

## THE LEGAL BASIS OF SEQUESTRATION

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Sequestration, as implemented by the Aquino Administration, has become the subject of heated debates as well as lawsuits. Involving as it does not only huge sums of money but also the question of balancing public welfare and interest against basic constitutional rights, there is a need for an early determination of its nature and legal basis.

It is the thesis of this paper that sequestration, as implemented by the present administration, is valid; hence, the focus of discussion will be on the legal basis of sequestration. This paper, however, will no longer touch on the international law aspects of sequestration.

That the present government is legitimate and therefore has the power to enact laws which it deems fit for the welfare of the Filipino people is a basic assumption of this paper. As declared by the Supreme Court in its resolution dated May 22, 1986 dismissing three petitions assailing the validity of the present government,

"... the legitimacy of the Aquino government is not a justiciable matter. It belongs to the realm of politics where only the people of the Philippines are the judge. And the people have made the judgment; they have accepted the government of President Corazon C. Aquino which is in effective control of the entire country, so that it is not merely a *de facto* government but is in fact and law a *de jure* government. Moreover, the community of nations has recognized the legitimacy of the present government. All the eleven members of this Court as reorganized, have sworn to uphold the fundamental law of the Republic under her government."<sup>1</sup>

### I. FACTUAL BACKGROUND

Long before Ferdinand Marcos was toppled from power, many Filipinos were already certain that the then President, his wife, their relatives and cronies were secretly plundering the Philippine treasury; but as to what extent, no one was too sure. The February revolution and its aftermath ushered in a revelation which appalled, shocked and angered the entire Filipino nation.

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<sup>1</sup> Lawyers League for a Better Philippines and/or Lozano v. Aquino, et al., G.R. No. 73748, May 22, 1986; People's Crusade for Supremacy of the Constitution, et al. v. Aquino, et al., G.R. No. 73972, May 21, 1986; Ganay v. Aquino, G.R. No. 73990, May 22, 1986.

Those who first entered Malacañang Palace shortly after Marcos fled on February 25, 1986 witnessed a "show of conspicuous consumption beyond their imaginings."<sup>2</sup> In Imelda's room, they found two queen-size beds, a grand piano and a washbasin made of gold. In the Palace's basement, they stumbled into some 2,700 pairs of size eight shoes, five shelves of Gucci handbags and 38 of Imelda's 105 clothes racks, designed to carry 80 outfits each.<sup>3</sup> Millions of dollars worth of antiques, rare books, religious articles and paintings adorned the Palace's rooms. Unearthed videotapes showed lavish parties hosted by a bejewelled Imelda.<sup>4</sup> No fewer than fifteen limousines, five standard Mercedes Benzes, a BMW, a Datsun, a Nissan as well as Imelda's personal bus (containing fourteen armchairs, two beds, a kitchen and bath) were parked in Malacañang's garage.<sup>5</sup>

The Marcoses left most of their belongings in Malacañang in their hurry, yet what they were able to cart away to Hawaii took more than a week for U.S. Customs officials to examine. The deposed President and his entourage brought with them twenty-two boxes of Philippine pesos and two hundred seventy-eight crates of jewelry, art works, gold, negotiable securities and real estate deeds. The U.S. customs service which retained custody of the foregoing reported that the twenty-two boxes of pesos contained approximately \$1.4 million.<sup>6</sup> The total value of the movables was later on determined to be approximately \$8.4 million.<sup>7</sup>

However, the riches in Malacañang and Hawaii were to be proven very modest compared with the rest of the loot. Personal papers found in Malacañang, confirmed by 2,300 pages of documents brought by Marcos to Hawaii in six suitcases, pointed to a worldwide network of mind-boggling wealth.<sup>8</sup>

Other documents have linked Marcos to four Manhattan properties, including the Crown Building and Lindenmere Estate worth an estimated \$350 million. Marcos also allegedly owns \$13 million worth of holdings in Fort Worth and real estate in Corpus Christi valued at \$19.2 million. It further appears that there may be as many as two hundred properties in California that are owned by Marcos' associates and cronies, including houses in San Francisco, land in San Diego, as well as thirty other holdings in Los Angeles County valued at \$8 million that are owned by either Marcos' sister, Fortuna Barba, or his former mistress, Dovie Beams de Villagran.<sup>9</sup>

<sup>2</sup> "Behind Closed Doors," Time, March 24, 1986, p. 8.

<sup>3</sup> *Ibid.*

<sup>4</sup> Manila Bulletin, March 15, 1986, p. 4, cols. 8-9.

<sup>5</sup> "Chasing Marcos' Millions," Time, March 31, 1986, p. 18.

<sup>6</sup> "Digging for Treasure," Time, March 17, 1986, p. 4.

<sup>7</sup> Manila Bulletin, June 25, 1986, p. 1, col. 4.

<sup>8</sup> "One balance sheet alone lists a total of \$88.7 million in five banks in the U.S., Switzerland and the Cayman Islands. Imelda Marcos' taste for opulent adornment was also in evidence. A document dated November 1984 shows \$411,746 in purchases of jewelry, including emeralds, rubies and one 519-carat sapphire. The documents also point to millions of dollars in kickbacks to the Marcoses from U.S. and Japanese

In the Philippines, the government has already seized properties allegedly belonging to the Marcoses consisting of around ₱2 billion in cash, two hundred land titles to vast tracts of land worth several billion pesos, jewelry worth ₱310 million, forty-two aircrafts worth ₱718 million, ships worth ₱748 million, and shares of stock valued at ₱215 million.<sup>10</sup>

No doubt, the foregoing provide only a glimpse into Marcos' decadent fortune but it is not the main object of this paper to provide a complete litany of his wrongdoings. It suffices to state in brief that the total Marcos loot is estimated to range from \$5 to \$15 billion<sup>11</sup> and it is in the light of these facts and circumstances that the nature of sequestration will be examined.

## II. NATURE OF SEQUESTRATION

### A. Basis of the Power to Sequester

The exercise of the power to sequester is provided for in the Provisional Constitution of the Philippines declared in Proclamation No. 3 dated March 25, 1986 and in Executive Order Nos. 1, 2 and 14 dated February 28, 1986, March 12, 1986, and May 7, 1986, respectively. Executive Order No. 1 was subsequently amended by Executive Order No. 13 issued on April 23, 1986 while Executive Order No. 14 was later amended by Executive Order No. 14-A dated Aug. 18, 1986.

Article II, Sec. 1 of the Freedom Constitution provides that:

"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:

. . .

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;

e) Eradicate graft and corruption in government and punish those guilty thereof; . . ."<sup>12</sup>

The authority to enact sequestration laws is grounded upon the police power of the state. Police power has been defined as the power to prescribe regulations to promote the health, morals, education, good order, safety, and general welfare of the people.<sup>13</sup> It rests upon public necessity and upon the right of the state and the public to self-protection.<sup>14</sup>

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companies doing business in the Philippines. One note refers to "amounts received" from five Japanese companies totalling more than \$1 million. Others showed that Westinghouse Electric Corp. paid \$11.2 million from 1976 to 1982 to obtain a lucrative contract to build the first Philippine nuclear power plant." See "Chasing Marcos Millions," *supra*, note 5 at 18-19.

<sup>9</sup> "Taking Her Sweet Time," *Time*, March 24, 1986, p. 6.

<sup>10</sup> *Manila Bulletin*, August 28, 1986, p. 12, cols. 3-4.

<sup>11</sup> *Manila Bulletin*, June 25, 1986, p. 5, col. 1.

<sup>12</sup> PROVISIONAL CONST. (1986), art. 11, sec. 1, pars. (1), (2-d), 2(e).

<sup>13</sup> *Primicias v. Fugoso*, 80 Phil. 71 (1948).

<sup>14</sup> *U.S. v. Toribio*, 15, Phil. 85 (1910).

A principle involved in police power is the maxim "*salus populi suprema lex est*" — the welfare of the people is the highest law.<sup>15</sup> Police power is considered "the most essential, at times the most insistent, and always one of the least limitable of the powers of government."<sup>16</sup> Consequently, a state cannot be deprived of its right to exercise this prerogative since the same is considered one of the cornerstones of the state.<sup>17</sup>

It has been said that police power extends to the protection of all properties within the state, including public property,<sup>18</sup>

The reasonableness of its exercise must be judged in the light of current economic conditions.<sup>19</sup> It is very plain to see that the enactment of sequestration laws by the Philippine government is for the furtherance of public welfare. Properties belonging to the state have been stolen to the grave damage and prejudice of the Filipino people. The sums to be recovered are essential to the nation's program of economic recovery. An urgent need for their recovery therefore exists and it is precisely to meet this need that sequestration laws have been formulated. Judging from the current Philippine economic situation, there is no doubt that the laws in question are based on public necessity and upon the right to protection from economic harm.

