Biraogo v. Philippine Truth Commission of 2010, G.R. No. 192935, December 7, 2010

December 7, 2010 (https://mirror.officialgazette.gov.ph/2010/12/07/g-r-no-192935-december-7-2010/)

Republic of the Philippines

SUPREME COURT

Manila

EN BANC

G.R. No. 192935 December 7, 2010

LOUIS "BAROK" C. BIRAOGO, Petitioner,

vs.

THE PHILIPPINE TRUTH COMMISSION OF 2010, Respondent.

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G.R. No. 193036

REP. EDCEL C. LAGMAN, REP. RODOLFO B. ALBANO, JR., REP. SIMEON A. DATUMANONG, and **REP. ORLANDO B. FUA, SR.,** Petitioners,

vs.

EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR. and DEPARTMENT OF BUDGET AND MANAGEMENT SECRETARY FLORENCIO B. ABAD, Respondents.

D E C I S I O N

MENDOZA, *J.:*

When the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them.

— Justice Jose P. Laurel[1]

The role of the Constitution cannot be overlooked. It is through the Constitution that the fundamental powers of government are established, limited and defined, and by which these powers are distributed among the several departments.[2] The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer.[3] Constitutional doctrines must remain steadfast no matter what may be the tides of time. It cannot be simply made to sway and accommodate the call of situations and much more tailor itself to the whims and caprices of government and the people who run it.[4]

For consideration before the Court are two consolidated cases[5] both of which essentially assail the validity and constitutionality of Executive Order No. 1, dated July 30, 2010, entitled "Creating the Philippine Truth Commission of 2010."

The first case is G.R. No. 192935, a special civil action for prohibition instituted by petitioner Louis Biraogo (Biraogo) in his capacity as a citizen and taxpayer. Biraogo assails Executive Order No. 1 for being violative of the legislative power of Congress under Section 1, Article VI of the Constitution[6] as it usurps the constitutional authority of the legislature to create a public office and to appropriate funds therefor.[7]

The second case, G.R. No. 193036, is a special civil action for certiorari and prohibition filed by petitioners Edcel C. Lagman, Rodolfo B. Albano Jr., Simeon A. Datumanong, and Orlando B. Fua, Sr. (petitioners-legislators) as incumbent members of the House of Representatives.

The genesis of the foregoing cases can be traced to the events prior to the historic May 2010 elections, when then Senator Benigno Simeon Aquino III declared his staunch condemnation of graft and corruption with his slogan, *"Kung walang corrupt, walangmahirap."* The Filipino people, convinced of his sincerity and of his ability to carry out this noble objective, catapulted the good senator to the presidency.

To transform his campaign slogan into reality, President Aquino found a need for a special body to investigate reported cases of graft and corruption allegedly committed during the previous administration.

Thus, at the dawn of his administration, the President on July 30, 2010, signed Executive Order No. 1 establishing the *Philippine* Truth Commission of 2010 (Truth Commission). Pertinent provisions of said executive order read:

EXECUTIVE ORDER NO. 1

CREATING THE PHILIPPINE TRUTH COMMISSION OF 2010

WHEREAS, Article XI, Section 1 of the 1987 Constitution of the Philippines solemnly enshrines the principle that a public office is a public trust and mandates that public officers and employees, who are servants of the people, must at all times be accountable to the latter, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives;

WHEREAS, corruption is among the most despicable acts of defiance of this principle and notorious violation of this mandate;

WHEREAS, corruption is an evil and scourge which seriously affects the political, economic, and social life of a nation; in a very special way it inflicts untold misfortune and misery on the poor, the marginalized and underprivileged sector of society;

WHEREAS, corruption in the Philippines has reached very alarming levels, and undermined the people's trust and confidence in the Government and its institutions;

WHEREAS, there is an urgent call for the determination of the truth regarding certain reports of large scale graft and corruption in the government and to put a closure to them by the filing of the appropriate cases against those involved, if warranted, and to deter others from committing the evil, restore the people's faith and confidence in the Government and in their public servants;

WHEREAS, the President's battlecry during his campaign for the Presidency in the last elections "kung walang corrupt, walangmahirap" expresses a solemn pledge that if elected, he would end corruption and the evil it breeds;

WHEREAS, there is a need for a separate body dedicated solely to investigating and finding out the truth concerning the reported cases of graft and corruption during the previous administration, and which will recommend the prosecution of the offenders and secure justice for all;

WHEREAS, Book III, Chapter 10, Section 31 of Executive Order No. 292, otherwise known as the Revised Administrative Code of the Philippines, gives the President the continuing authority to reorganize the Office of the President.

