive session and conducting its investigations therein, can effectively bar or at least place an unconstitutional limitation on the Executive Department from pursuing its law enforcement functions and prevent the Judiciary from effectively performing its adjudicative functions, because the testimonies and materials which the Legislature has obtained in executive session would not be made available to the other two branches for the effective exercise of their respective functions. This could not have been the intent of the rule. And it should not be.

---

[25]*See* SENATE RULES, Sec. 10 and HOUSE RULES, Sec. 7.

In fact, in the formulation of its rules, the legislature:

> may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations, all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just. It is no objection to the validity of a rule that a different one has been prescribed and enforced for a length of time. The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and within the limitations suggested, *absolute and beyond the challenge of any other body or tribunal.*[26] (emphasis supplied)

Furthermore, we should note that despite the confidentiality provisions in the executive session rule in legislative inquiries, the mere fact that such testimony and materials can still be accessed and used by the Executive and the Judiciary means that the witness can still invoke her privilege against self-incrimination in order to protect herself from any adverse later effect.

Having established that the executive session rule relates only to restricting public accessibility of testimonies and materials obtained thereunder and not denying access thereto by Executive and Judicial authorities for lawful purposes, the next question that comes to mind is:

II

What would be the evidentiary value of such materials or testimony in a court of law in a criminal proceeding involving the witness compelled to testify during an executive session of the investigating committee arising out of or subsequent to the legislative investigation? Can they be used: (1) directly against the witness-accused herself?; or (2) as leads in the gathering of other evidence against the witness-accused?

---

[26]United States v. Ballin, 144 U.S. 1, 5 (1891) *quoted in* Gregory Frederick Van Tatenhove, *A Question of Power: Judicial Review of Congressional Rules of Procedure*, 76 KY. L.J. 597, 608 (1987-88).

The records and written acts and reports of the investigating committee, both relating to its executive and non-executive sessions, are considered public writings or documents.[27] As such, they are evidence of the fact which gave rise to their execution and of the date of the latter,[28] *i.e,*. they are evidence solely of the fact that the committee conducted an investigation and the date or dates when such investigation was conducted.

There is no prohibition under our laws as would prevent the courts from receiving such public documents in evidence for or against the witness. The courts, through its subpoena and subpoena duces tecum powers under Rule 23 of the Revised Rules of Court, can require a person "to attend and to testify at the hearing or the trial of an action, or at any investigation conducted under the laws of the Philippines, or for the taking of his deposition. It may also require him to bring with him any books, documents, or other things under his control,..." Failure to comply without adequate cause with a subpoena served upon him is deemed to be contumacious conduct against the court issuing the subpoena.[29]

The court, however, cannot require any member of the investigating legislative committee to take the witness stand during a court proceeding regarding the testimony of a witness called on to testify during the session or meeting in question of the legislative committee. It can be considered that any information communicated by the witness during the investigation to the legislators is privileged

---

[27]Revised Rules of Court, Rule 132, Sec. 20, providing as follows:

SEC. 20. *Classes of documents.* — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial and executive, whether of the Philippines, or of a sovereign country; x x x

[28]In the Revised Rules of Court only "*[d]ocuments consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.*" *Id.*, Rule 132, Sec. 23.

[29]*Id.*, Rule 23, Sec. 12.

communications.[30]

It seems then that the testimony and materials provided by a witness to an investigating committee in executive session *as embodied in the records of such committee* can be obtained by the courts in a subsequent court action, criminal or civil, concerning the same acts covered by the investigation, upon application by the prosecution or private complainant, for evidentiary purposes as to the fact of the carrying out of such investigation and the dates it was conducted. They cannot, however, prove the contents of such public documents (and hence the truth of the testimony or materials concerned). In this sense hence, such executive session records, or, for that matter, the non-executive session records, of the investigating committee cannot be used *directly* to incriminate the witness-accused during the subsequent court action.