#### B. Sequestration Processes

Sequestration, as set out in the Rules and Regulations promulgated by the Philippine Commission on Good Government (PCGG), means

"taking into custody or placing under the Commission's control or possession any asset, fund or other property, as well as relevant records, papers and documents, in order to prevent their concealment, destruction, impairment or dissipation pending determination of the question whether the said asset, fund or property is ill-gotten wealth under Executive Order Nos. 1 and 3. In the sequestration of an on-going enterprise, the Commission shall appoint a fiscal agent therein to prevent the transfer, siphoning or dissipation of funds and assets and to audit transactions. Sequestration shall not result in the take-over of the operations of the business, unless otherwise warranted by the exigencies of the situation or required by national interest."<sup>20</sup>

The power to sequester includes the power to vote sequestered shares of stock of corporations. This is conceded by President Aquino's Memorandum to the PCGG, dated June 26, 1986, to wit:

"Consistent with Executive Order Nos. 1, 2 and 14, as regards recovery of ill-gotten wealth, the Commission is authorized to vote such shares

<sup>15</sup> *St. Louis & S.F.R. Co. v. Mathews*, 165 US 1, 121 Mo. 298, 24 SW 591.

<sup>16</sup> *McDonald v. Mabee*, 243 US 90, 61 L. ed. 608, 37 S.Ct. 343.

<sup>17</sup> *U.S. v. Gomez Jesus*, 31 Phil. 218 (1915).

<sup>18</sup> *California Reduction Co. v. Sanitary Reduction Works*, 199 US 306, 50 L. ed. 204, 26 S. Ct. 100.

<sup>19</sup> *West Coast Hotel Co. v. Parrish*, 300 US 379, 81 L. ed. 703, 57 S. Ct. 578.

<sup>20</sup> Sec. 1 (A).

of stock as it may have sequestered in corporations at all stockholders' meeting called for the election of directors; declaration of dividends; amendment of the Articles of Incorporation; adoption and amendment of by-laws; sale; lease, exchange, mortgage, pledge or other disposition of all or substantially all of corporate properties; incurring, creating or decreasing bonded indebtedness; increase or decrease of capital stock; merger or consolidation of the corporation with another or other corporations; investment of corporate funds in another corporation or business or for purposes other than the primary purpose for which it was organized; or for similar purposes, pending the outcome of proceedings to determine the ownership of said shares of stock.

The President shall designate the persons who shall be voted for to the Board of Directors in the corporations concerned corresponding to the sequestered shares as well as the officer(s) thereof if needed.<sup>21</sup>

Two related processes involved in sequestration are "freeze orders" and "hold orders." "A freeze order is an order intended to stop or prevent any act or transaction which may affect the title, possession, status, condition, integrity or value of the asset or property which is or might be the object of any section or proceeding under Executive Order Nos. 1 and 2, with a view to preserving and conserving the same or to preventing its transfer, concealment, disposition, destruction or dissipation."<sup>22</sup>

A general freeze order has in fact been issued in the form of Executive Order No. 2 dated March 12, 1986.<sup>23</sup>

A hold order, on the other hand, means

"an order to temporarily prevent a person from leaving the country where his departure will prejudice, hamper or otherwise obstruct the task of the Commission in the enforcement of Executive Order Nos. 1 and 2, because

<sup>21</sup> See note 20, *supra*.

<sup>22</sup> See note 20, *supra*.

<sup>23</sup> Exec. Order No. 2(1986). In particular, such law freezes

"... all assets and properties in the Philippines in which former President Marcos and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees have any interest or participation."

It prohibits

"... any person from transferring, conveying, encumbering or otherwise depleting or concealing such assets and properties or from assisting or taking part in their transfer, encumbrance, concealment, or dissipation under pain of such penalties as are prescribed by law."

It also prohibits

"... former President Ferdinand E. Marcos and/or his wife, Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees from transferring, conveying, encumbering, concealing or dissipating said assets or properties in the Philippines to determine whether any such assets or properties were acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines."

It further requires

"... all persons in the Philippines holding such assets or properties, whether located in the Philippines or abroad, in their names as nominees,

such person is known or suspected to be involved in the properties or transactions covered by said Executive Orders. A "hold order" shall be valid only for a maximum period of six months unless for good reasons extended by the Commissioners en banc."<sup>24</sup>

### *C. The Presidential Commission on Good Government*

Stating the urgent need to recover all ill-gotten wealth, especially those amassed by former President Marcos, his immediate family, relatives, and close associates, Executive Order No. 1 mandates the creation of the Presidential Commission on Good Government (PCGG), charged with the task of assisting the President with regard to:

"(a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship;

(b) The investigation of such cases of graft and corruption as the President may assign to the Commission from time to time; and

(c) The adoption of safeguards to ensure that the above practices shall not be repeated in any manner under the new government, and the institution of adequate measures to prevent the occurrence of corruption."<sup>25</sup>

The Commission or any member thereof is provided with immunity against any civil action for anything done or omitted in the discharge of the task contemplated in Executive Order No. 1. Additionally, no member or staff of the commission is required to testify or produce evidence in any judicial, legislative or administrative hearing concerning matters within its jurisdiction.<sup>26</sup>

To effectively carry out its tasks, the Commission is vested with the power and authority:

(a) To conduct investigations as may be necessary in order to accomplish and carry out the purposes of this order;

(b) To sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and 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 from accomplishing its task;

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agents or trustees, to make full disclosure of the same to the Commission on Good Government within (30) days from publication of this Executive Order, or the substance thereof, in at least two (2) newspapers of general circulation in the Philippines."

<sup>24</sup> See note 20, *supra*.

<sup>25</sup> Exec. Order No. 1 (1986).

<sup>26</sup> See note 25, *supra*.

(c) To provisionally take over in public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities;

(d) To enjoin or restrain any actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate or otherwise make ineffectual the efforts of the Commission to carry out its tasks under this order;

(e) To administer oaths, and issue subpoenas requiring the attendance and testimony of witnesses and/or the production of such books, papers, contracts, records, statement of accounts and other documents as may be material to the investigation conducted by the Commission;

(f) To hold any person in direct or indirect contempt and impose the appropriate penalties following the same procedures and penalties provided in the Rules of Court;

(g) To seek and secure the assistance of any office, agency or instrumentality of the government; and

(h) To promulgate such rules and regulations as may be necessary to carry out the purposes of this order."<sup>27</sup>

#### D. Procedure

The Commission's Rules and Regulations provide for certain procedures to be followed in the exercise of sequestration powers.<sup>28</sup>

<sup>27</sup> See note 25, *supra*.

<sup>28</sup> Sec. 3. "A writ of sequestration or a freeze or hold order may be issued by the Commission upon the authority of at least two Commissioners, based on the affirmation or complaint of an interested party or *motu proprio* when the Commission has reasonable grounds to believe that the issuance thereof is warranted."

"Service of the writ of sequestration or freeze order shall be made in the same manner as service of summons under the Revised Rules of Court. Refusal of the party concerned to accept service shall not prevent the enforcement of the writ or order. Whenever necessary in the public interest, the Commission may order or authorize the break-in or forcible entry into the premises to locate and secure the properties to be sequestered.

Sec. 4. "A hold order shall be communicated to the appropriate governmental authorities for implementation."

Sec. 5. "The person against whom a writ of sequestration or freeze or hold order is directed may request the lifting thereof in writing, either personally or through counsel within five (5) days from receipt of the writ or order, or in the case of a hold order, from date of knowledge thereof."

Sec. 6. "After due hearing or *motu proprio* for good cause shown, the Commission may lift the writ or order unconditionally or subject to such conditions as it may deem necessary, taking into consideration the evidence and the circumstances of the case. The resolution of the Commission may be appealed by the party concerned to the Office of the President of the Philippines within fifteen (15) days from receipt thereof."

Sec. 7. "The Commission may conduct a hearing, after due notice to the party or parties concerned within the purview of Executive Orders Nos. 1 and 2, to ascertain whether any particular asset, property or enterprise constitutes ill-gotten wealth and to determine the appropriate action to be taken in order to carry out the purposes of said Executive Orders.

If the party concerned is in the Philippines, it will be sufficient to serve notice of the hearing on him personally or by registered mail.