NOW, THEREFORE, I, **BENIGNO SIMEON AQUINO III**, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Creation of a Commission. – There is hereby created the **PHILIPPINETRUTH COMMISSION**, hereinafter referred to as the **"COMMISSION,"** which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration; and thereafter recommend the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.

The Commission shall be composed of a Chairman and four (4) members who will act as an independent collegial body.

SECTION 2. Powers and Functions. – The Commission, which shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption referred to in Section 1, involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration and thereafter submit its finding and recommendations to the President, Congress and the Ombudsman.

In particular, it shall:

a) Identify and determine the reported cases of such graft and corruption which it will investigate;

b) Collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate, and to this end require any agency, official or employee of the Executive Branch, including government-owned or controlled corporations, to produce documents, books, records and other papers;

c) Upon proper request or representation, obtain information and documents from the Senate and the House of Representatives records of investigations conducted by committees thereof relating to matters or subjects being investigated by the Commission;

d) Upon proper request and representation, obtain information from the courts, including the Sandiganbayan and the Office of the Court Administrator, information or documents in respect to corruption cases filed with the Sandiganbayan or the regular courts, as the case may be;

e) Invite or subpoena witnesses and take their testimonies and for that purpose, administer oaths or affirmations as the case may be;

f) Recommend, in cases where there is a need to utilize any person as a state witness to ensure that the ends of justice be fully served, that such person who qualifies as a state witness under the Revised Rules of Court of the Philippines be admitted for that purpose;

g) Turn over from time to time, for expeditious prosecution, to the appropriate prosecutorial authorities, by means of a special or *interim* report and recommendation, all evidence on corruption of public officers and employees and their private sector co-principals, accomplices or accessories, if any, when in the course of its investigation the Commission finds that there is reasonable ground to believe that they are liable for graft and corruption under pertinent applicable laws;

h) Call upon any government investigative or prosecutorial agency such as the Department of Justice or any of the agencies under it, and the Presidential Anti-Graft Commission, for such assistance and cooperation as it may require in the discharge of its functions and duties;

i) Engage or contract the services of resource persons, professionals and other personnel determined by it as necessary to car ry out its mandate;

j) Promulgate its rules and regulations or rules of procedure it deems necessary to effectively and efficiently carry out the objectives of this Executive Order and to ensure the orderly conduct of its investigations, proceedings and hearings, including the presentation of evidence;

k) Exercise such other acts incident to or are appropriate and necessary in connection with the objectives and purposes of this Order.

SECTION 3. Staffing Requirements. – xxx.

SECTION 4. Detail of Employees. – xxx.

SECTION 5. Engagement of Experts. – xxx

SECTION 6. Conduct of Proceedings. – xxx.

SECTION 7. Right to Counsel of Witnesses/Resource Persons. – xxx.

SECTION 8. Protection of Witnesses/Resource Persons.– xxx.

SECTION 9. Refusal to Obey Subpoena, Take Oath or Give Testimony.– Any government official or personnel who, without lawful excuse, fails to appear upon subpoena issued by the Commission or who, appearing before the Commission refuses to take oath or affirmation, give testimony or produce documents for inspection, when required, shall be subject to administrative disciplinary action. Any private person who does the same may be dealt with in accordance with law.

SECTION 10. Duty to Extend Assistance to the Commission.– xxx.

SECTION 11. Budget for the Commission. – The Office of the President shall provide the necessary funds for the Commission to ensure that it can exercise its powers, execute its functions, and perform its duties and responsibilities as effectively, efficiently, and expeditiously as possible.

SECTION 12. Office. – xxx.

SECTION 13. Furniture/Equipment. – xxx.

SECTION 14. Term of the Commission. – The Commission shall accomplish its mission on or before December 31, 2012.

SECTION 15. Publication of Final Report. – xxx.

SECTION 16. Transfer of Records and Facilities of the Commission. –xxx.

SECTION 17. Special Provision Concerning Mandate. If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be so extended accordingly by way of a supplemental Executive Order.

SECTION 18. Separability Clause. If any provision of this Order is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

SECTION 19. Effectivity. – This Executive Order shall take effect immediately.

DONE in the City of Manila, Philippines, this 30th day of July 2010.

