THE PHILIPPINE COMMISSION ON GOOD GOVERNMENT AND SEQUESTRATION: AN INQUIRY INTO ITS CONSTITUTIONALITY OR UNCONSTITUTIONALITY

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INTRODUCTION

SEQUESTRATION has been an oft-mentioned word in these recent times. It has been talked about by laymen, but it holds more interest in the legal community. The recent events of 1986 particularly the so-called "February Revolution" brought into power the present government of President Corazon Aquino. In its alleged desire to rectify the economic depravity committed against the Filipino people, the Aquino Government created a Presidential Commission on Good Government that was supposed to carry out the mission of recovering the "ill-gotten wealth" of the past regime of President Ferdinand Marcos, and of his cronies and relatives.

In order to effectuate the purposes of the said Commission, the enabling executive order thereof conferred upon it the power to confiscate or freeze assets and properties through a legal process that is known as *sequestration*. There would not have been any vehement objection or legal controversy arising from the exercise of such process had it not been for a fact that the enabling executive fiats are apparently beset with infirmities of a constitutional nature, aside from the arbitrary manner with which the writ or process has been executed. The alleged exercise by the government of the power of sequestration has been and is being defended in the legal and the extra-legal forum by its proponents as being a necessary "police power" measure for the protection and realization of the "national interests."

The manner by which the Commission has conducted its investigation and issuance of orders of sequestration apparently does not fully comply with what is mandated by the principles of constitutional law especially with respect to due process and the Rule of Law.

Apparently, there had been a transformation of the writ or process of sequestration from its nature as an equity writ or process into a governmental power. These is some misunderstanding of its real purpose. Or, if it is accepted as a governmental power, there appears to be a defect, in the legal sense, in its application or exercise.

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Therefore, it is the purpose of this paper, first, to trace the origin of what is called as sequestration; second, it will attempt to trace its development in the Philippine legal system; third, it will try to analyze the process in terms of constitutional principles, i.e., whether or not its exercise is wanting in due process and finally, it will as much as possible determine its possible consequences or repercussions not only legally, but also to the other aspects of society and societal life of the Philippine community.

CHAPTER ONE

THE ORIGIN OF SEQUESTRATION

Bouvier[1] defined sequestration in the following manner:

> "A writ of commission, sometimes directed to the sheriff, but usually four or more commissioners of the complainant's own nomination, authorizing them to enter upon the real or personal estate of the defendant, and to take the rents, issues, and profits into their own hands, and keep possession of or pay the same, as the court shall order or direct, until the party who is in contempt shall do that which is especially mentioned in the writs."[1]

The same author further defined it as:[2]

> "A process for contempt, used by chancery courts, to compel a performance of their orders or decrees."

From the foregoing, one can thus infer that the writ of sequestration is a process for compelling a party litigant, usually the defendant, to comply with an order of the court. The person who is directed by the court to execute the writ of sequestration is known as the "sequestrator." The same is deemed as a "depositary" and is one who cannot exonerate himself in the care of the properties so placed under sequestration, unless it was due to some reason that would lead to his resignation of his trust.[3]

It is thus only resorted to in case the situation arises that the defendant is compelled to comply with the orders of the court under pain of such contempt process. It is thus merely an extraordinary remedy resorted to in equity proceedings.

Equity, in general, is that branch "of remedial justice by and through which relief is afforded to suitors in courts of equity."[4] Bouvier further explained:[5]

> "In the broad sense in which this term is sometimes used, it signifies natural justice.
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> In a more limited application, it denotes equal justice between contending parties. This is the moral signification in reference to the rights

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1 Bouvier's Law Dictionary (Baldwin's Century Edition), p. 1102.
2 *Id.*
3 *Id.*
4 *Id.*, p. 358.
5 *Id.*

> of parties having conflicting claims; but applied to courts and their jurisdiction and proceedings, it has a more restrained and limited application.
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> x x x The remedial process of the courts of equity, x x x admits, and, generally requires, that all persons having an interest shall be made parties, and makes a large allowance for amendments by summoning and discharging parties after the commencement of the suit. The pleadings are usually framed so as to present to the consideration of the court the whole case, with its possible legal rights, and all its possible legal rights, and all its equities, — that is, all grounds upon which the suitor is or is not entitled to relief upon the principles of equity. And its final remedial process may be so varied as to meet the requirements of these equities, in cases where the jurisdiction of the courts of equity exist, by "commanding what is right, and prohibiting what is wrong." In other words, the final process is varied so as to enable the courts to do that equitable justice between the parties which the case demands, either by commanding what is to be done, or prohibiting what is threatened to be done. x x x"

Thus, the Anglo-American concept of sequestration is similar to the civil procedural process of attachment or garnishment or receivership.[6] Sequestration is thus merely a provisional remedy whereby specific property or properties are temporarily seized or set apart from other properties of a party to a suit claiming ownership or right or a lien over them, so as to preserve it pending the final outcome of a litigation. It is only then will the property restrained thereby be finally awarded to the rightful party-litigant.

Sequestration is hence "to seize or take possession of the property belonging to another, and hold it until the profits have paid the demand for which it is taken."[7]

It is further noted that, for the writ of sequestration to issue, it presupposes that there is what is known as the principal or main action pertaining to the action proper, i.e., "A writ of sequestration being *merely in aid of a principal demand,* x x x"[8] it is merely an ancillary writ in aid of a main suit. Hence, sequestration "is a provisional remedy or an auxiliary process, issued as an incident to a main action, and not an original process, except where a statute specifically provides that the writ may be issued in the absence of a principal demand pending before the court granting it."[9] It is "merely an attachment by means process in an equity suit. x x x"[10] It is likewise a "temporary injunction restraining the selling, transferring or encumbering of property sought to be taken or appropriated in (an) action x x x."[11]

As a process of attachment and execution it "is intended to accomplish its objective by the actual taking of goods and chattels, or the rents

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[6] Rules 57 and 58, Revised Rules of Court.
[7] Words and Phrases, Vol. 38, p. 645.
[8] *Id.*
[9] Am. Jur. 2d, Vol. 70, u. 102.
[10] See note 8, p. 646.
[11] *Id.*, Cumulative Annual Packet Part, p. 166.

and profits of lands, and withholding them until the distress brings compliance with what is then required; and it creates no lien in favor of future judgments or decrees, while an attachment creates such a lien, and nothing more. It is in effect strictly an attachment to create a lien."[12] Compared with attachment, the latter "is a proceeding to create or enforce a lien. It is a remedy for the collection of ordinary debt by preliminary levy upon property of the debtor to conserve it for eventual evecution after the lien shall have been perfected by judgment. x x x"[13] However, sequestration is differentiated from attachment in that the former is a "x x x process used as a conservatory writ to preserve, when right of property is involved in pending ltigation, the specific property subject to conflicting claims of ownership or liens and privileges, x x x."[14] Nonetheless, both processes have the same purpose in that, "with warning or notice given, (it is the same as that) of direct seizure of property found in defendant's possession; creation of an inchoate lien perfected by judgment; x x x"[15]

Turning now to the Philippine legal system, the concept of sequestration is closely similar to that of Anglo-American law and is otherwise known as judicial deposit. The provisions in the new Civil Code on sequestration or judicial deposit are found in Articles 2005 to 2009. The Civil Code provides that such takes place when an attachment or seizure of the property in litigation is ordered,[16] and the subject thereof may either be movable or immovable property.[17] A depositary of such property or properties placed under sequestration or judicial deposit is appointed by the court and is responsible for the preservation of the property until final resolution and order of the court of the controversy.[18] Such depositary is expected to exercise the diligence of, and is bound to comply with all the obligations of a good father of a family in the care and preservation of the property entrusted to him deemed *in custodia legis*.[19] The judicial seizure of the property in litigation may be or may become necessary in order to maintain or preserve the *status quo* pending litigation and/or for the plaintiff to be ensured of recovery in case of a favorable judgment.[20]

In one case[21] decided by the Court of Appeals, citing a long line of precedents laid down by the Supreme Court, the Court ruled that such judicially appointed receiver is deemed an officer of the court which creates no lien in favor of any party instrumental in obtaining his appointment. Moreover, the appointment of a receiver neither adjudicates nor prejudges

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12 *Id.*
13 McGuire, Evidence of Guilt, Restriction Upon Its Discovery or Compulsory Disclosure.
14 Words and Phrases, Vol. 38, p. 647.
15 McGuire, *op. cit.*, p. 2.
16 New Civil Code, Article 2005.
17 *Id.*, Article 2006.
18 *Id.*, Article 2007.
19 *Id.*, Article 2008.
20 Padilla, Civil Code (annot.), p. 485.
21 Progress Insurance and Surety Co., Inc. v. Insurance Commission, et al., 14 CA Rep. 787.

the purported rights of the parties in the main action. The Court of Appeals further explained in that same case that the appointment of such a receiver depends on the demand of the circumstances of the case, especially when the subject property is either in imminent danger of being lost or runs the risk of being impaired. In another case[22] decided also by the Court of Appeals, a receiver is considered as "merely an extension of the arm of the court."