In case the party concerned is abroad or his whereabouts are unknown, the notice shall be published in two newspapers of general circulation in the Philippines. The notice shall state the date, time and place of hearing, which shall not be earlier than

Executive Order No. 14 governs the filing of cases. Sections 1 and 2 provide that:

"Sec. 1. Any provision of the law to the contrary notwithstanding the Presidential Commission on Good Government, with the assistance of the Office of the Solicitor General and other government agencies is hereby empowered to file and prosecute all cases investigated by it under Executive Order No. 1, dated February 28, 1986, and Executive Order No. 2, dated March 12, 1986, as may be warranted by its findings."

"Sec. 2. The Presidential Commission on Good Government shall file all such cases, whether civil or criminal, with the *Sandiganbayan*, which shall have exclusive and original jurisdiction thereof."<sup>29</sup>

From the foregoing, it can therefore be inferred that sequestration is merely a preliminary, temporary and preventive remedy to preserve property pending final determination by a court whether such property is ill-gotten or not. It neither begins nor ends with the seizure of property. Before any sequestration, freeze or hold order can be issued, there must first be a determination that reasonable grounds exist for such issuance. In case an order does issue, an aggrieved party may request the lifting thereof within five days from its receipt, or in the case of a hold-order, from date of knowledge thereof. The resolution of the Commission may thereafter be appealed to the President of the Philippines.

More fundamentally, there can be no final forfeiture of any piece of property except after the resolution of a case filed by the Solicitor General before the *Sandiganbayan*, the decision of which is reviewable by the Supreme Court. It has happened, of course, that an initial sequestration has been directly questioned in the Supreme Court as in the case of *Tourist Duty Free Free Shops, Inc. v. Presidential Commission on Good Government*.<sup>30</sup> The point is, an aggrieved party is afforded both administrative and judicial opportunities to be heard consonant with the requirements of due process.

ten (10) days from the date of publication. A copy of the notice shall also be sent by registered mail to the party concerned at his address abroad, if known."

Sec. 8. "The Commission, in the exercise of its powers to investigate or hear cases within its jurisdiction shall act according to the requirements of due process and fairness, and shall not be strictly bound by the technical rules of evidence. The hearing shall be open to the public."

Sec. 9. "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."

Sec. 10. "Based on the evidence adduced, the Commission shall determine whether there is reasonable ground to believe that the asset, property or business enterprise in question constitutes ill-gotten wealth as described in Executive Orders Nos. 1 and 2. In the event of an affirmative finding, the Commission shall certify the case to the Solicitor General for appropriate action in accordance with law. Businesses, properties, funds and other assets found to be lawfully acquired shall be immediately released and the writ of sequestrations."

<sup>29</sup> Exec. Order No. 14 (1986).

<sup>30</sup> *Tourist Duty Free Shops, Inc. v. PCGG*, G.R. No. 74302, May 27, 1986.



### III. SEQUESTRATION AND OTHER PHILIPPINE LAWS ON RECOVERY OF ILL-GOTTEN WEALTH

An examination of other Philippine laws shows that the concept of repressing graft and corrupt practices through sequestration of ill-gotten wealth is not new in this jurisdiction.

Republic Act No. 1379 dated June 18, 1955 provided for the forfeiture in favor of the state of any property found to have been unlawfully acquired by any public officer or employee. Specifically, Section 6 of this law provides:

"If the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become property of the State."<sup>31</sup>

Likewise, Section 9 of the Anti-Graft and Corrupt Practices Act provides, among other penalties, "confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income."<sup>32</sup> Section 3 of Republic Act No. 3019 lists practices of any public officer which are declared corrupt and unlawful.<sup>33</sup> In addition, the same law imposes certain

<sup>31</sup> Rep. Act No. 1379 (1955), Sec. 6.

<sup>32</sup> Rep. Act No. 3019 (1960), Sec. 9, as amended by Rep. Act No. 3047 (1961).

<sup>33</sup> "(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation of offense; (b) Directly or indirectly requesting any gift, present, share, percentage, or benefit, for himself, or for any other person in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law;

(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act;

(d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination;

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality evident bad faith or gross inexcusable negligence. . . .

(f) Neglecting or refusing, after due demand or request, without sufficient justification; to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party;

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby;

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his

prohibitions on Members of Congress, on private individuals, and relatives of public officials.<sup>34</sup>

The Rules and Regulations of the PCGG, on the other hand, defines "ill-gotten wealth" as

"... any asset, property, business enterprises or material possession of persons within the purview of Executive Order Nos. 1 and 2, acquired by them directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes:

(1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

(2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned;

(3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;

official capacity, or in which he is prohibited by the Constitution or by any law from having any interest;

(i) Directly or indirectly becoming interested for personal gain, or having material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group . . . ;

(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled; and

(k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date . . . "

<sup>34</sup> "Sec. 4. (a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application request or contract with the government, in which such public official has to intervene.

(b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof."

Sec. 5. It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application, with the Government . . .

Sec. 6. It shall be unlawful hereafter for any Member of the Congress during the term of which he has been elected, to acquire or receive any personal pecuniary interest in any specific business enterprise which will be directly and particularly favored or benefited by any law or resolution authored by him previously approved or adopted by the Congress during the same term.

The provision of this section shall apply to any other public officer who recommended the initiation in Congress of the enactment or adoption of any law or resolution, and acquires or receives any such interest during his incumbency.

It shall likewise be unlawful for such member of Congress or other public officer, who, having such interest prior to the approval of such law or resolution authored or recommended by him, continues for thirty days after such approval to retain such interest."

(4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;

(5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interests; and

(6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit."<sup>35</sup>

Upon comparison of the unlawful acts set out in the PCGG Rules and those in Republic Act No. 3019, we find that those in the former encompass those in the latter and further enumerates acts which are far more serious in nature. Corrupt practices listed in R.A. 3019 seem petty as compared to those in the PCGG Rules. At the time of the enactment of R.A. 3019, the corrupt practices and acts perpetrated by former President Marcos, his wife, relatives and cronies were perhaps unimaginable. Who could probably have dreamed then of the plunder of the Philippine treasury to the extent of billions of dollars committed by the highest officials of the land? The framers of R.A. 3019 probably never anticipated such moves as establishing monopolies or combinations for the benefit of particular persons through the issuance of Presidential decrees or orders. Thus, although the above-mentioned laws differ in the magnitude of their object, they share the same purpose of suppressing corrupt practices and recovering ill-gotten gains.

R.A. 1379 establishes a procedure basically similar to that provided for under the present laws on sequestration except that, under the latter, there could be an initial seizure of property upon an *ex-parte* determination by the PCGG. This fact, however, does not render the present laws unconstitutional as will be discussed later in this paper.

The procedure prescribed by R.A. 1379 is as follows:

"Sec. 2. The Solicitor General upon complaint by any taxpayer to the city or provincial fiscal who shall conduct a previous inquiry similar to preliminary investigations in criminal cases and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof should not be declared property of the State."

"Sec. 4. The respondent shall have a period of fifteen days within which to present his answer."

"Sec. 5. The court shall set a date for a hearing, which may be open to the public, and during which the respondent shall be given ample opportunity to explain, to the satisfaction of the court, how he has acquired the property in question."

<sup>35</sup> See note 20, *supra*.

"Sec. 6. If the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property forfeited in favor of the state, and by virtue of such judgment the property aforesaid shall become property of the state."

"Sec. 7. The parties may appeal from the judgment of the Court of First Instance as provided in the Rules of Court for appeals in civil cases."<sup>36</sup>

In sum, R.A. 1379 provides that it is the Solicitor General who determines whether a *prima facie* case exists and if one does exist, he files a case with the Court of First Instance (now Regional Trial Court).

Under Executive Order No. 14, on the other hand, it is the PCGG, with the assistance of the Solicitor General and other government agencies, which files and prosecutes cases as may be warranted before the *Sandiganbayan* to finally determine whether property in question is ill-gotten. The decision of the *Sandiganbayan* is subsequently appealable to the Supreme Court.

Another important point that can be observed is the adoption in the PCGG Rules of the "presumption of unlawful acquisition" embodied in R.A. No. 1379. Such presumption supplies a convenient gauge for assessing whether or not a public official is unlawfully amassing government property and is originally worded as follows:

"Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired."<sup>37</sup>

Section 12 of Republic Act No. 1379 could be characterized as a "freeze order" since it provides that:

"Any public officer or employee who shall, after the effective date of this Act, transfer or convey any unlawfully acquired property shall be repressed with imprisonment for a term not exceeding five years, or a fine not exceeding ten thousand pesos, or both such imprisonment and fine. The same repression shall be imposed upon any person who shall knowingly accept such transfer or conveyance."<sup>38</sup>

The threat of a penalty in effect constrains the transfer or conveyance of property suspected to be ill-gotten and such an effect is also sought to be accomplished by a freeze order.