(SGD.) BENIGNO S. AQUINO III
By the President:

(SGD.) PAQUITO N. OCHOA, JR.
Executive Secretary

Nature of the Truth Commission

As can be gleaned from the above-quoted provisions, the Philippine Truth Commission (PTC) is a mere ad hoc body formed under the Office of the President with the primary task to investigate reports of graft and corruption committed by third-level public officers and employees, their co-principals, accomplices and accessories during the previous administration, and thereafter to submit its finding and recommendations to the President, Congress and the Ombudsman. Though it has been described as an "independent collegial body," it is essentially an entity within the Office of the President Proper and subject to his control. Doubtless, it constitutes a public office, as an ad hoc body is one.[8]

To accomplish its task, the PTC shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987. It is not, however, a quasi-judicial body as it cannot adjudicate, arbitrate, resolve, settle, or render awards in disputes between contending parties. All it can do is gather, collect and assess evidence of graft and corruption and make recommendations. It may have subpoena powers but it has no power to cite people in contempt, much less order their arrest. Although it is a fact-finding body, it cannot determine from such facts if probable cause exists as to warrant the filing of an information in our courts of law. Needless to state, it cannot impose criminal, civil or administrative penalties or sanctions.

The PTC is different from the truth commissions in other countries which have been created as official, transitory and non-judicial fact-finding bodies "to establish the facts and context of serious violations of human rights or of international humanitarian law in a country's past."[9] They are usually established by states emerging from periods of internal unrest, civil strife or authoritarianism to serve as mechanisms for transitional justice.

Truth commissions have been described as bodies that share the following characteristics: (1) they examine only past events; (2) they investigate patterns of abuse committed over a period of time, as opposed to a particular event; (3) they are temporary bodies that finish their work with the submission of a report containing conclusions and recommendations; and (4) they are officially sanctioned, authorized or empowered by the State.[10] "Commission's members are usually empowered to conduct research, support victims, and propose policy recommendations to prevent recurrence of crimes. Through their investigations, the commissions may aim to discover and learn more about past abuses, or formally acknowledge them. They may aim to prepare the way for prosecutions and recommend institutional reforms."[11]

Thus, their main goals range from retribution to reconciliation. The Nuremburg and Tokyo war crime tribunals are examples of a retributory or vindicatory body set up to try and punish those responsible for crimes against humanity. A form of a reconciliatory tribunal is the Truth and Reconciliation Commission of South Africa, the principal function of which was to heal the wounds of past violence and to prevent future conflict by providing a cathartic experience for victims.

The PTC is a far cry from South Africa's model. The latter placed more emphasis on reconciliation than on judicial retribution, while the marching order of the PTC is the identification and punishment of perpetrators. As one writer[12] puts it:

The order ruled out reconciliation. It translated the Draconian code spelled out by Aquino in his inaugural speech: "To those who talk about reconciliation, if they mean that they would like us to simply forget about the wrongs that they have committed in the past, we have this to say:

There can be no reconciliation without justice. When we allow crimes to go unpunished, we give consent to their occurring over and over again."

The Thrusts of the Petitions

Barely a month after the issuance of Executive Order No. 1, the petitioners asked the Court to declare it unconstitutional and to enjoin the PTC from performing its functions. A perusal of the arguments of the petitioners in both cases shows that they are essentially the same. The petitioners-legislators summarized them in the following manner:

(a) E.O. No. 1 violates the separation of powers as it arrogates the power of the Congress to create a public office and appropriate funds for its operation.

(b) The provision of Book III, Chapter 10, Section 31 of the Administrative Code of 1987 cannot legitimize E.O. No. 1 because the delegated authority of the President to structurally reorganize the Office of the President to achieve economy, simplicity and efficiency does not include the power to create an entirely new public office which was hitherto inexistent like the "Truth Commission."

(c) E.O. No. 1 illegally amended the Constitution and pertinent statutes when it vested the "Truth Commission" with quasi-judicial powers duplicating, if not superseding, those of the Office of the Ombudsman created under the 1987 Constitution and the Department of Justice created under the Administrative Code of 1987.

(d) E.O. No. 1 violates the equal protection clause as it selectively targets for investigation and prosecution officials and personnel of the previous administration as if corruption is their peculiar species even as it excludes those of the other administrations, past and present, who may be indictable.