The Supreme Court recognizes the harshness of the writ if issued and executed and in one case decided by it,[23] ruled that, "Where the effect of the appointment of a receiver is to take real estate out of the possession of the defendant before the final adjudication of the rights of the parties, the appointment should be made only in extreme cases and on a clear showing of necessity therefor in order to save the plaintiff from grave and irremediable loss or damage." Hence, the appointment of a receiver pursuant to the execution of a writ of sequestration or judicial deposit, must be exercised with extreme caution by the court and only upon careful consideration of the basis for its petition by either one of the parties-litigants, but normally by the plaintiff. Furthermore, the consequences or repercussions or effects thereof should be also considered by the court so as to avoid causing irreparable injury to others who are entitled to as much as those seeking it.[24]

Padilla in his commentaries stated that sequestration (or attachment as more popularly known or called) may be resorted to.[25] Rule 127 of the Rules on Criminal Procedure (both the 1964 and 1985 rules) provides for attachment as a provisional remedy available to the offended party as against the offender.[26]

Sequestration is also available as a remedial writ in criminal cases but is known as either attachment as a provisional remedy or confiscation and forfeiture of the instrument or proceeds of the crime committed as provided in Article 45 of the Revised Penal Code. Confiscation and forfeiture of the proceeds, or instruments, or tools of the crime is an accessory penalty included in the penalty imposable for the felony committed.[27] The articles confiscated are forfeited in favor of the Government and those which cannot be the subject of lawful commerce shall be destroyed whether it belongs to the accused or third person.[28] In U.S. vs. Filart,[29] the Supreme Court ruled that confiscation cannot be had or effected if the article or

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22 Ralla v. Ralla, et. al., 6 CA Rep. 902.
23 Ylarde v. Enriquez, 78 Phil. 136 (1947).
24 Diaz, et al. v. Hon. Nietes, et al., 110 Phil. 606 (1960).
25 *Id.*
26 Section 2, Rule 127, "Sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen and twenty of Rule 57 of the Rules of Court governing attachment in civil action shall apply to attachment provided for in the preceding section in so far as they may be applicable."
27 Reyes, Revised Penal Code (annot., 11th ed.), Vol. 1, p. 619.
28 *Id.*
29 30 Phil. 80 (1915).

property if it was not submitted in evidence or placed at the disposal of the court. The High Court also ruled that articles or property which belong to a third person not a party to the criminal case may be recovered by the same and cannot be ordered confiscated.[30]

In certain special penal statutes, confiscation and forfeiture is likewise provided for as an accessory penalty aside from the conviction of the accused. Republic Act No. 3019, also known as the "Anti-Graft and Corrupt Practices Act" provides for the confiscation and forfeiture in favor of the Government any prohibited interest or unexplained wealth found to be manifestly out of proportion to one's salary or lawful income.[31] The aforementioned statute will serve some use later when compared to the power of sequestration of the executive agency under study.

There arise certain distinctions between sequestration and confiscation and forfeiture, and from condemnation as legal processes affecting property or property rights. As earlier discussed, sequestration is an extraordinary writ or process resorted to by private parties in a chancery proceeding in Anglo-American law. The Philippine legal system and law adopted to a certain extent, the Anglo-American concept but available to a different kind of action or suit. Confiscation and forfeiture is more of a penal process peculiar to criminal law. Confiscation is the preliminary act or process of appropriaitng to the use of the state certain property or properties.[32]

Forfeiture is the completing process of appropriating the property in favor of the government. It pertains to "divestiture of property without compensation in consequence of a default or offense, a method deemed necessary by the legislature to restrain the commission of the offense and to aid its prevention."[33] It is an action against the *res*, that is, against the property itself, the legal effect of which is the transfer of title of the specific thing from the owner to the sovereign power."[34] As a penalty, it "denotes punishment by way of a pecuniary (or material) exaction from the offender, collected through an action in *personam*, and imposed and enforced by the State for a crime or offense against its laws."[35] As to its constitutionality, there seems to be no constitutional objection except the prohibition against cruel and unusual punishment.[36] As regards to limitations or other exceptions, the property of an innocent third person is exempt from such forfeiture proceeding, the reason being that despite its use by the accused, consent to mere relinquishment of possession, of itself, would have no connection to a subsequent unlawful use.[37]

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30 People v. Delgado, et al., C.A., 64 O.G. 785, 9 CA Rep. 960.
31 Sec. 9(a).
32 See note 1, p. 207.
33 Am. Jur. 2d, Vol. 36, p. 611.
34 *Id.*
35 *Id.*, p. 612.
36 *Id.*, p. 622.
37 *Id.*, p. 625.

As regards its effect on title, the statute providing for the forfeiture of property must expressly declare and delineate the bases and process of divestiture of title.[38] Such forfeiture is effected either immediately in favor of the government, or upon the performance of some particular act.[37] Upon the commission of the particular act, forfeiture would immediately take effect and would therefor vest in the government the title to the property, and should condemnation be obtained, such retroacts to the time of the commission of the act and would thus avoid or preclude intermediary sales or alienations even purchasers in good faith.[40]

Confiscation, as used in international law, would relate to seizure or holding "enemy properties" of enemy subjects found in the country and which may be appropriated by the Government without notice. It is a recognized practice during hostilities between states.[41] The exercise of sequestration powers by a belligerent state against properties of enemy subjects is liimted only by humanitarian considerations and also by the doctrine that "damages inflicted upon the enemy must not be out of proportion to the advantage gained by the other side."[42]

Confiscation may also be resorted to by a government against rebellious elements within its territory and existing within the state, as when internal strife exists as it does when the war is foreign.[43] The process or act as exercised by the sovereign would be effected by such means, either summarily or arbitrarily, as the sovereign expressing its will through lawful channels may please to adopt.[44]

Philippine law and jurisprudence with respect to sequestration as a power of the sovereign has followed the concept of sequestration defined in international law. In the case of *Haw Pia vs. China Banking Corporation*[45] (which will be fully discussed later) the Supreme Court extensively discussed the exercise of sequestration by the Japanese Military Administration in the Philippines as a belligerent occupant, and its consequences and after-effects.

Condemnation is somewhat similar to confiscation as used in international law. It pertains to the act of a belligerent against another belligerent, and which can only be effected by what is allowed by international convention.[46] In Anglo-American law, it refers to a judgment, sentence or decree whereby the property seized and subject to forfeiture for infraction

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38 *Id.*
39 *Id.*
40 *Id.*
41 Latifi, *Effects of War on Property*, Beijing Studies in International Law and Policy, pp. 14-15.
42 *Id.*
43 See note 1, p. 208.
44 *Id.*
45 80 Phil. 604 (1948).
46 See Note 44, p. 202.

of either revenue, navigation or other laws, thereby resulting in the forfeiture of the property in favor of the government.[47] It is also defined as the sentence or judgment by a court of competent jurisdiction that a ship or vessel taken as a prize on the high seas was liable to capture, provided that such was properly and legally captured and held as a prize.[48] Thus, until a sentence of condemnation has been rendered, the original owner may regain his property, although the ship has been in the possession of the enemy or carried *infra praiesidia*.[49]

CHAPTER TWO

TRANSFORMATION OF SEQUESTRATION INTO A GOVERNMENTAL POWER

As time progresses, so do laws, and in this particular instance, sequestration was transformed from a purely personal remedy available to private parties to a "governmental" power whereby properties are subject to confiscation, but apparently only under certain conditions or accepted justification. It appears nonetheless that the act of sequestering is similar to the act of confiscation if exercised by the government, and not by any judicial entity.

In international law, this writ of sequestration is recognized, not only by writers or publicists in international law, but also by agreement among States in the form of an international convention. Sequestration, in other words, is resorted to by the sovereign of the State or belligerent occupant in times of war. Latifi, in his work,[50] defines war as "primarily an armed contention between states." He further stated that, "Individuals do not become enemies of the enemy state or its subjects but becomes an enemy as citizens of a belligerent State—hence, indirectly treated and deemed as enemies insofar as their public duties to their State is concerned and due to their personal participation in the war waged by their State."[51] In effect, if the belligerent occupant is successful in occupying the territory of its enemy, the invader is deemed to have replaced or substituted the displaced Sttae's sovereign authority and wields a quasi-sovereign authority.[52]

Thus, sequestration in international law is recognized as a war measure act which can be validly exercised by a belligerent state and that it "is justified, as a general rule, in seizing or destroying all property belonging to the enemy State, movable or immovable, corporeal and incorporeal, that he seizes within his own jurisdiction or carry off with it."[53] Sequestration of such property is thus necessary or necessarily exercised absent any other

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47 *Id.*
48 *Id.*
49 *Id.*
50 See Note 42, *supra*, p. B.
51 *Id.*
52 *Id.*, p. 11 citing De Martens, Traite de Droit International, III, par. 117.
53 *Id.*, pp. 14-15.

means of effective means of control over enemy property. It is nonetheless, limited in its exercise to that in merely preventing the furthering of an enemy's cause and impede that of another and to all other war-related activities.[54] This is further elaborated in the following quotation:[55]

> "Every act of the *de facto* ruler, to be valid, must be limited by the transitory nature of his authority. x x x He can only confiscate what he can carry away of the nemy State's property, in the natural course of things, to his own jurisdiction, where he can permanently defend its possession. In order, however, to effect a transfer of a title of movable property, it is sufficient if it is seized and the power to carry it away is present though not exercised. x x x the belligerent may seize and confiscate movable goods and gather the fruits of the immovable property of the Enemy property without waste, but he may not alienate the property itself. The acts of the invader that exceed this rule will not be binding on the legitimate sovereign."