<sup>36</sup> See note 31, *supra*.

<sup>37</sup> See note 20, *supra*.

<sup>38</sup> See note 31, *supra*.

#### IV. SEQUESTRATION COMPARED TO WRITS OF ATTACHMENT, RECEIVERSHIP AND PRELIMINARY INJUNCTION

A writ of sequestration is essentially the same as a writ of attachment or a writ of receivership while a freeze order and a hold-order are analogous to a preliminary injunction.

Attachment, receivership and injunction are provisional remedies or writs and processes "available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects of a final judgment in the case."<sup>39</sup>

##### A. *Similarities Between Sequestration and Attachment:*

One of the purposes of attachment is to seize the property of the debtor in advance of a final judgment and to hold it for purposes of satisfying the said judgment.<sup>40</sup> Some of the cases in which attachment may issue are:

"(a) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(b) In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an officer;

(c) In an action against a party who resides out of the Philippines, or on whom summons may be served by publication."<sup>41</sup>

A writ of attachment may issue *ex-parte*, that is, without previous notice to the adverse party. The opening statement of Rule 57.1 which provides that "a plaintiff . . . may at the commencement of the action . . . have the property of the adverse party attached . . ." implies that the writ may be served with the summons which constitutes the first notice to the adverse party.

A comparison of the essential features of sequestration and attachment easily reveals the following points of concurrence:

1. Both processes could be applied in cases of embezzlement or conversion of property for a public officer's own use;
2. Both seek to seize and hold property for purposes of satisfying a final judgment in a case; and
3. Both may issue *ex-parte*.

<sup>39</sup> 1 REGALADO, REMEDIAL LAW COMPENDIUM 320 (3rd ed., 1984).

<sup>40</sup> *Id.*, at 322.

<sup>41</sup> RULES OF COURT, Rule 57, sec. 1, par. (1b), (1c), 1(f).

**B. *Similarities Between Sequestration and Receivership.***

With regard to receivership, the Supreme Court has stated that receivers are appointed for the purpose of preserving property under litigation,<sup>42</sup> and the following are some cases in which their appointment is proper:

"(a) When it appears from the complaint or answer, and such other proof as the judge may require, that the party applying for the appointment of receiver has an interest in the property or fund which is the subject of the action, and that such property or fund is in danger of being lost, removed, or materially injured unless a receiver be appointed to guard and preserve it;

(b) Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation."<sup>43</sup>

The powers of a receiver are set out in Section 7, Rule 59 of the Rules of Court, as follows:

"Subject to the control of the court in which the action is pending, a receiver shall have power to bring an defend, as such, actions in his own name; to take and keep possession of the property in controversy, to receive rents; to collect debts due to himself as receiver or to the fund, property, estate, person, or corporation of which he is receiver; to compound for and compromise the same; to make transfers; to pay outstanding debts; to divide the money and other property that shall remain among the persons legally entitled to receive the same and generally to do such acts respecting the property as the court may authorize. But funds in the hands of a receiver may be invested at interest only by order of the court made upon the written consent of all the parties to the action."<sup>44</sup>

From a perusal of the above provisions, it could be discerned that the purpose and effect of a writ of sequestration is no more than that of a writ of receivership which is to preserve and administer property to abide final judgment in a proper case. Also, a writ of receivership may issue *ex-parte* like a writ of sequestration as explicitly provided for in section 3 of Rule 59.

**C. *Similarities Between Freeze or Hold Orders and Preliminary Injunction***

Turning to preliminary injunction, we see that it is "an order . . . requiring a person to refrain from a particular act."<sup>45</sup> Its primary purpose is to preserve the status quo by restraining action or interference or by furnishing preventive relief.<sup>46</sup> It may be granted when it is established:

"(a) That the plaintiff is entitled to the relief demanded and the whole or part of such relief consists in restraining the commission or continuance of an act or acts, either for a limited period or perpetually;

<sup>42</sup> *Ventosa v. Fernan*, 10 SCRA 59 (1961).

<sup>43</sup> RULES OF COURT, Rule 59, sec. 1, par. 1(b), 1(e).

<sup>44</sup> RULES OF COURT, Rule 59, sec. 7, par. (1).

<sup>45</sup> RULES OF COURT, Rule 58, sec. 1, par. (1).

<sup>46</sup> *Rodulfa v. Alfonso*, 76 Phil. 225 (1949).

(b) That the commission or continuance of some act complained of during the litigation or the non-performance thereof would probably work injustice to the plaintiff; or

(c) That the defendant is doing, threatens, or is about to do, or is procuring or suffering to be done, some act probably in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual."<sup>47</sup>

On the other hand, a freeze order is intended to stop or prevent any act or transaction which may affect the title, possession, status, condition, integrity or value of the asset or property while a hold order seeks to temporarily prevent a person from leaving the country where his departure will prejudice, hamper or otherwise obstruct the task of the commission because such person is known or suspected to be involved in the properties or transactions covered by Executive Order Nos. 1 and 2.

A comparison of the above-cited definitions leads to the conclusion that a freeze order and a hold order are merely specific instances of a preliminary injunction. It may also be added that although a preliminary injunction cannot be granted *ex-parte*, a restraining order may be so issued just like sequestration processes.<sup>48</sup>

#### D. *Differences Between Sequestration and the Provisional Remedies of Attachment Injunction and Receivership*

The main difference between sequestration processes and the provisional remedies of attachment, injunction and receivership is that, as a general rule, the former are issued through an administrative body while the latter are issued through the courts. The concession of the power to issue writs of sequestration to an executive body, however, cannot in any way be considered an irregularity.

"The governmental structure established by the American colonial administration observed the doctrine of separation of powers and its corollary, the non-delegation of powers. But in the Philippines as in the United States, these doctrines as judicially developed did not prevent the creation of hybrid governmental agencies, (a) in which legislative, executive and judicial powers are merged, (b) to which legislative powers are delegated and judicial powers are granted, (c) which straddle the boundary lines of the three branches of government, and (d) which cannot be classified as clearly legislative, executive or judicial."<sup>49</sup>

We also find that while writs of receivership, attachment and injunction are ordinarily issued through the judiciary, they could be issued by entities

<sup>47</sup> RULES OF COURT, Rule 58, sec. 3, par. (1a), (1b), (1c).

<sup>48</sup> "No preliminary injunction shall be granted without notice to the defendant. If it shall appear from the facts shown by affidavits or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made may issue a restraining order . . ." Resolution of the Supreme Court, January 11, 1983.

<sup>49</sup> I. CORTES, PHILIPPINE ADMINISTRATIVE LAW 70 (2nd ed., 1984).

other than courts. For instance, under Section 6 of Presidential Decree No. 902-A,<sup>50</sup> as amended by Presidential Decree No. 1799,<sup>51</sup> the Securities and Exchange Commission (S.E.C.) has the power to issue preliminary or permanent injunctions, writs of attachment, and to appoint receivers, rehabilitation receivers, or management committees. Receivers may be appointed by the SEC in accordance with the Rules of Court and in such cases when necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors. The SEC may also appoint rehabilitation receivers who shall have the powers of a regular receiver under the Rules of Court and, in addition, the powers of a management committee. A management committee, on the other hand, may be appointed when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralization of business operations of corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public.

A rehabilitation receiver appointed by the SEC has even greater powers than the PCGG. Not only can the rehabilitation receiver take custody and control of all assets and property of certain entities; it can also restructure and rehabilitate such entities. A rehabilitation receiver or management committee in effect takes over the operations of entities under management for the former can overrule or revoke the actions of the previous management and board of directors. The PCGG, in contrast, cannot take over the operations of a business unless otherwise warranted by the exigencies of the situation or required in the national interest. Furthermore, while the PCGG only seeks to preserve sequestered properties, a rehabilitation receiver may recommend the dissolution of an entity under management.

Similar to Presidential Decree No. 902-A, the Central Bank Act provides for the appointment of conservators and receivers.<sup>52</sup> Again, we have

<sup>50</sup> Pres. Decree No. 902-A (1976).

The management committee or rehabilitations receiver "shall have the power to take custody of, and control over, all the existing assets and property of such entities under management; to evaluate the existing assets, liabilities, earnings and operations of such corporations, partnerships or other associations; to determine the best way to salvage and protect the interest of the investors and creditors; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Commission."