(e) The creation of the "Philippine Truth Commission of 2010" violates the consistent and general international practice of four decades wherein States constitute truth commissions to exclusively investigate human rights violations, which customary practice forms part of the generally accepted principles of international law which the Philippines is mandated to adhere to pursuant to the Declaration of Principles enshrined in the Constitution.

(f) The creation of the "Truth Commission" is an exercise in futility, an adventure in partisan hostility, a launching pad for trial/conviction by publicity and a mere populist propaganda to mistakenly impress the people that widespread poverty will altogether vanish if corruption is eliminated without even addressing the other major causes of poverty.

(g) The mere fact that previous commissions were not constitutionally challenged is of no moment because neither laches nor estoppel can bar an eventual question on the constitutionality and validity of an executive issuance or even a statute."[13]

In their Consolidated Comment,[14] the respondents, through the Office of the Solicitor General *(OSG),* essentially questioned the legal standing of petitioners and defended the assailed executive order with the following arguments:

1] E.O. No. 1 does not arrogate the powers of Congress to create a public office because the President's executive power and power of control necessarily include the inherent power to conduct investigations to ensure that laws are faithfully executed and that, in any event, the Constitution, Revised Administrative Code of 1987 (E.O. No. 292),[15] Presidential Decree (P.D.) No. 1416[16] (as amended by P.D. No. 1772), R.A. No. 9970,[17] and settled jurisprudence that authorize the President to create or form such bodies.

2] E.O. No. 1 does not usurp the power of Congress to appropriate funds because there is no appropriation but a mere allocation of funds already appropriated by Congress.

3] The Truth Commission does not duplicate or supersede the functions of the Office of the Ombudsman (Ombudsman) and the Department of Justice (DOJ), because it is a fact-finding body and not a quasi-judicial body and its functions do not duplicate, supplant or erode the latter's jurisdiction.

4] The Truth Commission does not violate the equal protection clause because it was validly created for laudable purposes.

The OSG then points to the continued existence and validity of other executive orders and presidential issuances creating similar bodies to justify the creation of the PTC such as Presidential Complaint and Action Commission *(PCAC)* by President Ramon B. Magsaysay, Presidential Committee on Administrative Performance Efficiency *(PCAPE)* by President Carlos P. Garcia and Presidential Agency on Reform and Government Operations *(PARGO)* by President Ferdinand E. Marcos.[18]

From the petitions, pleadings, transcripts, and memoranda, the following are the principal issues to be resolved:

1. Whether or not the petitioners have the legal standing to file their respective petitions and question Executive Order No. 1;

2. Whether or not Executive Order No. 1 violates the principle of separation of powers by usurping the powers of Congress to create and to appropriate funds for public offices, agencies and commissions;

3. Whether or not Executive Order No. 1 supplants the powers of the Ombudsman and the DOJ;

4. Whether or not Executive Order No. 1 violates the equal protection clause; and

5. Whether or not petitioners are entitled to injunctive relief.

Essential requisites for judicial review

Before proceeding to resolve the issue of the constitutionality of Executive Order No. 1, the Court needs to ascertain whether the requisites for a valid exercise of its power of judicial review are present.

Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and

substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lismota* of the case.[19]

Among all these limitations, only the legal standing of the petitioners has been put at issue.

Legal Standing of the Petitioners

The OSG attacks the legal personality of the petitioners-legislators to file their petition for failure to demonstrate their personal stake in the outcome of the case. It argues that the petitioners have not shown that they have sustained or are in danger of sustaining any personal injury attributable to the creation of the PTC. Not claiming to be the subject of the commission's investigations, petitioners will not sustain injury in its creation or as a result of its proceedings.[20]

The Court disagrees with the OSG in questioning the legal standing of the petitioners-legislators to assail Executive Order No. 1. Evidently, their petition primarily invokes usurpation of the power of the Congress as a body to which they belong as members. This certainly justifies their resolve to take the cudgels for Congress as an institution and present the complaints on the usurpation of their power and rights as members of the legislature before the Court. As held in Philippine Constitution Association v. Enriquez,[21]

To the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution.

An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress. In such a case, any member of Congress can have a resort to the courts.

Indeed, legislators have a legal standing to see to it that the prerogative, powers and privileges vested by the Constitution in their office remain inviolate. Thus, they are allowed to question the validity of any official action which, to their mind, infringes on their prerogatives as legislators.[22]

With regard to Biraogo, the OSG argues that, as a taxpayer, he has no standing to question the creation of the PTC and the budget for its operations.[23] It emphasizes that the funds to be used for the creation and operation of the commission are to be taken from those funds already appropriated by Congress. Thus, the allocation and disbursement of funds for the commission will not entail congressional action but will simply be an exercise of the President's power over contingent funds.