Of course, the credibility of the witness-accused's testimony in her defense in the subsequent court action can be impeached therein by presenting evidence of prior statements made by her on occasions other than the trial in which she is testifying, i.e. before the investigating legislative committee.[31] But such evidence of her prior inconsistent statements cannot be based on the testimony she has given before the investigating committee. As stated by one writer, "Legislative investigations are for the purpose of informing Congress. They are not judicial hearings... Hence any information to aid Congress in drafting a legislation is *not admissible as evidence in a court of law.*"[32]

But again we note that such documents as may be produced by the legislative investigating committee, by virtue of their being public documents accessible for lawful use by law enforcement agencies, can be used to serve as a foundation on which a case can be built against the witness-accused. The findings of the investigation can be used by, for example, the police in identifying possible suspects and other leads that could point towards the solution of a crime.

---

[30]*Id.*, Rule 132, Sec. 24(e).

[31]The rule on impeachment by prior inconsistent statements is laid down in *id.*, Rule 132, Sec. 13.

[32]RIVERA, *supra* note 5, at 61.

In fact, in the Joint Committee Report on the *Kuratong Baleleng* incident concluding that there was indeed no shootout as alleged by law enforcement agents, the Joint Committee recommended as follows:

> 2. The DOJ should conduct further investigations and adequately prepare for the prosecution of the respondents in the appropriate court with jurisdiction on the matter.
>
> Copies of this report together with all attachments, transcripts of stenographic notes and affidavits are hereby furnished the DOJ.[33]

The recommendation above clearly shows that the Senate considers its report and materials on the incident as of possible help to the Department of Justice for possible prosecution of persons identified in the report as having incurred possible criminal liability thereon.

Considering the above discussion,

III

Can we, hence, regard this procedural rule pertaining to the confidentiality of testimonies and materials given in legislative executive sessions or meetings as a *de facto* immunity statute (though limited in coverage) for the affected witnesses, giving them absolute immunity from subsequent criminal prosecution arising out of acts or transactions covered by or referred to by such testimonies or materials? If so, what would the constitutional validity of such a rule? If valid, does it then constitute an exception to the constitutionally guaranteed privilege against self-incrimination?

It would seem that we cannot consider the executive session rule as providing any form at all of immunity to the affected witnesses.

The witness can still be prosecuted even if she has testified in executive session and her testimony can be used to incriminate her

---

[33]S. JOINT REP. No. 1021, *supra* note 18, at 7.

(though indirectly). In fact, the Philippines has no statute granting immunity to the witness who was compelled to testify pursuant to a congressional investigation. Indeed, the Senate's rule on the privilege against self-incrimination during legislative inquiries contains an implicit premise that the testimony of the witness can be used against her even if it was obtained during an executive session. It provides as follows:

> SEC. 18. *Privilege Against Self-Incrimination* — No person may be required to answer any question which may tend to incriminate him. If the Committee decides, however, that his answer be given in an executive session *and will not be used against him in any other proceeding*, he may be compelled to answer in executive session.[34] ... (emphasis supplied)

Note that the part of the rule pertaining to when the Committee can compel the witness to answer in executive session provides two factors that the Committee must consider when deciding to compel the witness to answer: (1) that the answer be given in an executive session; and (2) that the answer will not be used against her in any other proceeding. The second factor clearly indicates that when the answer will be used against the witness in any other proceeding, she may not be compelled to answer even when in executive session. The witness may invoke and insist on her right to remain silent in such a case.[35]

It is interesting to note that the Joint Committee in the *Kuratong Baleleng* investigation did not rule squarely on the issue of the constant invocation by the witnesses thereto of their right to remain silent. As the Acting Chief of Staff of the Chairperson of the Senate Committee on Justice and Human Rights explained in an interview:

> The Joint Committee did not rule squarely on this point, on whether the witnesses called on to testify can invoke their right

---

[34]SENATE RULES, Sec. 18.