Furthermore, the management committee or rehabilitation receiver "may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary." (As amended by PD No. 1799).

It should also be stressed that the management committee, or rehabilitation receiver "shall not be subject to any action, claim or demand for, or in connection with, any act done or omitted to be done by it in good faith in the exercise of its functions, or in connection with the exercise of its power herein conferred." (As amended by PD No. 1799).

<sup>51</sup> Pres. Decree No. 1799 (1981).

<sup>52</sup> Rep. Act No. 265 (1948), as amended by Pres. Decree No. 72.

"Sec. 28-A. Appointment of conservators. Whenever, on the basis of a report submitted by the appropriate supervising and examining department, the Monetary Board finds that a bank is in a state of continuing inability or unwillingness to maintain



an administrative body authorized to appoint receivers or conservators and empowered to take charge of assets and the management of corporations. More significant is the fact that the Monetary Board has the power to order the liquidation of banking institutions. If such powers which seem even greater than the power to sequester could be delegated to the Monetary Board, there is apparently no reason why the power to sequester cannot be conceded to the PCGG.

#### V. SUMMARY SEIZURES OF PROPERTY IN PHILIPPINE TAX LAWS

We now proceed to instances wherein administrative bodies could summarily seize property without prior notice and solely upon their own determination.

Section 15 of the National Internal Revenue Code states:

"The Commissioner of Internal Revenue, . . . and other internal revenue officers shall have authority to make arrests and seizures for the violation of any penal law or regulation administered by the Bureau of Internal Revenue. Any person so arrested shall be forthwith carried before a court there to be dealt with according to law."<sup>53</sup>

It is also provided in Sections 178 and 179 of the same law that:

"Sec. 178. "Any revenue officer may detain any package containing or supposed to contain articles subject to a specific tax when he has good reason to believe that the lawful tax has not been paid or that the package has been or is being removed in violation of law, and every such package shall be held by such officer in a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture; but such summary detention shall not continue in any case longer than seven days without process of law or intervention of the officer to whom such detention is to be reported."

a condition of solvency and liquidity deemed adequate to protect the interest of depositors and creditors, the Monetary Board may appoint a conservator to take charge of the assets, liabilities, and the management of that banking institution, collect all monies, and debts due said bank and exercise all powers necessary to preserve the assets of the bank, reorganize the management thereof, and restore its viability. He shall have the power to overrule or revoke the actions of the previous management and board of directors of the bank, any provisions of law to the contrary notwithstanding, and such other powers as the Monetary Board shall deem necessary.

Sec. 29. Proceedings upon insolvency. Whenever, upon examination by the head of the appropriate supervising and examining department or his examiners or agents into the condition of any banking institution, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors forthwith, in writing, to inform the Monetary Board of the facts, and the Board may upon finding the statements of the department head to be true, forbid the institution to do business in the Philippines and shall designate an official of the Central Bank, or a person of recognized competence in banking, as receiver to immediately take charge of its assets and liabilities, as expeditiously as possible, collect and gather all the assets and administer the same for the benefit of its creditors, exercising all the powers necessary for these purposes including, but not limited to, bringing suits and foreclosing mortgages in the name of the banking institution.

If the Monetary Board shall determine and confirm within the said period that the banking institution is insolvent or can not resume business with safety to its depositors, creditors and the general public, it shall, if the public interest requires, order its liquidation, indicate the manner of its liquidation and approve a liquidation plan.

<sup>53</sup> Pres. Decree No. 1158 (1977), as amended.

"Sec. 179. Furthermore, any internal revenue officer may in the discharge of his official duties enter any house, building or place where articles subject to tax under this Title are produced or kept, or are believed by him upon reasonable grounds to be produced or kept, so far as may be necessary to examine, discover or seize the same. He may also stop and search any vehicle or other means of transportation when upon reasonable grounds he believes that the same carries an article on which the specific tax has not been paid."<sup>54</sup>

As could be seen, Sections 15, 178 and 179 do not require revenue officers to secure warrants from the courts before making arrests and seizures for violations of any penal law or regulation administered by the BIR or before performing searches and seizures with respect to articles subject to specific taxes. With regard to the foregoing matters, revenue officers may take action according to their own determination.

The abovesited provisions of the National Internal Revenue Code find counterparts in the Tariff and Customs Code.<sup>55</sup>

<sup>54</sup> See note 53, *supra*.

<sup>55</sup> "Sec. 2205. Exercise of Power of Seizure and Arrest: It shall be within the power of a customs official or person authorized as aforesaid, and it shall be his duty, to make seizure of any vessel, aircraft, cargo, article, animal or other movable property, when the same is subject to forfeiture or liable for any fine imposed under tariff and customs laws, rules and regulations, such power to be exercised in conformity with the law and the provisions of this Code. . . ."

"Sec. 2208. Right of Police Officer to Enter Enclosure. For the more effective discharge of his official duties, any person exercising the powers herein conferred, may at any time enter, pass through, or search any land or enclosure or any warehouse, store or other building, not being a dwelling house. . . ."

"Sec. 2210. Right to Search Vessels or Aircrafts and Persons or Articles Conveyed Therein. It shall be lawful for any official or personnel exercising police authority under the provisions of this Code to go aboard any vessel or aircraft within the limits of any collection district, and to inspect, search and examine said vessel or aircraft and any trunk, package, box or envelope on board, and to search any person on board the said vessel or aircraft and to this end to hail and stop such vessel or aircraft if under way, to use all necessary force to compel compliance; and if it shall appear that any breach or violation of the customs and tariff laws of the Philippines has been committed, whereby or in consequence of which such vessels or aircrafts, or the article, or any part thereof, on board of or imported by such vessel or aircraft, is liable to forfeiture to make seizure of the same or any part thereof.

The power of search hereinabove given shall extend to the removal of any false bottom, partition, bulkhead or other obstruction, so far as may be necessary to enable the officer to discover whether any dutiable or forfeitable articles may be concealed therein.

No proceeding herein shall give rise to any claim for the damage thereby caused to an article or vessel or aircraft."

In Pres. Decree No. 1464 (1978), it is further provided under the heading "Administrative Proceedings" that:

Sec. 2301. "Upon making any seizure, the Collector shall issue a warrant for the detention of the property; and if the owner or importer desires to secure the release of the property for legitimate use, the Collector may surrender it upon the filing of a sufficient bond, in an amount to be fixed by him, conditioned for the payment of the appraised value of the article and/or any fine, expenses and costs which may be adjudged in the case: Provided, That articles the importation of which is prohibited by law shall not be released under bond."

Sec. 2303. "The Collector shall give the owner or importer of the property or his agent a written notice of the seizure and shall give him an opportunity to be heard in reference to the delinquency which was the occasion of such seizure."

Sec. 2304. "Notice to an unknown owner shall be effected by posting for fifteen days in the public corridor of the customhouse of the district in which the seizure was

Seizure by customs officials is done *ex-parte*. It is only after seizure that a warrant for detention is issued and the owner of the property seized is notified and afforded an opportunity to be heard. It is also quite significant that it is the owner, and not the Bureau of Customs, who has to file a bond if he wants to secure the release of the detained goods.

The case of *Señeres v. Frias*<sup>56</sup> ruled that a Court of First Instance has no jurisdiction to interfere with port customs authorities' custody over seized property, much less order their forcible release, for the legislators intended to divest courts of this power. It was further stated in *Collector v. Torres*<sup>57</sup> that the CFI should yield to the Collector of Customs who is thereby constituted as a tribunal when sitting in forfeiture proceedings. The recourse of any aggrieved party is to appeal to the Court of Tax Appeals but only after the exhaustion of administrative remedies in the Bureau of Customs.

In fine, the modes adopted to enforce the collection of taxes are summary, do not require judicial proceedings, and must be interfered with as little as possible. Such attributes are necessary because taxation is the lifeblood of the government and the chief means relied upon by the latter to obtain the means to carry out its functions.<sup>58</sup>

#### VI. AMERICAN JURISPRUDENCE ON SEQUESTRATION

In American practice, sequestration is defined as

"the provisional seizure or setting apart of specific property upon which a party to a suit has a claim of ownership, or a right, lien, or privilege, or as to preserve it pending the litigation, in order that it may be subjected to any final judgment or decree that may be rendered in the cause."<sup>59</sup>

It is a provisional remedy except where the law specifically provides that the writ may be issued even in the absence of a principal demand pending before the court granting it.<sup>60</sup>

Proceedings involved in sequestration are special summary and inquisitorial in nature.<sup>61</sup> The writ of sequestration is usually issued *ex-parte* upon the sworn statement of the applicant without any prior notice to the defendant.<sup>62</sup> It has also been said that sequestration is similar to attachment, replevin, provisional injunction, temporary receivership, judicial de-

made, and, in the discretion of the Commissioner, by publication in a newspaper or by such other means as he shall consider desirable."