As correctly pointed out by the OSG, Biraogo has not shown that he sustained, or is in danger of sustaining, any personal and direct injury attributable to the implementation of Executive Order No. 1. Nowhere in his petition is an assertion of a clear right that may justify his clamor for the Court to exercise judicial power and to wield the axe over presidential issuances in defense of the Constitution. The case of David v. Arroyo[24] explained the deep-seated rules on locus standi. Thus:

Locus standi is defined as "a right of appearance in a court of justice on a given question." In private suits, standing is governed by the "real-parties-in interest" rule as contained in Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as amended. It provides that "**every action must be prosecuted or defended in the name of the real party in interest**." Accordingly, the "real-party-in interest" is "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit." Succinctly put, the plaintiff's standing is based on his own right to the relief sought.

The difficulty of determining *locus standi*arises in public suits. Here, the plaintiff who asserts a "public right" in assailing an allegedly illegal official action, does so as a representative of the general public. He may be a person who is affected no differently from any other person. He could be suing as a "stranger," or in the category of a "citizen," or 'taxpayer." In either case, he has to adequately show that he is entitled to seek judicial protection. In other words, he has to make out a sufficient interest in the vindication of the public order and the securing of relief as a "citizen" or "taxpayer.

Case law in most jurisdictions now allows both "citizen" and "taxpayer" standing in public actions. The distinction was first laid down in *Beauchamp v. Silk*, where it was held that the plaintiff in a taxpayer's suit is in a different category from the plaintiff in a citizen's suit. In the former, the plaintiff is affected by the expenditure of public funds, while in the latter, he is but the mere instrument of the public concern. As held by the New York Supreme Court in *People ex rel Case v. Collins*: "In matter of mere public right, however…the people are the real parties…It is at least the right, if not the duty, of every citizen to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied." With respect to taxpayer's suits, *Terr v. Jordan* held that "the right of a citizen and a taxpayer to maintain an action in courts to restrain the unlawful use of public funds to his injury cannot be denied."

However, to prevent just about any person from seeking judicial interference in any official policy or act with which he disagreed with, and thus hinders the activities of governmental agencies engaged in public service, the United State Supreme Court laid down the more stringent "**direct injury**" **test** in *Ex Parte Levitt*, later reaffirmed in *Tileston v. Ullman*. The same Court ruled that for a private individual to invoke the judicial power to determine the validity of an executive or legislative action, **he must show that he has sustained a direct injury as a result of that action, and it is not sufficient that he has a general interest common to all members of the public.**

This Court adopted the **"direct injury" test** in our jurisdiction. In *People v. Vera*, it held that the person who impugns the validity of a statute must have "**a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result**." The *Vera* doctrine was upheld in a litany of cases, such as, *Custodio v. President of the Senate*, *Manila Race Horse Trainers' Association v. De la Fuente*, *Pascual v. Secretary of Public Works* and *Anti-Chinese League of the Philippines v. Felix*. [Emphases included. Citations omitted]

Notwithstanding, the Court leans on the doctrine that "the rule on standing is a matter of procedure, hence, can be relaxed for nontraditional plaintiffs like ordinary citizens, taxpayers, and legislators when the public interest so requires, such as when the matter is of transcendental importance, of overreaching significance to society, or of paramount public interest."[25]

Thus, in Coconut Oil Refiners Association, Inc. v. Torres,[26] the Court held that in cases of paramount importance where serious constitutional questions are involved, the standing requirements may be relaxed and a suit may be allowed to prosper even where there is no direct injury to the party claiming the right of judicial review. In the first Emergency Powers Cases,[27] ordinary citizens and taxpayers were allowed to question the constitutionality of several executive orders although they had only an indirect and general interest shared in common with the public.

The OSG claims that the determinants of transcendental importance[28] laid down in CREBA v. ERC and Meralco[29] are non-existent in this case. The Court, however, finds reason in Biraogo's assertion that the petition covers matters of transcendental importance to justify the exercise of jurisdiction by the Court. There are constitutional issues in the petition which deserve the attention of this Court in view of their seriousness, novelty and weight as precedents. Where the issues are of transcendental and paramount importance not only to the public but also to the Bench and the Bar, they should be resolved for the guidance of all.[30] Undoubtedly, the Filipino people are more than interested to know the status of the President's first effort to bring about a promised change to the country. The Court takes cognizance of the petition not due to overwhelming political undertones that clothe the issue in the eyes of the public, but because the Court stands firm in its oath to perform its constitutional duty to settle legal controversies with overreaching significance to society.