However, it is also stated that:[56]

> "x x x such rights nevertheless, are delimited by considerations based on humanity or general interest of mankind and by the doctrine that damages inflicted upon the enemy must not be out of proportion to the advantage gained by the other side."

Also, by international convention, more specifically, the Hague Convention and subsequent convention on warfare.[57]

This principle and convention was sufficiently discussed and applied in the Philippines during the Japanese occupation in cases decided by the Supreme Court. The foremost of these cases was that of *Haw Pia vs. China Banking Corporation*[58] where the appellee bank was then ordered seized and liquidated by the Japanese Military Authority with defendant Bank of Taiwan, Ltd., as liquidator. The plaintiff-appellant in this case sought the cancellation of a mortgage executed in favor of the said appellee bank and for the delivery of the certificate of title of the real property mortgaged with the annotation duly cancelled. The plaintiff contended that the Japanese Military authority had authority to liquidate the bank upon its sequestration as enemy property and the liquidator being authorized to accept payment by the plaintiff thus extinguishing her obligation to China Banking.

The Supreme Court held that, the sequestration of the appellee bank is deemed not to be confiscated of its properties, but mere sequestration *per se* thus requiring the winding up or liquidation of the business of said bank. This Court further stated,

> "It is to be presumed that Japan, in sequestering and liquidating the China Banking Corporation, must have acted with her own Manual of the

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[54] *Id.*, pp. 11-12.
[55] *Id.*, pp. 12-13.
[56] *Id.*, p. 15.
[57] *Id.*, pp. 14-27.
[58] See note 46, *Id.*

> Army and Navy and Civil Affairs, or with her Trading with the Enemy Act, and even if not, it being permitted to the Allied Nations, specially the United States and England, to sequestrate, impound, and block enemy properties found within their own domain or in enemy territories occupied during the war by their armed forces, and it being not contrary to the Hague Regulations or international law, Japan had also the right to do the same in the Philippines by virtue of the international law principle that "what is permitted to one belligerent is also allowed to the other."

The High Court also noted that sequestration was one of the necessary measures that can be undertaken by a belligerent to prevent enemy property from aiding the enemy's war efforts:

> "The belligerents in their efforts to control enemy property within their jurisdiction or in territories occupied by their armed forces in order to avoid their use in aid of their enemy and to increase their own resources, after the Hague Convention and specially during the First World War, had to resort to such measures of prevention, which do not amount to a straight confiscation, as freezing, blocking, placing under custody and *sequestering* the nemy private property. Such acts are recognized as not repugnant to the provisions of Article 46 of any other article of the Hague Regulations by well-known writers on International Law, and are authorized in the Army and Navy Manual of Military Government and Civil Affairs not only of the United Sttaes, but also in similar manuals of Army and Navy of the civilized countries, as well as in the Trading with the Enemy Acts of said countries."

The Court also elaborated on the purpose of sequestering enemy-owned property:

> "In the absence of effective measures of control, enemy-owned property can be used to further the interest of the enemy and to impede our own war effort. All enemy-controlled assets can be used to finance propaganda, espionage, and sabotage in this country or in countries friendly to our cause. They can be used to acquire stocks of strategic materials and supplies x x x of use to the enemy, they will be diverted from our own war effort."

The Court further stated that the liquidation or impounding of the assets of enemy banks like the appellee bank in the case is not, therefore, outright confiscation of private property and is deemed to be mere sequestration of the enemy bank's assets and which necessarily requires the liquidation or winding up of the business of said bank. Moreover, it was ruled that in case of failure of the military occupant to pay the enemy bank, the balance of money collected could not possibly change the sequestration or impounding by such belligerent occupant of the bank's assets during the war into an outright confiscation. And pursuant to international conventions and treaties, the owners of properties seized, sequestered, or impounded and who are nationals of the victorious belligerent are deemed to be entitled to compensation for the loss or damage caused to their property by reason of emergency war measures undertaken by the enemy occupant Such claims for compensation are to be filled by the nationals of such victorious State through their respective Governments.

In the case of *Tuason vs. Gimenea*,[59] a Court of Appeals decision, it was ruled therein that:

> "Under the rules of International Law, the commandeering of private properties is done by requisitions on the authority of the commander of the locality occupied (Hyde on International Law, Vol. 3, p. 1891). x x x Private property must be respected even in case of war, and persons may not be deprived thereof except in the manner provided for under the rules of International Law. To sanction otherwise would be to sanction the rule of force."

If requisition of private property was required to be done in accordance with what the rules of international law provide, with more reason as regards to measures undertaken short of confiscation, i.e., property and property rights are sanctioned under international law even in times of war.

The doctrine laid down in the *Haw Pia* case was reiterated in subsequent cases involving claims.[60] In one of these cases,[61] the Supreme Court clearly reiterated that it is a recognized rule in international law that a belligerent state in times of war or hostilities was authorized to seize or sequester property through executive channels, provided that it is that of an enemy of the belligerent state. The Court further noted that the exercise of sequestration powers should provide for the return of the properties in case of mistake. Moreover, under international convention, compensation must be provided for in cases of sequestration of properties during war conditions which eventually ceased. The Court however, mentioned that for the claimants to be entitled to compensation, they are to prove, first, that they are nationals of the victorious belligerent State; second, they are the rightful and lawful owners of the properties placed under sequestration; and third, they must substantially show that they are entitled to compensation for the loss or damage inflicted upon their property by such emergency war measures undertaken during the period of hostilities by the belligerent enemy occupant.

Another period during which sequestration was resorted to as an emergency measure was during the Martial Law period in the Philippines. The exercise of sequestration powers by the President then was pursuant to the constitutional provision on his being the Commander-in-Chief and was deemed necessary in order to quell the rebellion taking place in 1972. This implied power of sequestration as exercised by the Executive through the duly appointed officer is deemed by the Supreme Court in the Martial Law cases[62] to be appropriate, as the factual bases for martial law's declaration was deemed a matter of contemporary history within the court's cognizance. The Court also stated that though Martial

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[59] CA-G.R. No. 955-R, June 16, 1948.

[60] Everett Steampship Corp. v. Bank of P.I., 84 Phil. 202 (1949); Brownell v. Bautista, 95 Phil. 853 (1954).

[61] Brownell v. Bautista, 95 Phil. 853 (1954).

[62] Aquino, Jr., et al. v. Enrile, et al., 59 SCRA 183 (1974).

Law was deemed to be an extreme measure, it rested nonetheless on the principle that every state has the right to its self-preservation, and that the State's right thereto is inherent in every state without which neither the State nor society could exist.[63]

Thus, it could be inferred that the sequestration orders issued by the President pursuant to martial law powers were implicitly necessary to prevent the furtherance of the cause of the rebellious elements within the country from using certain properties for their own purpose. This sequestration order can be inferred from the various letters of instruction issued by the President to the then Secretary of National Defense "to take over or cause the taking over and control" of certain facilities and properties to prevent its use by the rebellious elements in undermining the Government and eventual overthrow thereof.[64] Such description has adequately summarized in the opinion of Chief Justice Makalintal in the said martial law cases and as follows:

> "In the first place I am convinced (as are the other Justices), without need of receiving evidence as in an ordinary adversary court proceeding, that a state of rebellion existed in the country when Proclamation No. 1081 was issued. It was a matter of contemporary history within the cognizance not only of the court but of all observant people residing here at the time. Many of the facts and events recited in detail are of common knowledge. The state of rebellion continues up to the present. The argument that while armed hostilities go on in several provinces of Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefor there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed newssheets or rumors disseminated in whispers; recruitment of armed and ideologica adherents, raising of funds, procurement of arms and material, fifth-column activities, including sabotage and intelligence — all these are part of the rebellion which by hteir nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt with in that context."

This exercise of sequestration powers and nonetheless delimited by the Constitution which was deemed to be still operative and its supremacy undiminished even by the advent of a national emergency.[65] The Court was deprived of the opportunity of deciding a case involving the confiscation of certain properties during Martial Law as no case thereon was ever brought before it for resolution. What the Court merely resolved in the aforecited case was the validity of the restraint of liberty of the petitioners therein. But the import of the decision has impliedly conferred validity to the martial law powers and measures exercised by the President.

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[63] *Id.*, per separate opinion Castro, J., pp. 244-281.
[64] Letter of Instructions, Nos. 1, 2 and 3, September 22, 1972.
[65] See note 13, per separate opinion Fernando, J., pp. 281-308.