<sup>56</sup> 39 SCRA 533 (1971).

<sup>57</sup> 45 SCRA 272 (1972).

<sup>58</sup> *Vera v. Fernandez*, 89 SCRA 185 (1979).

<sup>59</sup> *Manning v. Mercantile Securities Co.*, 217 US 597, 54 L. ed. 896, 30 S. Ct. 696.

<sup>60</sup> *Fink v. Martin (La)*, 10 Rob 147.

<sup>61</sup> *In Re Jefferson's Appeal*. *Rucker v. Aymett*, 219 SW 2d 181 (1949).

<sup>62</sup> *Hancock Bank v. Alexander*, 256 La 643, 237 So 2d 669.

posit, lis pendens, execution or the writ of *levari facias* in common law.<sup>63</sup> In *Buxton v. Acadian Production Corporation*,<sup>64</sup> it was held that a judge was empowered by the State Code of the State of Louisiana to direct a sequestration, even of his own motion, in order to preserve and protect the property object of a suit pending the outcome of the litigation. In the case of *Steel v. Walker*, it was argued in support of a demurrer that the judgment to order the seizure of the property subject matter of the action and the holding of them during the pendency of the rule to show cause was dependent on the jurisdiction of the person of the plaintiff. It was held, however, that

"the sequestration of property . . . that it may be preserved in its integrity pending the making of future orders in reference to it or pending the suit, is not unusual. It lies within the inherent jurisdiction of the court. The sequestration is *in rem*, drawing the property into the custody and control of the court, and binds the property, though there may not be jurisdiction over all the persons having rights or interests in it."<sup>65</sup>

Under some statutes, it is sufficient cause for the plaintiff to have property seized under a writ of sequestration if it is within the power of the defendant to conceal, dispose of, or waste the property or the revenues therefrom, or remove the property during the pendency of an action.<sup>66</sup> Where a sequestration order may issue, property of every description anywhere within the jurisdiction of the court is subject to such order.<sup>67</sup>

A statute authorizing the use of sequestration should be given such construction as will carry out the purposes for which it was enacted.<sup>68</sup>

Some of the actions in which sequestration is available are actions for the recovery of ownership, and actions for the recovery of goods obtained through fraud and deceit or by means of a criminal act or other improper means.<sup>69</sup>

In *Matthews v. Matthews*,<sup>70</sup> the defendant assailed as unconstitutional a section of the Civil Practice Act of New York which reads as follows:

"Where in an action for divorce or separation it appears to the court that the defendant is not within the state, or cannot be found therein, or is concealing himself therein, so that process cannot be personally served upon him, the court may at any time . . . make any order . . . without notice directing the sequestration of his property, . . . and may appoint a receiver thereof . . . or otherwise take the same into its possession and control."

<sup>63</sup> *Albert v. Albert* (Sup), 199 NY 2d 766; *Steam Stone Cutter v. Jones* (CCVt) 13 F. 567.

<sup>64</sup> *Buxton v. Acadian Production Corporation*, 35 F. Supp. 543 (1940).

<sup>65</sup> *Steel v. Walker*, 21 So 942 (1897).

<sup>66</sup> *Hancock Bank v. Alexander*, 237 So. 2d 669 (1970).

<sup>67</sup> *Baldwin v. Black*, 119 US 643, L. ed. 530, 7 S. Ct. 326.

<sup>68</sup> *American Mortgage Corp. v. Samuel*, 108 SW 2d 193 (1937).

<sup>69</sup> *Turner v. Young*, 15 La. App. 425, 132 So. 237; *Altman v. Jackson* (Tex. Civ. App.) 254 SW 318; *Pirtle v. Price*, 31 La. Ann. 357; *Edwards v. Massey*, 8 NC 359.

In brushing aside the defendant's contention, the Court of Appeals of New York, speaking through Justice Crane, clarified that the section in question does not authorize disposition or payment out of sequestered property without notice to the defendant and an opportunity afforded him to be heard. Rather, the court continued, the section provided wives and children of absconding husbands a remedy in the nature of an attachment whereby upon the filing of an action, the husband's property could be seized and held subject to judgment or order after notice.

Such a view was reiterated in *Geary v. Geary*,<sup>71</sup> wherein it was stated that a state has power to order that property within the state of a non-resident defendant be seized and applied to satisfy the defendant's marital obligation to support his wife, as in any other obligation, provided that the defendant is afforded notice and an opportunity to be heard before application of the property upon any judgment that might be rendered.

It is emphasized that the notice referred to in the above-mentioned cases is only essential for the application of sequestered property upon a judgment and not for the sequestration itself.

Thus, after an examination of their essential features, we are led to the conclusion that, except for the fact that one is issued through courts while the other is through an administrative body, sequestration in the Philippines and sequestration in the United States are alike in their main aspects, i.e., they could issue in *ex-parte* proceedings for the purpose of seizing and holding property to abide judgment in a case; they are available for the recovery of property obtained through improper means; and they provide a person whose property was sequestered an opportunity to be heard.

## VII. THE TRADING WITH THE ENEMY ACT

Sequestration laws in the Philippines are paralleled by the Trading with the Enemy Act, a statute originally enacted by the U.S. Congress on October 6, 1917 and whose operation was extended to the Philippines<sup>72</sup>

It may be argued at this point that said law cannot be compared with sequestration since the former deals with property of enemies. It should be pointed out however, that citizens who rob their own country of wealth

<sup>70</sup> *Matthews v. Matthews*, 147 N.E. 237, 38 A.L.R. 1079 (1925).

<sup>71</sup> *Geary v. Geary*, 76 N.E. 2d 67 (1936).

<sup>72</sup> 40 Stat. 411, Section 18 of the statute states that:

"The several courts of first instance in the Philippine Islands and the district court of the Canal Zone shall have jurisdiction of offenses under this Act committed within their respective districts, and concurrent jurisdiction with the district courts of the United States of offenses under this Act committed upon the high seas and of conspiracies to commit such offenses as defined by section thirty-seven of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, and the provisions of such section for the purpose of this Act are hereby extended to the Philippine Islands and to the Canal Zone."

amounting to \$5 to \$15 billion dollars could be considered no less than enemies.

There is even probably a stronger case for upholding the validity of Philippine sequestration laws than for upholding the Trading With The Enemy Act considering that the former laws concern a state's own property while the latter concerns enemy property. Stated otherwise, the Philippines is merely trying to recover what is rightfully its own and is not out to seize what belongs to others.

Let us therefore proceed to examine the pertinent provisions of the Trading With The Enemy Act.

Section 7(c) and (e) gives the President the power to sequester enemy property as follows:

If the President shall so require, any money or other property . . . owing or belonging to or held for . . . an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed . . . seized by the Alien Property Custodian; . . .

The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act . . .

No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act."<sup>73</sup>

The remedy referred to in Section 7 is stated in Section 9, as follows:

"Any person not an enemy or ally or enemy claiming any interest, right, or title in any money or other property sequestered may file with the said custodian a notice of his claim . . . and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property . . ."

If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity . . . If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian or in the Treasury of the United States . . . to abide any final judgment or decree."<sup>74</sup>

The President of the United States, by virtue of Section 5, vested in the Alien Property Custodian through Executive Orders of October 12, 1917 and February 26, 1918, the administration of Sec. 7(c), including the power to determine after investigation whether property was enemy-

<sup>73</sup> See note 72, *supra*.

<sup>74</sup> See note 72, *supra*.

owned and to require surrender or seizure if the property was so owned. During World War II, the office of the Custodian was re-established through Executive Order No. 9095 dated March 11, 1942.