Power of the President to Create the Truth Commission

In his memorandum in G.R. No. 192935, Biraogo asserts that the Truth Commission is a public office and not merely an adjunct body of the Office of the President.[31] Thus, in order that the President may create a public office he must be empowered by the Constitution, a statute or an authorization vested in him by law. According to petitioner, such power cannot be presumed[32] since there is no provision in the Constitution or any specific law that authorizes the President to create a truth commission.[33] He adds that Section 31 of the Administrative Code of 1987, granting the President the continuing authority to reorganize his office, cannot serve as basis for the creation of a truth commission considering the aforesaid provision merely uses verbs

such as “reorganize,” “transfer,” “consolidate,” “merge,” and “abolish.”[34] Insofar as it vests in the President the plenary power to reorganize the Office of the President to the extent of creating a public office, Section 31 is inconsistent with the principle of separation of powers enshrined in the Constitution and must be deemed repealed upon the effectivity thereof.[35]

Similarly, in G.R. No. 193036, petitioners-legislators argue that the creation of a public office lies within the province of Congress and not with the executive branch of government. They maintain that the delegated authority of the President to reorganize under Section 31 of the Revised Administrative Code: 1) does not permit the President to create a public office, much less a truth commission; 2) is limited to the reorganization of the administrative structure of the Office of the President; 3) is limited to the restructuring of the internal organs of the Office of the President Proper, transfer of functions and transfer of agencies; and 4) only to achieve simplicity, economy and efficiency.[36] Such continuing authority of the President to reorganize his office is limited, and by issuing Executive Order No. 1, the President overstepped the limits of this delegated authority.

The OSG counters that there is nothing exclusively legislative about the creation by the President of a fact-finding body such as a truth commission. Pointing to numerous offices created by past presidents, it argues that the authority of the President to create public offices within the Office of the President Proper has long been recognized.[37] According to the OSG, the Executive, just like the other two branches of government, possesses the inherent authority to create fact-finding committees to assist it in the performance of its constitutionally mandated functions and in the exercise of its administrative functions.[38] This power, as the OSG explains it, is but an adjunct of the plenary powers wielded by the President under Section 1 and his power of control under Section 17, both of Article VII of the Constitution.[39]

It contends that the President is necessarily vested with the power to conduct fact-finding investigations, pursuant to his duty to ensure that all laws are enforced by public officials and employees of his department and in the exercise of his authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of his officials.[40] The power of the President to investigate is not limited to the exercise of his power of control over his subordinates in the executive branch, but extends further in the exercise of

his other powers, such as his power to discipline subordinates,[41] his power for rule making, adjudication and licensing purposes[42] and in order to be informed on matters which he is entitled to know.[43]

The OSG also cites the recent case of Banda v. Ermita,[44] where it was held that the President has the power to reorganize the offices and agencies in the executive department in line with his constitutionally granted power of control and by virtue of a valid delegation of the legislative power to reorganize executive offices under existing statutes.

Thus, the OSG concludes that the power of control necessarily includes the power to create offices. For the OSG, the President may create the PTC in order to, among others, put a closure to the reported large scale graft and corruption in the government.[45]

The question, therefore, before the Court is this: Does the creation of the PTC fall within the ambit of the power to reorganize as expressed in Section 31 of the Revised Administrative Code? Section 31 contemplates "reorganization" as limited by the following functional and structural lines: (1) restructuring the internal organization of the Office of the President Proper by abolishing, consolidating or merging units thereof or transferring functions from one unit to another; (2) transferring any function under the Office of the President to any other Department/Agency or vice versa; or (3) transferring any agency under the Office of the President to any other Department/Agency or vice versa. Clearly, the provision refers to reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. These point to situations where a body or an office is already existent but a modification or alteration thereof has to be effected. The creation of an office is nowhere mentioned, much less envisioned in said provision. Accordingly, the answer to the question is in the negative.