CHAPTER THREE

THE PHILIPPINE COMMISSION ON GOOD GOVERNMENT, SEQUESTRATION AND ITS CONSTITUTIONALITY OR UNCONSTITUTIONALITY

Allegedly, it is "the direct mandate of the people as manifested by their extraordinary action which demands the complete reorganization of the government, *protection of basic rights,* rebuilding of confidence in the entire governmental system, eradication of graft and corruption, restoration of peace and order, maintenance of the supremacy of civilian authority over the military, and that transition to a government under a New Constitution in the shortest time possible; x x x"[66] and that "there is an urgent need to recover all ill-gotten wealth."[67] Thus, the Aquino Government by executive fiat created the Philippine Commission on Good Government. It was purportedly created in order to recover all ill-gotten wealth in the possession of the deposed President Marcos, his family and close associates, whether in the government or private individuals.[68]

The first and foremost contention against the existence of the Commission is that the enabling act or executive fiat partakes of a bill of attainder. A bill of attainder is defined as a legislation which inflicts punishment without being given the benefit of a judicial proceeding and a person falling within the operation thereof would be immediately be under pain of penalty.[69] Such are also generally directed against individuals by name and may sometimes be directed against a specific whole class.[70] With respect to Executive Order No. 1 creating the Commission, this is evidenced by its whereas clauses, as follows:

> "WHEREAS, vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad; x x x"

It stands clear that persons falling within any of the "category" or classes have been pre-judged to be guilty of the crime imputed to them without the benefit of trial. They are thus deprived of their constitutional or human rights, whichever is appropriate. Section 9 of the PCGG Rules and regulations issued April 11, 1986 is more absurd in that, "Any accumulation of assets, properties and other material possessions of those persons covered by Executive Order Nos. 1 and 2, whose value is out of proportion to their known lawful income is prima facie deemed ill-gotten wealth." This runs contrary to the long established rule of evidence that, "He who alleges, not he who denies, must prove." Hence,

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[66] Proclamation No. 3 dated March 2, 1976.
[67] Executive No. 1 dated February 28, 1986.
[68] Executive Order No. 1 dated February 28, 1986 and Executive Order No. 2 dated March 12 1986.
[68] Am. Jur. 2d, Vol. 16, pp. 751-752.
[70] *Id.*

it is up to the Commission or prosecution to establish proof and not for the defendant to convince the other side of his innocence, especially if the case will be a criminal lawsuit.[71]

Another feature of the enabling executive fiat of the Commission is that it suffers from constitutional infirmity of being a bill of attainder in that it is a legislation that inflicts punishment or condemns a person without judicial trial.[72] If such persons are placed under the pain of having their property under sequestration or confiscation, to answer for the supposed crime they have committed or are the instruments or proceeds of the crime they have perpetrated, they are still deprived of their constitutional rights, even under the "Freedom Constitution," specifically, of their right not to be held to answer for a criminal offense without due process of law[73] and the right to be presumed innocent until the contrary is proven.[74]

In one case,[75] the constitutionality of Republic Act No. 1700 otherwise known as the "Anti-Subversive Act" was assailed as unconstitutional as it partakes the character of a bill of attainder in that it outlaws the Communist Party of the Philippines and in effect, inflicts punishment to those "knowingly, willfully and by overt act affiliates himself with, or becomes or remains a member" of the Party or any other similar "subversive" organization.[76] It was held by the Court that the Act is not a bill of attainder in the sense that the law does not specify the Communist Party nor its members for the purpose of punishment but simply declared the Party to be an organized conspiracy for the overthrow of the Government for the purposes of the prohibition as stated in section of the said Act, against membership in the said outlawed organization. The Court further said that the use of the term pertaining to the Party is "solely for definition purposes."[77] It further said that it is not the mere membership in the Communist Party which is punished but the willful and knowing intent to become a member to further the illegal objectives of the said Party or similar organizations. The Court went even further and stated that notwithstanding the naming of specific individuals in the Anti-Subversion Act, such feature will not yet render it a bill of attainder except when such statute would apply to either named individuals or to easily ascertainable members of a group in the manner that they are susceptible to punishment without the benefit of judicial trial.[78] The Court further stated that it was not enough that that the statute specifically named persons or groups for

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[71] Moran, Comments on the Rules of Court, Part IV, pp. 2-3.
[72] Am. Jur. 2d, Vol. 16, p. 751.
[73] Article IV, Section 17, 1973 Constitution as amended (said Article being adopted *in toto* in Proclamation No. 3 dated February 28, 1986).
[74] *Id.*, section 19.
[75] People v. Ferrer, 48 SCRA 382 (1972).
[76] *Id.*
[77] *Id.*, p. 398.
[78] *Id.*, pp. 402-403.

it to be declared a bill of attainder but it must also apply retroactively and reach past conduct.[79]

In that case however, one Justice of the said Court dissented from the majority opinion, ruling that the Act is a bill of attainder within the purview of the Constitution and, citing several American cases,[80] stated that "the mere fact that a criminal case would have to be instituted would not save the statute."[81]

The executive fiats concerned applying the doctrine above-mentioned, would apparently appear to be suffering from constitutional infirmity as being a bill of attainder. The constitutional infirmity of Executive Order No. 1 is further amplified by a supporting executive order where the title itself obviously reveals it as being a bill of attainder.[82] The title of the said executive order states:

> "REGARDING THE FUNDS, MONEYS, ASSETS, AND PROPERTIES ILLEGALLY ACQUIRED BY FORMER *PRESIDENT FERDINAND MARCOS, MRS. IMELDA ROMUALDEZ MARCOS,* THEIR CLOSE RELATIVES, SUBORDINATES, BUSINESS ASSOCIATES, DUMMIES, AGENTS, OR NOMINEES." (Italic supplied)

Moreover, the whereases of the same likewise demonstrates its being a bill of attainder:

> "WHEREAS, the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former President Ferdinand E. Marcos, and/or his wife Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationships, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines; x x x"

Another characteristic of a bill of attainder is that such can also inflict punishment "absolutely or conditionally and can even provide that if the person affected surrenders himself before a certain day for trial, the penalties and disabilities declared shall be void and of no effect."[83] This is evidenced by an amendatory executive order wherein Section 5 thereof[84] provides:

> "The Presidential Commission of Good Govetrnment is authorized to *grant immunity from criminal prosecution to any person who testifies to*

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79 *Id.*, pp. 405-406.
80 *Id.*, per dissenting opinion Fernando, J., pp. 416-433.
81 *Id.*, p. 426.
82 Executive Order No. 2 dated March 12, 1986.
83 Am. Jur. 2d, Vol. 16, p. 752.

> *the unlawful manner by which any respondent, defendant, or accused has acquired or accumulated the property or properties in question in cases where the testimony is necessary to prove violations of existing laws."* (Italics supplied)

The executive fiats are therefore also considered *ex post facto*, and thus run counter to Section 12 of Article IV on the Bill of Rights found in the 1973 Constitution and as adopted in toto in Proclamation No. 3 as a part thereof constituting as a whole supposedly a "Freedom Constitution." However, it is significant to note that in paragraph (4) of Section 1, Article II of the Freedom Constitution provides:

> "x x x d) Recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people *through orders of sequestration or freezing of assets or accounts."*

The above provision comes subsequent to the adoption of the Bill of Rights in Section 1 of Article 1, and apparently, it is inconsistent with said Section, which states that "No person shall be deprived of his life, liberty or property without due process of law x x x." Insofar as the Bill of Rights is concerned, it is submitted to be supreme as against other provisions of the "Freedom Constitution" as demonstrated by the "Whereas" paragraphs of the same proclamation in that:

> "WHEREAS, the direct mandate of the people as manifested by their extraordinary action demands x x x the x x x *protection of basic rights* x x x"
>
> "WHEREAS, x x x it must be guaranteed that *the government will respect basic human rights and fundamental freedoms;* x x x" (Italics supplied)

Moreover, Executive Order No. 14 states that notwithstanding the undertaking of sequestration of certain properties or assets by virtue of "overriding considerations of national interest and national survival," the Commission is mandated in carrying out its task to perform it "with due regard to the requirements of fairness and due process."[85]

It can be seen therefore that Executive Orders Nos. 1 and 2, and all related executive orders, are void upon their face for being contrary to the rule of law and deemed violative of due process, aside from being violative of Section 12 of the Bill of Rights adopted *in toto* by the Freedom Constitution.

The Executive Orders and allied rules and regulations are likewise violative of due process as the issuance of such writs or orders of sequestration were done in the absence of or can be done in the absence of any preliminary inquiry, with proper notice and upon the establishment of

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[84] Executive Order No. 14, dated May 7, 1986.
[85] *Id.*

probable cause. The Commission may issue orders of sequestration not only in terms of confiscating illegally acquired properties or assets but also to sequester or cause to be placed under sequestration or under the Commission's control or possession "any building or office x x x any records pertaining thereto, in order to prevent their destruction, concealment, or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission for accomplishing its task."[86] The Executive Order also empowered the Commission in provisionally taking over business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos.[87] As can be observed, it appears that the Commission can do away with any investigation prior to the issuance of any order of sequestration if it will tend to prevent the destruction, concealment or disappearance of records, documents and other pertinent materials that will reveal the ownership of such properties or assets believed to be illegally acquired properties or assets by the aforementioned persons Even if preliminary investigation was had to make it appear that due process is met, the validity of the sequestration order and its issuance would still be rendered nugatory, by reason of the defect of the executive fiats.