The Alien Property Custodian is authorized to seize property which he has determined to be enemy owned without resort to the courts. The case of *American Exchange National Bank v. Garvan*<sup>75</sup> ruled that such determination is conclusive, whether right or wrong, with respect to immediate possession of property in question, citing the opinion of Justice Holmes in *Kahn v. Garvan*.<sup>76</sup> Any title which the Custodian acquires is still defeasible, however. This is so because a remedy is available for the recovery of property which consists of filing a claim and instituting a suit in equity against the custodian.<sup>77</sup> The Trading With The Enemy Act has therefore been held constitutional for it does not result in deprivation of property of citizens, or friendly aliens without due process of law. The very act contemplates the possibility of mistaken action on the part of the Custodian, hence the existence of section 9.<sup>78</sup>

It is not necessary that enemy ownership be determined judicially before the property can be seized. The Trading with the Enemy Act commits the determination of that question to the President, or the representative through whom he acts, but it does not make his action final. On the contrary, it reserves to any claimant who is neither an enemy nor an ally of an enemy a right to assert and establish his claim by a suit in equity notwithstanding the prior executive determination. Pending the suit which the claimant may bring promptly after the seizure, the property is to be retained by the Custodian to abide by the result; and if the claimant prevails, it is to be forthwith returned to him. Thus, the claimant, as of right, obtains full hearing on his claim before a proper court and there is provision for the return of his property if mistakenly sequestered.<sup>79</sup>

From the foregoing, it is quite clear that the Trading With The Enemy Act and Philippine sequestration laws are practically the same in purpose and procedure.

First, they were promulgated for the furtherance of public interest and welfare;

Second, they involve seizure of property, upon the *ex-parte* determination by an administrative officer;

Third, they seek to hold and preserve property to abide by the final judgment in a case before a court; and

<sup>75</sup> *American Exchange National Bank v. Garvan*, 273 F. 43 (1921).

<sup>76</sup> *Kahn v. Garvan*, 254 U.S. 554, 21 Sup. Ct. 214 (1921).

<sup>77</sup> *Sturchler v. Sutherland*, 19 F. 2d 998 (1927); *Tatorka v. Brownell*, 143 F. Supp. 57 (1956); *La Due and Co. v. Rogers*, 259 F. 2d 905 (1958).

<sup>78</sup> *Salamandra Ins. Co. v. New York Life and Trust Co.*, 254 F. 852 (1918).

<sup>79</sup> *Stoeck v. Wallace*, 65 L. ed. 604, 612 (1921).

Fourth, they provide for adequate remedies for the return of property in case of mistaken action.

If the Trading With The Enemy Act, as well as American sequestration laws, has been upheld as constitutional, it is difficult to see why Philippine sequestration laws should be held otherwise.

#### VIII. CONSTITUTIONAL CONSIDERATIONS

The following arguments have been levelled against the constitutionality of the sequestration laws promulgated by the Aquino government: We shall proceed to address ourselves to these averments.

1) First Argument: *Sequestration violates the due process clause because it is tantamount to a confiscation of property without notice by a body which acts as accuser, prosecutor, judge and executioner.*

Although sequestration processes may be issued and executed without prior notice, such mode of issuance does not violate the due process clause for all that due process requires is an opportunity to be heard;<sup>80</sup> absence of previous notice is not of itself a substantial defect.<sup>81</sup>

In *De Borja v. Tan*, it was insisted by petitioner that the appointment of one Jose de Borja was made without any petition, notice or hearing such that it amounted to a grave abuse of discretion on the part of the respondent judge. In dismissing this contention, the Supreme Court said that

"It is true that there was no previous notice of the court's intention to appoint him and thus give the other interested parties opportunity to express their objection thereto. But this procedural defect was cured when the said interested parties were given an opportunity to express their objection thereto. . . . When the court therefore, overruled their objection and confirmed the appointment, the interested parties were given their day in court, and the previous objection of lack of notice or opportunity to be heard fully met. What the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard."<sup>82</sup>

Such a view was reiterated in *Aguilar v. Tan*, wherein the Court of Appeals, without first giving due course to a petition and without giving notice of such petition to the adverse party, rendered judgment granting the petition. Petitioners in the above -entitled case submitted that the Court of Appeals' decision was void for lack of merit. The Supreme Court rejected this contention, explaining that the instant petitioners had moved to set aside the Court of Appeals' decision and the C.A. listened to their plea, held its questioned order in abeyance and allowed the case to be heard on the merits. The Supreme Court then went on to declare that

<sup>80</sup> *Auyong Hian v. CTA*, 59 SCRA 110 (1974).

<sup>81</sup> *Manuel v. Villalena*, 37 SCRA 745 (1971).

<sup>82</sup> *De Borja v. Tan*, 93 Phil. 167 (1953).



"the situation here presented comes within the coverage of the rule that "[w]hat the law prohibits is not the absence of previous notice, but the absolute absence thereof. Considering then that the decision of June 16, 1964 was superseded, and that meanwhile herein petitioners . . . have had full opportunity to speak and explain, and did actually speak and explain their side of the case, we feel that the fundamental safeguards of due process were not denied petitioners . . . The vice existed, but it was cured."<sup>83</sup>

Furthermore, in the case of *Marinduque Iron Mines Agents, Inc. v. Workmen's Compensation Commission* concerning the construction of the Workmen's Compensation Act, it was ruled that

"the statute (Sec. 48, Act 3428 as amended) even permits the Commissioner (or his referee) to take testimony without notice, provided of course such ex-parte evidence is reduced to writing, and the adverse party is afforded opportunity to examine and rebut the same—which was done in this instance."<sup>84</sup>

From the foregoing, it can be inferred that the availability of an opportunity to question initial sequestration both administratively and judicially therefore saves the laws on sequestration from unconstitutionality.

The summary issuance of sequestration processes is dictated by necessity and by time constraints. We should not be oblivious of the fact that despite the power to sequester, so much property have been effectively concealed, converted or spirited but of the country. During the first few days after Marcos' capitulation, there was a rush to cash checks under the names of persons identified with Marcos.<sup>85</sup> In New York, a vast collection of artwork was secretly moved out of Imelda Marcos' townhouse before PCGG teams arrived.<sup>86</sup> Commissioner Salonga has also cited a case wherein an official in the Ministry of Human Settlements was able to withdraw \$260,000 from his accounts just shortly before the service of a freeze order.<sup>87</sup> The PCGG has tried to move fast but, in not a few instances, it is still being beaten to the draw. What would have happened if the PCGG still had to conduct hearings, give previous notices or file cases in the courts before sequestering ill-gotten property? No doubt the Filipino people would have been left holding an empty bag. As Commissioner Salonga aptly stated, "giving previous notice and conducting a previous hearing would be the best way *not* to recover the ill-gotten wealth of Mr. Marcos."<sup>88</sup>

Also, we should not be unmindful of the fact that U.S. Courts have frozen Marcos assets without previous notice or hearing. For instance, U.S.

<sup>83</sup> *Aguilar v. Tan*, 31 SCRA 205 (1970).

<sup>84</sup> *Marinduque Iron Mines Agents, Inc. v. WCC*, 99 Phil. 480 (1956).

<sup>85</sup> *Manila Bulletin*, March 15, 1986, p. 4, col. 7.

<sup>86</sup> *Manila Bulletin*, August 7, 1986, p. 6, col. 5.

<sup>87</sup> Address by Commissioner Salonga, Gregorio Araneta Memorial Lecture, Makati, Metro Manila, August 25, 1986.

<sup>88</sup> *Ibid.*

District Judge Pfaelzer froze a \$4-million home in Beverly Hills, \$800,000 in bank accounts in California and an unspecified amount of jewelry in Hawaii,<sup>89</sup> while Superior Court Judge Paul Levy banned the sale of two New Jersey properties formerly used by Imee Marcos and Ferdinand Marcos Jr.<sup>90</sup> In an unprecedented move, the "Swiss government stunned the banking community by freezing all assets in numerous bank accounts, rumored to total in the hundreds of millions of dollars, belonging to Marcos, his family and associates."<sup>91</sup>

Sequestration is not confiscation for it merely preserves property pending final determination by a court whether or not such property is ill-gotten. If found to be lawfully acquired, businesses, properties, funds and other assets will be released. It is unlike what was done at the onset of martial law when the properties of the Lopezes, for instance, were taken over and delivered to Marcos cronies, Meralco and the Manila Chronicle to Benjamin Romualdez, and ABS-CBN to Roberto Benedicto.<sup>92</sup>

Moreover, it must be clarified that the PCGG does not act as accuser, judge, jury and executioner in sequestration cases. The PCGG is assisted by the Solicitor General in the filing of cases before the *Sandiganbayan* which makes the final determination of whether property is ill-gotten or not and such decision is subject to review by the Supreme Court.