To say that the PTC is borne out of a restructuring of the Office of the President under Section 31 is a misplaced supposition, even in the plainest meaning attributable to the term "restructure"—an "alteration of an existing structure." Evidently, the PTC was not part of the structure of the Office of the President prior to the enactment of Executive Order No. 1. As held in BuklodngKawaning EIIB v. Hon. Executive Secretary,[46]

But of course, the list of legal basis authorizing the President to reorganize any department or agency in the executive branch does not have to end here. We must not lose sight of the very source of the power—that which constitutes an express grant of power. Under Section 31, Book III of Executive Order No. 292 (otherwise known as the Administrative Code of 1987), "the President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have the continuing authority to reorganize the administrative structure of the Office of the President." For this purpose, he may transfer the functions of other Departments or Agencies to the Office of the President. In Canonizado v. Aguirre [323 SCRA 312 (2000)], we ruled that reorganization "involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions." It takes place when there is an alteration of the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them. The EIIB is a bureau attached to the Department of Finance. It falls under the Office of the President. Hence, it is subject to the President's continuing authority to reorganize. [Emphasis Supplied]

In the same vein, the creation of the PTC is not justified by the President's power of control. Control is essentially the power to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former with that of the latter.[47] Clearly, the power of control is entirely different from the power to create public offices. The former is inherent in the Executive, while the latter finds basis from either a valid delegation from Congress, or his inherent duty to faithfully execute the laws.

The question is this, is there a valid delegation of power from Congress, empowering the President to create a public office?

According to the OSG, the power to create a truth commission pursuant to the above provision finds statutory basis under P.D. 1416, as amended by P.D. No. 1772.[48] The said law granted the President the continuing authority to reorganize the national government, including the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create

and classify functions, services and activities, transfer appropriations, and to standardize salaries and materials. This decree, in relation to Section 20, Title I, Book III of E.O. 292 has been invoked in several cases such as Larin v. Executive Secretary.[49]

The Court, however, declines to recognize P.D. No. 1416 as a justification for the President to create a public office. Said decree is already stale, anachronistic and inoperable. P.D. No. 1416 was a delegation to then President Marcos of the authority to reorganize the administrative structure of the national government including the power to create offices and transfer appropriations pursuant to one of the purposes of the decree, embodied in its last "Whereas" clause:

WHEREAS, the ***transition*** towards the parliamentary form of government will necessitate flexibility in the organization of the national government.

Clearly, as it was only for the purpose of providing manageability and resiliency during the interim, P.D. No. 1416, as amended by P.D. No. 1772, became functusoficio upon the convening of the First Congress, as expressly provided in Section 6, Article XVIII of the 1987 Constitution. In fact, even the Solicitor General agrees with this view. Thus:

ASSOCIATE JUSTICE CARPIO: Because P.D. 1416 was enacted was the last whereas clause of P.D. 1416 says "it was enacted to prepare the transition from presidential to parliamentary. Now, in a parliamentary form of government, the legislative and executive powers are fused, correct?

SOLICITOR GENERAL CADIZ: Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO: That is why, that P.D. 1416 was issued. Now would you agree with me that P.D. 1416 should not be considered effective anymore upon the promulgation, adoption, ratification of the 1987 Constitution.

SOLICITOR GENERAL CADIZ: Not the whole of P.D. [No.] 1416, Your Honor.

ASSOCIATE JUSTICE CARPIO: The power of the President to reorganize the entire National Government is deemed repealed, at least, upon the adoption of the 1987 Constitution, correct.

SOLICITOR GENERAL CADIZ: Yes, Your Honor.[50]

While the power to create a truth commission cannot pass muster on the basis of P.D. No. 1416 as amended by P.D. No. 1772, the creation of the PTC finds justification under Section 17, Article VII of the Constitution, imposing upon the President the duty to ensure that the laws are faithfully executed. Section 17 reads:

Section 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed. (Emphasis supplied).

As correctly pointed out by the respondents, the allocation of power in the three principal branches of government is a grant of all powers inherent in them. The President's power to conduct investigations to aid him in ensuring the faithful execution of laws—in this case, fundamental laws on public accountability and transparency—is inherent in the President's powers as the Chief Executive. That the authority of the President to conduct investigations and to create bodies to execute this power is not explicitly mentioned in the Constitution or in statutes does not mean that he is bereft of such authority.[51] As explained in the landmark case of Marcos v. Manglapus:[52]

xxx. The 1987 Constitution, however, brought back the presidential system of government and restored the separation of legislative, executive and judicial powers by their actual distribution among three distinct branches of government with provision for checks and balances.