With respect to the members of the Commission, who were appointed and whose names were specifically mentioned in the Executive Order[88] without any reason given for their appointment and qualification as Commissioners thereof, it is of general knowledge that most of the people appointed as Commissioners were, one way or another, "victims" of the past Marcos Administration or were subject to harassment by reason of their identification with the opposition then. Hence, impartiality and fairness cannot be had from such people in the sense that bias and prejudice might be expected in their investigations and decisions, by reason thereof.

Moreover, the legal existence of a writ of sequestration is in serious doubt since no action, whether criminal or civil, is filed against respondents in the investigation conducted by the Commission as required by the subsequent executive fiat on the matter.[89]

Another constitutional infirmity the issuance and the writ of sequestration itself suffers from is that it partakes of the nature of a general warrant in violation of Section 3 of the Bill of Rights as adopted by the Freedom Constitution. As an example, in one of its sequestration orders dated April 30, 1986 directed to the owner/custodian/caretaker of the building at 1420 San Marcelino Street, Manila, the writ of sequestration reads:

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[86] Executive Order No. 1, section 3, subsec. (b)
[87] *Id.*, subsec. (c).
[88] *Id.*, section 1.
[89] See Note 23, sections 1, 2 and 3.

> "In the name of the Presidential Commission on Good Government and by virtue of the authority vested in it by the President of the Philippines, we hereby sequester and seize *all the documents, papers and records pertaining to the property holdings, assets and/or businesses of Mr. Roberto S. Benedicto and Trader's Royal Bank* which are *reportedly* being kept in the abovementioned premises. x x x" (Italics supplied).

Thus, it can be seen from the quoted contents of the sequestration order that it is bereft of any particularity or specificity as to what records, documents or papers must be turned over. And it is deemed to be in violation of Section 3 of the Bill of Rights where it states "no search warrant x x x shall issue *except upon probable cause* to be determined by the judge, or such other responsible officer as may be authorized by law, *after examination under oath or affirmation of the complainant and the witnesses he may produce,* and *particularly describing the place to be searched, and the persons or things to be seized.*" (Italics supplied). The absence of specificity or adequate particularity for the writs of sequestration to be valid is readily apparent.

The landmark case with respect to the constitutional prohibition against general warrants is *Stonehill v. Diokno*[90] where the Supreme Court speaking through then Chief Justice Roberto Concepcion stated:

> "x x x Indeed, the same were issued upon applications stating that the natural and juridical persons therein named had committed a 'violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue (Code) and Revised Penal Code.' In other words, no specific offense had been alleged in said applications. The averments thereof with respect to the offense committed were abstract. As a consequence, it was impossible for the judges who issued the warrants to have found the existence of probable cause, for the same presupposes the introduction of competent proof that the party against whom it is sought has performed particular acts, or committed specific omissions, violating a given provision of our criminal laws. As a matter of fact, the applications involved in this case do not allege any specific acts performed by herein petitioners. *It would be a legal heresy of the highest order, to convict anybody of a violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue (Code) and Revised Penal Code, — as alleged in the aforementioned applications — without reference to any determinate provision of said laws or codes.* (Italics supplied).

In the present cases of sequestration and seizures of various properties and assets of persons on the mere declaration of the executive fiats that such are illegally acquired properties or assets by associates and family members of the Marcoses, the executive fiats are devoid of any express declaration that those people have violated laws penalizing such acts as criminals in nature.

The aforecited case[91] continues:

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[90] 20 SCRA 383 (1967).

> "Books of accounts, financial records, vouchers, journals, correspondence, receipts, ledgers, portfolios, credit journals, typewriters, and other documents and/or papers showing all business transactions including disbursement receipts, balance sheets and related profit and loss statements."
>
> "Thus, the warrants authorized the search for and seizure of records pertaining to all business transactions were legal and illegal. The warrants sanctioned the seizure of all rceords of the petitioners and the aforementioned corporations, whatever their nature, thus openly contravening the explicit command of our Bill of Rights — that the things to be seized be partciularly described as well as tending to defeat its major objective — the elimination of general warrants."

The issuance of a search warrant or search and seizure order whatever name it may otherwise be known or called, must comply with two constitutional requirements namely, probable cause and particular description of the place to be searched, and the person or things to be seized. Probable cause has been defined as "such facts and circumstances sufficient in themselves to induce a cautious man to rely upon them and act in pursuant thereof."[92] It is thus "The existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted."[93] Test of sufficiency of description or particularity of description would be in terms of reasonableness in being able to identify and ascertain the place to be searched and the objects sought to be seized must likewise be described in such manner.

The sequestration orders were issued by the Commission against the various business enterprises, properties and assets which are believed to be owned by people of the deposed regime. The orders became a search for exploratory purpose which is abhorred by the Bill of Rights. In one case,[94] the Supreme Court ruled that the seizure of certain papers, books and documents by means of a search warrant and which will be used in a criminal case against the person in whose person they were found, is deemed to be unconstitutional not only because of the unreasonableness of the warrant but also, its being equivalent to the violation of the constitutional guarantee against compelling an accused to testify against himself. Thus, "When the warrant sanctioned the seizure of all records of the petitioner or records pertaining to all his business transactions, regardless of whether the transactions were legal or illegal, it contravened the explicit constitutional command that the things seized be particularly described, and the searches and seizures were illegal."[95] In a recent case[96] the Supreme Court decided that "the constitutional requirements for a valid search warrant or warrant of arrest" that is to be followed would be the

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91 *Id.*, p. 39.
92 People v. Sy Juco, 64 Phil. 667 (1937).
93 Buchanan v. Esteban, 32 Phil. 365 (1915).
94 Alvarez v. CFI, 64 Phil. 33 (1937).
95 QUISUMBING-FERNANDO, THE PHILIPPINE CONSTITUTIONAL LAW, 93 (1984).
96 *Id.*, citing Castro v. Pabalan, 70 SCRA 477 (1976).

one established in the *Stonehill v. Diokno* case. "Failure to abide by both the Constitution and the procedural law in terms of the existence of a probable cause, a particular description of the property to be seized, and the requirement that there be only one specific offense renders the contested warrants illegal. For a search warrant to escape the imputation of being unreasonable, there should be strict conformity with the requirements of the Constitution and the applicable procedural rules."[97]

Thus, the Supreme Court further stated that:

> "To uphold the validity of the warrants in question would be to wipe out completely one of the most fundamental rights guaranteed in our Constitution, for it would place the sanctity of the domicile and the privacy of communication and correspondence at the mercy of the whims, caprice or passion of peace officers. This is precisely the evil sought to be remedied by the constitutional provision abovequoted — to outlaw the so-called general warrants. It is not difficult to imagine what would happen, in times of keen political strife, when the party in power feels that the minority is likely to wrest it, even though by legal means."

In the case of *Bache & Co. (Phil.) v. Ruiz*,[98] the Supreme Court ruled:

> "A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow (People v. Rubio, 57 Phil. 384); or when the description expresses a conclusion of fact — not of law — by which the warrant officer may be guided in making the search and seizure (idem., dissent of Abad Santos, J.,); or when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued (Sec. 2, Rule 126, Revised Rules of Court). The herein search warrants do not conform to any of the foregoing tests. If the articles desired to be seized have any direct relation to an offense committed, the applicant must necessarily have some evidence, other than those articles, to prove the said offense; and the articles subject of search and seizure should come in handy merely to strengthen such evidence. In this event, the description contained in the herein disputed warrant should have mentioned, at least, the dates, amounts, persons, and other pertinent data regarding the receipts of payments, certificates of stocks and securities, contracts, promissory notes, deeds of sale, message and communications, checks, bank deposits and withdrawals, records of foreign remittance, among others, enumerated in the warrant."

On the issue of probable cause, an American case comes into mind resolving the issue of validity as regards the issuance of a warrant of arrest or search warrant by a person authorized by law other than a judge:[99]

> "x x x the determination of probable cause was made by the chief 'government enforcement agency of the State — the Attorney-General — who was actively in charge of the investigation and later was to be chief prosecutor at the trial. To be sure, the determination was formalized

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97 *Id.*

98 37 SCRA 82 (1971).