2) Second Argument: *The enforcement of the sequestration laws by an executive body constitutes an arrogation of judicial functions.*

The functions of the PCGG cannot be an arrogation of judicial functions because they only concern preliminary determination and not final disposition. It is for the same reason that preliminary seizures by the Bureau of Customs, the Bureau of Internal Revenue and the Alien Property Custodian have been upheld as valid. Administrative law has developed to the point where administrative bodies have been vested with quasi-judicial functions. We have thus noted that the Securities and Exchange Commission has power to issue injunctions, writs of attachment and receivership, among others. It may also be pointed out that "due process" is not always "judicial due process."<sup>93</sup>

3) Third Argument: *The sequestration laws violate the provision against undue delegation of legislative power since there are no sufficient standards for the issuance of sequestration processes.*

There are sufficient standards for the exercise of the power to issue sequestration processes against Marcos' ill-gotten properties. The Rules of the PCGG clearly define what constitute ill-gotten wealth. There is also

<sup>89</sup> Manila Bulletin, June 18, 1986, col. 3, p. 1.

<sup>90</sup> Manila Bulletin, March 12, 1986, p. 1, col. 5.

<sup>91</sup> "Purging Marcos' Legacy," Time, April 7, 1986, p. 18.

<sup>92</sup> Ibid.

<sup>93</sup> Ex parte Williams, 345 Mo. 1121, 311 US 675, 85 L. ed. 434, 61 S. Ct. 42.

the presumption, adopted from Republic Act No. 1379, that property is *prima-facie* ill-gotten if its value is manifestly out of proportion to a person's salary and to his other lawful income. More importantly, there are the suitcase-loads of documents recovered from Malacañang and in Hawaii pointing to ill-gotten properties. Such documents, in fact, formed the basis for the issuance of Executive Order Nos. 1 and 2 as declared in their Whereas clauses.

Furthermore, sequestration processes issue only after the determination by the Commission that there exist reasonable grounds to warrant issuance. This means that there is first an examination of evidence and it is only when there is a *prima facie* case that the Commission acts. It is for this reason that the Supreme Court has upheld the PCGG in cases where the validity of initial sequestration has been challenged.

In *Tourist Duty-Free Shops, Inc. v. PCGG*, the TDFS was incorporated by relatively unknown persons with a paid up capital of ₱250,000.00. Thereafter, in 1975, it obtained a special permit from the then President to operate duty-free shops and then obtained its exclusive franchise to continue its operation for twenty-five years under Presidential Decree No. 1193 enjoying several privileges. All it had to pay the government was a franchise tax of 7% of its net sales. By 1983, the capitalization of petitioner reached the sum of ₱80M, with the Tantoco sisters, appearing to hold 98.5% of its shares of stocks. Respondent Commission submitted various other documents showing that their mother, Gliceria Tantoco, appeared to be running the affairs of petitioner Company although she did not appear as stockholder or officer on record. She wrote various letters addressed to then Central Bank Governor Jaime Laya furthering the interest of the Company. It also appears she had written several letters or reports to the then President's wife reporting on the profits of the company far exceeding their projections. In this case, it was held that

"The Court is satisfied that respondent Commission acted with *prima facie* basis in issuing the sequestration order of Petitioner's assets. It has submitted figures tending to show that the Petitioner Company belonged to the Marcoses, either alone or in partnership with the family of Gliceria Tantoco."<sup>94</sup>

Likewise, in a petition filed by the Bataan Shipyard and Engineering Company, documents submitted by the PCGG to the high tribunal showed that Baseco was organized and controlled by Alfredo "Bejo" Romualdez, brother-in-law of the ousted President, by taking titles to and converting or appropriating the government properties worth ₱447.1 million:

The Supreme Court upheld the action of the PCGG, declaring that the PCGG has established that what it has sequestered is public and govern-

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<sup>94</sup> See note 30, *supra*.

ment-owned property taken over by the Marcos administration or entities or persons close to the deposed President.<sup>95</sup>

With regard to any mistaken action that may be committed, this paragraph from *Salamandra Ins. Co. v. New York Life Ins. and Trust Co.* dealing with the Trading With The Enemy Act is most enlightening:

"That a citizen by such an enforced surrender or property wrongly determined in its character be subjected to inconvenience, annoyance, and possible expense goes without saying—the justification for these considerations must be the purpose intended to be served. They are, in the final analysis, but incidents to the operation of a protective and preventive measure which has for its purpose the protection of the nation."<sup>96</sup>

4. **FOURTH ARGUMENT:** *The sequestration laws are bills of attainder or ex post facto laws.*

The laws on sequestration cannot be bills of attainder or ex-post factor laws for who can say that stealing from the government was an innocent act before the passage of Executive Order Nos. 1, 2, and 14? The foregoing laws do not aggravate any crime or inflict a greater punishment than that provided for by laws in force at the time the crime was committed. They do not even prescribe penalties, much less declare anyone guilty. They merely state that there is evidence showing that former President Marcos and his cronies have assets and properties illegally acquired from the government.

5. **FIFTH ARGUMENT:** *The provision on the accountability of public officers is violated because of the immunity from civil action granted to the PCGG.*

The grant of immunity from civil action against the Commission or any member thereof is by no means novel. We have seen that management committees or rehabilitation receivers appointed by the Securities and Exchange Commission are not subject to any action in connection with any acts done or omitted to be done by them in good faith in the exercise of their functions or of powers provided under P.D. 902-A.<sup>97</sup> Personnel of the Bureau of Customs are likewise immune from any claim for damage caused to articles, vessels or aircraft in the exercise of their search powers.<sup>98</sup> The proper remedy for any abuses committed by PCGG personnel in the implementation of the sequestration laws is lodged in the Executive branch itself. The PCGG has power to police its own ranks and it has exercised such power. It has been reported, for instance, that the PCGG replaced

<sup>95</sup> The Manila Chronicle, October 29, 1986, p. 3, col. 1.

<sup>96</sup> *Salamandra Ins. Co. v. New York Life Ins. and Trust Co.*, 254 F. 852 (1918).

<sup>97</sup> See note 50, *supra*.

<sup>98</sup> Pres. Decree No. 1464 (1978).

its officer-in-charge in the Floirendo Group of Companies and revoked all mission orders issued before July 27, 1986.<sup>99</sup>

6. SIXTH ARGUMENT: *Sequestration orders are general warrants.*

With regard to the contention that writs of sequestration are general search warrants, suffice it to say that the aforesaid writs are not warrants. Their purpose is merely to hold assets or property with a view to prevent their concealment, destruction, impairment or dissipation pending determination, whether or not said assets or property are ill-gotten.

7. SEVENTH ARGUMENT: *Hold-orders abridge the freedom to travel.*

Lastly, we turn to the assertion that the right to travel is violated by the issuance of hold-orders. It could readily be concluded that such a view is misplaced because there exists a valid reason to temporarily curtail such right. Certain persons must not be allowed to leave the country because their departure may prejudice, hamper or otherwise obstruct the task of the PCGG because such persons are known or suspected to be involved in questioned transactions or properties. Furthermore, the right to travel is not absolute. It may be impaired "when necessary in the interest of national security, public safety, or public health."<sup>100</sup> It should also be emphasized that "the state, in order to promote the general welfare, may interfere with personal liberty, with property, and with business and occupations. Persons and property may be subjected to all kinds of restraint and burdens in order to secure the general comfort, health and prosperity of the state. . .<sup>101</sup>

Finally, in view of all the foregoing, it should be considered that "What state procedures are fair, what state process is constitutionally due, what distinctions are consistent with the right to equal protection, all depend upon the particular situation presented, and history is relevant to these inquiries. The requirements of due process frequently vary with the type of proceeding involved. Considerations of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by government action."<sup>102</sup>

## IX. RECOMMENDATIONS

While we have shown that the sequestration laws enacted are valid and constitutional, some recommendations are submitted, as follows:

<sup>99</sup> Manila Bulletin, July 24, 1986, p. 1, col. 1.

<sup>100</sup> PROV. CONST. (1986), art. 1, sec. 1, par. (1), citing CONST. (1973), art. IV, sec. 5.

<sup>101</sup> Calalang v. Williams, 70 Phil. 726 (1940).

<sup>102</sup> Cohen v. Hurley, 366 US 117, 6 L. ed. 2d 156, 81 S.Ct. 954; Hannah v. Larche, 363 US 420, 4 L. ed. 2d 1307; Cafeteria & Restaurant Workers Union v. McElroy, 80 S.Ct. 1502, 367 US 886, 8 L. ed. 2d 1230, 81 S.Ct. 1743.

1. The PCGG should thoroughly evaluate the honesty and integrity of its personnel and police its own ranks to prevent possible abuses in the exercise of sequestration powers.
2. The PCGG should file cases for the final determination of whether sequestered properties are ill-gotten or not as soon as possible after actual seizure to obviate any charges of denial of due process.
3. It is further recommended, however, that the law should be amended so as to set a time limit on the period to file cases with the Sandiganbayan.