[35] Note however that the right to remain silent is not "*an absolute guaranty that a citizen may never be forced to reveal his misdeeds. If he is no longer subject to prosecution for them, he may not refuse to testify as to them.*" READ, *supra* note 1 at 426.

> against self-incrimination. The reason for this was that the Joint Committee intended the report that will result from its investigation to be only a preliminary report under the Ninth Congress which will be passed on to the Tenth Congress for further action if the latter so deems fit. This preliminary report will be the basis for Tenth Congress action on the controversy.
>
> The Joint Committee did not want its work to be made *functus officio* by reason of the closing of the Ninth Congress. It also did not want the hands of the Tenth Congress to be tied to the conclusions and recommendations that would be made in the report. Hence, the Joint Committee deemed it better to make its report as a preliminary one. It is in this light that the Joint Committee did not make any substantive ruling on the witnesses' invocation of their right against self-incrimination. [36]

Furthermore, no part of the rule gives the witness any immunity from subsequent criminal or civil action nor ensures that her testimony to the congressional committee will not be used against her. Indeed, the Philippines has no counterpart to the immunity statute in the United States giving testimonial use immunity to the witness compelled to answer before a congressional committee investigation.[37]

---

[36]Personal Interview with Atty. Edwin Carillo, Acting Chief of Staff, Office of Senator Raul S. Roco, Chairperson of the Senate Committee on Justice and Human Rights, 9th Congress. (June 28, 1995).

[37]This United States immunity statute is found in 18 U.S.C., § 6002 (1988) providing as follows:

> Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to —
>
> x x x
>
> (3) either House of Congress, a joint committee of the two Houses, or a committee or subcommittee of either House, and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

Therefore, considering that only the granting of absolute immunity from criminal prosecution and consequent release from potential attachment of criminal liability thereto would enable the State to compel a person to involuntarily waive her right against self-incrimination,[38] the fact that the witness under current rules governing congressional inquiries is not freed from the overhanging fear of prosecution and the consequent threat of having her testimony in such inquiries used against her, clearly points us to the conclusion that the right against self-incrimination exists and is invocable in all types and under all conditions of legislative investigation.

VII. BALANCING STATE POWER AND INDIVIDUAL RIGHTS

With the above points in mind, how now shall we view congressional investigations? For reasons of public policy and constitutional security, we have to view congressional investigations as being essential for the effective action of the legislature — notwithstanding the fact that such investigations have often been used merely for grandstanding purposes by our good legislators. As instruments for the public will, congressional investigations can do a lot of good, of course, it can also do a lot of damage, especially to the target of such investigations.

Despite the desirability of such investigations however, we have to bear in mind that Constitutionally-guaranteed personal rights

---

[38]As pointed out by READ, *supra* note 1, at 426-427:

> [A] grant to the witness of immunity from prosecution for crimes concerning which he testifies may be used to overcome a claim of privilege. The immunity granted, however, must be as broad as the privilege denied. Mere barring use of the testimony is not enough. Since that testimony may be used to develop other evidence against the witness, he must be granted complete immunity from prosecution with respect to the fact concerning which he testifies... The immunity granted, being in the nature of an act of amnesty, cannot be conferred by a single or joint resolution not having the force of law but must be granted by a measure having legal effect. Once granted, however, the immunity is a complete bar to prosecution for the acts concerning which the witness testified, no matter what use, if any, is made of his testimony. (footnotes omitted).

and freedoms are insulated by case law and the Constitution itself, from the excessive exercise of the legislative investigative power.

What must indeed be found is a workable balance between the Constitutional imperatives for the protection of a person's human, civil and political rights and the Constitutional mandate that Congress enact laws for the benefit of the people. This balance between the people's rights and the State's power can be found only through increased vigilance on the part of the former in the exercise and protection of their rights, and heightened respect and regard by the State of its duties under the Philippine Constitution.

- oOo -