99 Coolidge v. New Hampshire, 29 L. Ed. 2d, 564, 572-573 (1971).

> hereby a writing bearing the title 'Search Warrant,' where as in Johnson there was no piece of paper involved, but the State has not attempted to uphold the warrant on any such artificial basis. Rather, the State argues that the Attorney-General, who was unquestionably authorized as a justice of the peace to issue warrants under the then-existing state law, did in fact act as a "neutral and detached magistrate." Further, the State claims that *any* magistrate, confronted with the showing of probable cause made by the Menchester chief of police, would have issued the warrant in question. To the first proposition it is enough that there could hardly be a more appropriate setting than this for a per se rule of disqualification rather than a case-by-case evaluation of all the circumstances. Without disrespect to the state law enforcement agent here involved, the whole point of the basic rule so well expressed by Mr. Justice Jackson is that prosecutors and policemen simply cannot be asked to maintain the requisite neutrality with regard to their own investigations — the 'competitive enterprise' that must rightly engage their single-minded attention."

There arose apparently, a usurpation of judicial power, a transgression of the doctrine of separation of powers, despite the queer characteristic of the present Aquino Government. This resulted in a complete loss of the "cold neutrality of an impartial judge,"[100] in the case of the Commission's execution and exercise of its functions and powers.

Thus, the manner by which the Commission exercises its functions and powers can be deemed as being inconsistent with the requirements of due process and the rule of law and even to their declared government policy. The Supreme Court has defined due process of law and has been reiterated in a long lien of precedents to which the Court had admonished and enjoined the other branch of the government, especially the executive branch and agencies to duly observe said principle in their exercise of their powers. Due process of law has been defined as regards particular cases, is such exertion of powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribed for the class of cases to which one in question belongs. Hence, by the law of the land, it is more clearly intended as the general law, a law which hears before it condemns, which proceed upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern societies. Everything which may pass under the form of an enactment is not, therefore, to be considered the law of the land.[101] "Due process of law does not necessarily mean a judicial proceeding in the regular courts. The guarantee of due process, viewed in its procedural aspect, requires no particular form of procedure. It implies due notice to the individual of the proceedings, an opportunity to defend himself, and the problem of the deprivations under the circumstances presented must be resolved in a

[100] Mateo, Jr. v. Villaluz, 50 SCRA 18 (1973).
[101] U.S. v. Ling Fu San, 10 Phil. 111 (1908).

manner consistent with essential fairness. It essentially means a fair and impartial trial and reasonable opportunity for the preparation of defense.[102] In the words of the Supreme Court in *Halili v. Public Service Commission*,[103] due process is that which is in "accord with the procedure outlined in the law or, in the absence of express procedure, under such safeguards for the protection of individual rights as the settled maxims of law permit and sanction for the particular class of cases to which the one in question belongs. In a general sense it means the right to be heard before some tribunal having jurisdiction, which proceeds upon notice, with an opportunity to be heard, with full power to grant relief."

If due process is disregarded, the Supreme Court in one case[104] ruled that, "x x x acts of Congress, *as well as those of the Executive, can deny due process under pain of nullity, and judicial proceedings suffering from the same flaw "are subject to the same sanction, any statutory provision to the contrary notwithstanding.*" In another decision of a later date the Supreme Court stated:

> "We are thus led to considering the insistent, almost shrill tone, in which the objection is raised to the question of due process. There is no controlling and precise definition of due process. It furnishes though a standard to which the governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid. What then is the standard of due process which must exist both as a procedural and substantive requisite to free the challenged ordinance or *any governmental action* for that matter, from the imputation of legal infirmity insufficient to spell its doom? It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, *arbitrariness is ruled out and unfairness avoided.* To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reason and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly it has been identified as *freedom from arbitrariness.* It is the embodiment of the sporting idea of fair play. It exalts fealty 'to those strivings for justice' and judges the act of officialdom of whatever branch 'in the light of reason drawn from considerations of fairness that reflect (democratic) traditions of legal and political thought.' It is not a narrow or technical conception with fixed content unrelated to time, place and circumstances, decisions based on such a clause requiring a 'close and perceptive inquiry into fundamental principles of our society.' Questions of due process are not to be treated narrowly or pedantically in slavery to form or phrases."

In another decision,[105] due process is defined by the Supreme Court in the following manner:

> "It is a mandate of reason. It frowns on arbitrariness, it is the antithesis of any governmental act that smacks of whim or caprice. It negates

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102 Aquino v. Military Commission, 63 SCRA 576 (1975).
103 92 Phil. 1040 (1953).
104 Vda. de Cuaycong v. Vda. de Sembengco, 110 Phil. 117 (1960).
105 Ermita-Malate Hotel & Motel Operators' Asso. v. City Mayor, 20 SCRA 849, 860-861 (1967).

> state power to act in an oppressive manner. It is, as had been stressed so often, the embodiment of the sporting idea of fair play. In that sense, it stands as a guaranty of justice. That is the standard that must be met by any governmental agency in the exercise of whatever competence is entrusted to it."

The present Chief Justice Teehankee, perennially known as a vocal advocate of human rights stated in his dissenting opinion in *Del Castillo v. Enrile*[106] that:

> "If the rule of law means anything... (T)he Court should so rule squarely... (T)he issue at bar is a decisive and fundamental issue of public interest and importance affecting the very liberties of the people. The vital issue demands to be resolved...for the guidance of public respondents and all concerned."

In another dissenting opinion of Chief Justice Teehankee in another case[107] he stated:

> "A reflection upon previous instances of attempted encroachment against fundamental rights easily show that these were precisely under the greatest pressures from "national security," "national interest," the "common good," or even "national survival," and the like. Hence, the public officials involved could indeed be credited with the highest and most noble of intentions and motives (as for instance in "Villavicencio vs. Lukban, *infra.*) However, it will also be seen that it is precisely because the courts have the unique position of seeing the broader view that they step in at times like these.
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> "(T)he need for guiding principles on constitutionalism is particularly keen in critical times and in periods of transition. There is the tendency to be impulsive in the exercise of power. They use illegal shortcuts and the breakdown of traditional restraints and discipline, unfortunately, is most pronounced in troubled times. It becomes necessary for the Court to emphasize the importance of adherence to the mandates of the Constitution. The efforts, no matter how well meaning, to quell a rebellion or stave off economic disaster cannot succeed if they transgress basic rights and, therefore, alienate our people."

In still another dissent, Chief Justice Teehankee wrote:

> "Over and above all, public officials should ever be guided by the testament over a half a century ago of the late Justice Jose Abad Santos in his dissenting opinion in *People vs. Rubio* that the "commendable zeal...if allowed to override constitutional limitations would become 'obnoxious to fundamental principles of liberty.' And if we are to be saved from the sad experiences of some countries which have constitution only in name, we must insist that governmental authority be exercised within constitutional limits; for, after all, what matters is not so much what the people write in their constitutions as the spirit in which they observe their provisions.' To require the citizen at every step to assert his rights and go to court is to render illusory his rights."

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[106] 131 SCRA 405, 412 (1984).
[107] Eastern Broadcasting Corp. v. Dans, 137 SCRA 628, 639 (1985).
[108] German v. Barangan, 135 SCRA 514, 535-536 (1985).

Evidently, in fact and in law, there was no due notice to the right party at a propitious and reasonable time for a respondent to an investigation. From the reading of the enabling executive act, it appears that there is no prior requisite investigation for an order of sequestration to issue. Not only because the whereases clause of Executive Order No. 1 have already pre-judged the guilt of the people mentioned therein but have considered the recovery of alleged ill-gotten wealth amassed by the deposed regime as stated in Proclamation No. 3.[109] This is in apparent contradiction within the same enumeration of said Proclamation (if the enumeration is considered to be an enumeration of priority where subsection (b) states, "x x x Make effective the guarantees of civil, political, human, social, economic and cultural rights and freedoms of the Filipino people, and provide remedies against violations thereof; x x x." Thus, the present Aquino Government is contradicting itself and is not seriously committed to the policy of upholding basic human rights whether or not they are identified with the former regime.

The Commission created by executive fiat arrogates exclusively to itself the power to convict and leave nothing for judicial determination. This is evident with the whereas clauses of the executive orders which makes a conclusive finding of guilt and conviction. Assuming *arguendo* that the President is emppowered to legislate in a revolutionary government as it empowered herself to do so, it is not inferrable that the Commission can arrogate unto itself judicial power. It does not necessarily mean that if an executive agency is created, and conferred with judicial powers as to exist as a quasi-judicial body. It appears that the delegation is one "running riot, unconfined and vagrant" in terms of the executive fiat being incomplete in that it does not state with clarity and specificity under what conditions and/or circumstances warrants the exercise of the powers conferred upon the agency[110] or the executive fiat does not state with particularity what are deemed to be acts that are considered reprehensible under it.[111] The executive fiat further lacks or is devoid of ascertainable standards in the case of what can be a legally acceptable definition of "ill-gotten wealth" and leaves to the Commission to determine what properties or assets can be considered as such[112] and which is in conflict

[109] Article II, Section 1 — "Until a legislature is elected and convened under a new Constitution, the President shall continue to exercise legislative power.

"The President shall give priority to measures to achieve the mandate of the people to:

"x x x (d) Recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration and freezing of assets of accounts; x x x"

[110] Cia General de Tabacos de Filipinas v. Board of Public Utility Commissioners, 34 Phil. 316.

[111] U.S. v. Ang Tang Ho, 43 Phil. 1 (1922).

[112] Executive Order No. 1, section 3, subsec. (h), "x x x To promulgate such rules and regulations as may be necessary to carry out the purposes of this Order; x x x"

with the jurisprudence developed with respect to administrative law on the matter.[113]

It may not be amiss to note that notwithstanding the grant of rule-making power to the Commission as regards its fulfilling its purpose, an author in administrative law[114] has said, "rule-making has for its objective in general, the 'filling-in of details' of legislative policy, to implement or prescribe law or specific policy *for the future rather than the evaluation of past conduct.*" As regards the rules and regulations promulgated by the Commission, what the Supreme Court in the case of *People v. Maceren*[115] said must be borne in mind, "except for constitutional officials who can trace their competence to act to the fundamental law itself, a public official must locate in the statute relied upon a grant of power before he can exercise it." "Department zeal may not be permitted to outrun the authority conferred by statute." Citing *Radio Communications of the Philippines v. Santiago*,[115-a] the High Court further stated in the same case that:

> "Rules and rgeulations when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, partake of the nature of a statute, and compliance therewith may be enforced by a penal sanction provided in the law. This is so because statutes are usually couched in general terms, after expressing the policy, purposes, objectives, remedies and sanctions intended by the legislature. The details and the manner of carrying out the law are oftentimes left to the administrative agency entrusted with its enforcement.
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> "In this sense, it has been said that the rules and regulations are the products of a delegated power to create new or additional legal provisions that have the effect of law." The rule or regulation should be within the scope of the statutory authority granted by the legislature to the administrative agency. (Citing Davis, Administrative Law, p. 194, 197 cited in Victorias Milling Co., Inc. v. Social Security Commission, 114 Phil. 555)
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> "The rule is that the violation of a regulation prescribed by an executive officer of the government in conformity with and based upon a statute authorizing such regulation constitutes an offense and renders the offender liable to punishment in accordance with the provisions of the law. (Citing U.S. v. Tupasi, 29 Phil. 119).
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> "It has been held that 'to declare what shall constitute a crime and how it shall be punished is a power vested exclusively in the legislature, and it may not be delegated to any other body or agency" (1 Am. Jur. 2nd, Sec. 127, p. 938; Texas Co. vs. Montgomery, 73 F. Supp. 527).
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> "A penal statute is strictly construed. While an administrative agency has the right to make rules and regulations to carry into effect a law already enacted, the power should not be confused with the power to enact a criminal statute. An administrative agency can have only the administrative or policing powers expressly or by necessary implication conferred upon it. (Glustrom vs. State, 206 Ga. 734, 58 SE 2nd 534; See 2 Am. Jur. 2nd 129-130)."

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113 Panama Refining Co. v. Ryan, 293 U.S. 388 cited in CORTEZ, PHILIPPINE ADMINISTRATIVE LAW, 90-97, 117-121 (1934).

114 CORTEZ, PHILIPPINE ADMINISTRATIVE LAW, p. 132 (1984).

115-a 58 SCRA 493 (1974).

It must also be borne in mind that the Commission, by virtue of an executive fiat by the legislative powers of the President would be merely such quasi-judicial administrative agency limited to only investigating but which apparently would be a pro forma function since the enabling executive fiats have, as previously stated, been pre-judged as guilty. The Commission in effect, arrogates exclusively to itself the power to convict and leave nothing for judicial determination. Again, quoting the particular whereas clause in Executive Order No. 1 stating:

> "WHEREAS, vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad;
>
> "WHEREAS, there is an urgent need to recover all ill-gotten wealth; x x x"

This is again repeated in Executive Order No. 2 in its whereas clauses and quote:

> "WHEREAS, the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former President Ferdinand E. Marcos, and/or his wife Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates dummies, agents, or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;"
>
> "x x x WHEREAS, in accordance with the requirements of justice and due process, it is the position of the new democratic government that former President Marcos and his wife, Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees be afforded fair opportunity to contest these claims before appropriate Philippine authorities; x x x"

And again, Executive Order No. 14 dated May 7, 1986, its whereas clauses repeated the same theme:

> "WHEREAS, the Presidential Commission on Good Government was created on February 28, 1986 by Executive Order No. 1 to assist the President in the recovery of ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates;
>
> "WHEREAS, the Presidential Commission on Good Government under Executive Order No. 2 dated March 12, 1986, has likewise been primarily charged with the responsibility of recovering the assets and properties illegally acquired by former President Ferdinand E. Marcos and/or Mrs. Imelda R. Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees; x x x"

Thus, it can be concluded that the executive fiats creating and empowering the Philippine Commission on Good Government to confiscate or sequester

properties and assets on the mere suspicion that they are illegally-acquired properties and assets by the aforementioned persons mentioned by name and class therein, discredit the State because of its disregard of a basic objective which is that justice be dispensed with an even hand if it is through duly established agencies especially fiats for the task. Thus, notwithstanding the declaration in the executive fiats that such governmental actions against such persons and propeprties were necessary in the name of "national interest" or "national survival" cannot and will not cure the constitutional infirmity that plagues its existence as a valid and constitutional statute.

The arrogation of judicial powers by the Commission unto itself is in direct violation of the long-standing constitutional precept of separation of powers, which is implicitly maintained by the "Freedom Constitution" (Proclamation No. 3) by the adoption in toto of the provisions of the 1973 Constitution as amended on the Judiciary (Article X), the President (Article VII), Local Governments (Article XI) on condition that they are not inconsistent with the provisions of said Proclamation (Section 1). Hence, there appears to be an inconsistency insofar as the "adopted" provisions of the 1973 Constitution by Proclamation No. 3 is concerned and the overriding "national interests" and "national survival" clause is concerned which apparently countermand restrict the effectivity of the guarantees of the former if they are viewed or considered as inconsistent with the declared policies and objectives of the "Revolutionary Government of President Aquino."

CHAPTER FIVE

FINAL ANALYSIS AND EVALUATION

Evidently, if the validity or constitutionality of the Executive Orders creating the Philippine Commission on Good Government and the Commission's existence is upheld by the present "revolutionary" Supreme Court of President Aquino and declared to be not inconsistent with the policies and objectives of the said Government, what may be only left to object to or remedy would be the irregularity, arbitrariness, and prejudicial exercise of the powers and functions by the said Commission. But it seems that in the eyes of the law, the enabling executive fiat is *prima facie* a nullity in the light of the constitutional guarantees it has violated and principles in constitutional law which it has transgressed with impunity.

The indiscriminate sequestration of properties and assets without proper investigation and on mere surmises and beliefs that such are the properties and/or assets of the members or associates of the deposed regime of President Marcos have become an inquisitorial crusade by the Aquino Government against persons whether identified or not with the deposed regime, and has become the subject of their caprice and whims.

These sequestrations and sometimes outright confiscation have caused widespread apprehension especially among businessmen and entrepreneurs and the ever needed foreign investors.

More concerned with what the Commission is doing are the members of the local circle especially those in the academe seriously inquiring into the validity of the exercise of sequestration powers by the Commission[116] and which will be given importance later.

The question more likely to be asked would be, what would be the remedy of those whose properties and assets were wrongfully sequestered or frozen by the Commission? The preliminary answer would be: none. Section 4 of Executive Order No. 1 provides:

> "(a) No civil action shall lie against the commission or any member thereof for anything done or omitted in the discharge of the task contemplated by this order.
>
> "(b) No member or staff of the commission shall be required to testify or produce evidence in any judicial, legislative or administrative proceeding concerning matters within its official cognizance."

The implications of this provision is that members, and agents of the Commission are immune from suit and are protected from being compelled upon a lawful process from testifying in any proceeding that may involve the Commission itself.

It appears then, that private individuals and such other individuals who may have been aggrieved by the acts of the Commission can find no reparation or compensation for whatever damage that may have been caused to them, either to their personal reputation or business standing or to their business, by reason of the immunity clause. Hence, it is doubtful whether the present revolutionary Supreme Court will decide against the validity of its creation or against the constitutionality of the executive fiats creating and empowering the Commission in the petitions[117] filed in said Court.

Independent of what the Supreme Court will rule on the matter, summarizing the discussion made thereof; the following conclusions are respectfully submitted: on the constitutionality of the executive fiats and the Commission created thereby, they are, objectively, contrary to what is dictated by constitutionalism and evidently repugnant to what is known as the Rule of Law. The Aquino Government has become inconsistent in its stand that basic human rights and freedom, whether found in the Bill of Rights or not, shall be guaranteed by them.[118] It is submitted by

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[116] Perfecto V. Fernandez, *Sequestration and the Fundamental Law*, Daily Express, August 25 to September 3, 1986 and Vicente Millora, *Notes on Sequestration*, Bulletin Today, August 1-3, 1986.

[117] Tourist Duty-Free Shop, Inc. v. Presidential Commission on Good Government, et al., G.R. No. 74302 (1987). Roberto S. Benedicto, et als. v. Presidential Commission on Good Government, et als., G.R. No. L-74974 (1987). Lucio C. Tan, et als. v. Philippine Commission on Good Government, G.R. No. L-75687 (1987).

Professor Perfecto Fernandez in his article[119] that, "The present regime in the Philippines, though self-styled as Revolutionary Government, *may be deemed or should be considered a constitutional regime,* in that it has declared itself subject to, and bound by, the "Freedom" Constitution of 1986, adopted or instituted pursuant to Proclamation No. 3 dated March 25, 1986." He further said, "By the process or method of Auto-Limitation, which is well-recognized in jurisprudence, a government with otherwise unlimted powers has by its own acts and issuances become a Limited Government operating under an interim constitution, and pledged to abide by, and to conform to, constitutional limitations therein prescribed, *including the Bill of Rights* lifted from the 1973 Constitution." (emphasis supplied). He further implored that, "x x x the regime must be deemed to recognize that the limitations in the "Freedom" Constitution, especially the Bill of Rights are in full force and vigor, and that the acts of the Government must fully conform to such limitations, in order to be valid and lawful." The Philippine Commission on Good Government is not excepted from such dictum of the Rule of Law and what Due Process requires of governments so as not to wield the strong arm of the government without due regard for human rights.

The legal infirmity of the exercise of the sequestration powers by the Commission stems not only from the constitutional nullity of the executive fiats but also in the very concept of what the process of sequestration really is. This has been discussed in the earlier portion of this paper and which can be summarily stated by way of what Professor Fernandez stated,[120] "In constitutional systems after which the Philippine constitutional system was patterned, especially the American and English systems, sequestration is well established as an ancillary or auxiliary proceeding in furtherance and support of a principal or main remedy. *"It is not, by itself, a principal or independent action.* It is rather a subsidiary remedy, which is in aid of, and dependent upon, another and different remedy, which is the main or principal action in the case." (emphasis supplied). This has been the observation of said law professor,[121]

> "The question presented now by the situation is simply this: If sequestration an ancillary remedy, should not principal actions be pending by this time, after so many sequestrations have been made, and so many months have lapsed since the first sequestration undertaken by the regime?
>
> "It is more than somewhat anomalous that after the lapse of over fourth months since the proclamation of the "Freedom Constitution," and after so many sequestrations have been made, there are no pending actions as yet that can provide the legal foundation for such sequestration."

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118 Proclamation No. 3, dated March 26, 1986.
119 See note 55.
120 *Id.*
121 *Id.*

The anomaly in the procedure would not have been so noticeable if there were no injuries resulting from such sequestration. Evidently, pecuniary damage, extensive for that matter have been inflicted upon many business establishments like corporate shares of the United Coconut Planters' Bank,[122] certain shares in the San Miguel Corporation allegedly belonging to Eduardo Cojuangco,[123] and shares of stock of one Lucio Tan and company in Shareholdings, Inc. and Fortune Tobacco Corporations,[124] $4.5 million in Philippine Export and Foreign Loan Guarantee Corp. (Philguarantee),[125] and other various properties and assets whether privately-owned or corporate-owned.

What is also observable is the manner by which a writ of sequestration is issued. The executive fiats including the Commission's own rules and regulations do not provide whether a member Commissioner can issue such writ without the concurrence of the other Commissioners or a majority vote is required. The executive fiats and the Commissioner's rules and regulations are lacking in detail and thoroughness as to how writs of sequestration are to be issued. This view is shared by Attorney Millora, President of the Integrated Bar of the Philippines:

> "(Section 3 of Executive Order No. 1,) particularly pars. (b) and (c) empowering the PCGG to take-over or sequester is an undue delegation of legislative power. The provision *does not provide sufficient standards for the exercise of such power.* There are no parameters or standards the limits of which are sufficiently determinate or determinable, to which the PCGG must conform in the performance of this functions.
>
> "Without such standards, there would be no means to determine with reasonable certainty, whether the PCGG has acted within or beyond the scope of its authority. Hence, *it could arrogate upon itself the power, not only to make law, but also and this is worse, to unmake it, by adopting measures in consistent with the end sought to be attained by the law. x x x*"

Thus, the authority "unconfined, vagrant and running riot" has led to its abuse not only by the Commission, but also by unscrupulous persons who may only be harassing rivals or competitors in business since what is merely required is prima facie evidence either upon a complaint or *motu proprio* pursuant to Executive Orders Nos. 1 and 2, presumably since the executive fiats do not contain any provision as to how investigations shall be initiated and the subsequent promulgation of its own and regulations does not cure the defect of the enabling executive fiat, despite the latter authorizing the formulation of rules and regulations.

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[122] Rene Alviar, *Government Takes Over Bank; Enrile Quits,* Bulletin Today, July 1, 1986, p. 1.

[123] Loreto Cabañes, *Aquino Tells PCGG to Void SMC Deal,* Bulletin Today, May 21, 1986, p. 1.

[124] PCGG Writ of Sequestration dated August 26, 1986 signed by Commissioners Ramon A. Diaz and Quintin S. Doromal.

[125] *PCGG Seizes $4.5M in Philguarantee,* Daily Express, May 3, 1986.

Despite all of these considerations, is there still a possibility for the Executive Orders and the existence of the Commission to be legal and not unconstitutional? It is humbly submitted that it may be far from a possibility. For one, the conclusions or whatever conclusions the Commission makes, the same are already pre-ordained and decreed by the Commission's own enabling executive fiats. The prosecution and even the investigation of cases the Commission has taken cognizance of would be devoid of procedural due process since the Commission is directed or ordained with looking for evidence in substantiating the pre-judged conclusion of the executive fiats. Even the search and seizure raids conducted by agents of the Commission on the strength of writs of sequestration were evidently fishing expeditions for evidence to be used against those suspected of having acquired illegally certain properties or assets, thus totally disregarding human rights which the Aquino Government has vowed to uphold and guarantee. A specific right which is being obviously violated is the right against self-incrimination. Section (3) of Executive Order No. 2 states:

> "Require all persons in the Philippines holding such assets or properties, whether located in the Philippines or abroad, in their names or nominees, agents, or trustees, to make a full disclosure of the same to the Commission on Good Government within thirty (30) days from publication of this Executive Order or the substance thereof, in at least two (2) newspapers of general circulation in the Philippines."

Backing up this requirement is the power of the Commission to hold a person in contempt[126] and to compel by subpoena any person to testify before the Commission or to require such persons served with the Commission's subpoena, to produce such books, papers or documents "as may be material to the investigation conducted by the Commission."[127]

Bolstering these executive fiats is a subsequent amendatory Executive Order[128] which provides:

> "No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to prosecution; but no individual shall be prosecuted criminally for on account of any transaction, matter or thing concerning which he is compelled, after having claimed the privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and conviction for perjury or false testimony committed in so testifying or from such administrative proceedings as may be proper and necessary."

Notwithstanding the safety valve guaranteeing the right against self-incrimination upon its invocation, this may still be overriden by the earlier promulgated executive fiat notwithstanding the guaranteed right against

126 Executive Order No. 1, section 3, subsec. (f).
127 *Id.*, subsec. (e).
128 Executive Order No. 14 dated May 7, 1986, section 4.

self-incrimination since no sane man would do so especially if what he will be testifying on would involve him also. Exposing his reputation and credibility before such an inquiry would not be likely to be done by one except perhaps by reason of self-preservation. The executive fiats foreclosed any possibility of one availing of the right since the decrees compel or can compel anyone whom the Commission may wish to be investigated or to testify against another.

In case the executive fiats cannot or will not be ruled upon as being violative of constitutional provisions and principles, such can or will cast doubt as to the sincerity of the Aquino Government in protecting and guaranteeing individual human rights and freedom irrespective of the person who may be invoking it against the "strong arm of the government." In the words of Justice Malcolm in a decision that he penned,[129] wherein he stated that though prostitutes were viewed by some as being "lepers of society," they are, in a sense, "nevertheless not chattels but Philippine citizens protected by the same constitutional guaranties as are other citizens." It is respectfully submitted that even those suspected or accused of having illegally acquired properties and/or assets are citizens who by the force of constitutional rights guaranteed and sanctioned in whatever form they may take are still entitled to their protection. What must be done or should have been done were to have their case PROPERLY AND REGULARLY DEALT WITH IN ACCORDANCE WITH THE APPLICABLE LAW BEFORE THE APPROPRIATE FORUM OR TRIBUNAL. Despite the amendatory executive fiats, the damage has been done and the decrees themselves have foreclosed any possible means of recovering compensation and damages for any oppressive, whimsical and arbitrary sequestration or freezing of assets and properties to the prejudice of honest-to-goodness and legitimate business, or properties and assets

Although the people who are accused or even merely suspected of having acquired illegally properties or assets may be the "worst humans in the world," still they are human beings who possess such rights as those possessed by the holiest of innocents and guaranteed by the law and expected to be observed and respected by the Government or Sovereign Authority for that matter.

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129 Villavicencio v. Lukban, 39 Phil. 778 (1919) cited in QUISUMBING-FERNANDO, PHILIPPINE CONSTITUTIONAL LAW, p. 120.