It would not be accurate, however, to state that "executive power" is the power to enforce the laws, for the President is head of state as well as head of government and whatever powers inhere in such positions pertain to the office unless the Constitution itself withholds it. Furthermore, the Constitution itself provides that the execution of the laws is only one of the powers of the President. It also grants the President other powers that do not involve the execution of any provision of law, e.g., his power over the country's foreign relations.

On these premises, we hold the view that although the 1987 Constitution imposes limitations on the exercise of **specific** powers of the President, it maintains intact what is traditionally considered as within the scope of "executive power." Corollarily, the powers of the President

cannot be said to be limited only to the specific powers enumerated in the Constitution. In other words, executive power is more than the sum of specific powers so enumerated.

It has been advanced that whatever power inherent in the government that is neither legislative nor judicial has to be executive. xxx.

Indeed, the Executive is given much leeway in ensuring that our laws are faithfully executed. As stated above, the powers of the President are not limited to those specific powers under the Constitution.[53] One of the recognized powers of the President granted pursuant to this constitutionally-mandated duty is the power to create ad hoc committees. This flows from the obvious need to ascertain facts and determine if laws have been faithfully executed. Thus, in *Department of Health v. Camposano*,[54] the authority of the President to issue Administrative Order No. 298, creating an investigative committee to look into the administrative charges filed against the employees of the Department of Health for the anomalous purchase of medicines was upheld. In said case, it was ruled:

The Chief Executive's power to create the Ad hoc Investigating Committee cannot be doubted. Having been constitutionally granted full control of the Executive Department, to which respondents belong, the President has the obligation to ensure that all executive officials and employees faithfully comply with the law. With AO 298 as mandate, the legality of the investigation is sustained. Such validity is not affected by the fact that the investigating team and the PCAGC had the same composition, or that the former used the offices and facilities of the latter in conducting the inquiry. [Emphasis supplied]

It should be stressed that the purpose of allowing ad hoc investigating bodies to exist is to allow an inquiry into matters which the President is entitled to know so that he can be properly advised and guided in the performance of his duties relative to the execution and enforcement of the laws of the land. And if history is to be revisited, this was also the objective of the investigative bodies created in the past like the PCAC, PCAPE, PARGO, the Feliciano Commission, the Melo Commission and the Zenarosa Commission. There being no changes in the government structure, the Court is not inclined to declare such executive power as non-existent just because the direction of the political winds have changed.

On the charge that Executive Order No. 1 transgresses the power of Congress to appropriate funds for the operation of a public office, suffice it to say that there will be no appropriation but only an allotment or allocations of existing funds already appropriated. Accordingly, there is no usurpation on the part of the Executive of the power of Congress to appropriate funds. Further, there is no need to specify the amount to be earmarked for the operation of the commission because, in the words of the Solicitor General, "whatever funds the Congress has provided for the Office of the President will be the very source of the funds for the commission."[55] Moreover, since the amount that would be allocated to the PTC shall be subject to existing auditing rules and regulations, there is no impropriety in the funding.

Power of the Truth Commission to Investigate

The President's power to conduct investigations to ensure that laws are faithfully executed is well recognized. It flows from the faithful-execution clause of the Constitution under Article VII, Section 17 thereof.[56] As the Chief Executive, the president represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his department. He has the authority to directly assume the functions of the executive department.[57]

Invoking this authority, the President constituted the PTC to primarily investigate reports of graft and corruption and to recommend the appropriate action. As previously stated, no quasi-judicial powers have been vested in the said body as it cannot adjudicate rights of persons who come before it. It has been said that "Quasi-judicial powers involve the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by law itself in enforcing and administering the same law."[58] In simpler terms, judicial discretion is involved in the exercise of these quasi-judicial power, such that it is exclusively vested in the judiciary and must be clearly authorized by the legislature in the case of administrative agencies.

The distinction between the power to investigate and the power to adjudicate was delineated by the Court in Cariño v. Commission on Human Rights.[59] Thus:

"Investigate," commonly understood, means to examine, explore, inquire or delve or probe into, research on, study. The dictionary definition of "investigate" is "to observe or study closely: inquire into systematically: "to search or inquire into: x x to subject to an official probe x x: to conduct an official inquiry." The purpose of investigation, of course, is to discover, to find out, to learn, obtain information. Nowhere included or intimated is the notion of settling, deciding or resolving a controversy involved in the facts inquired into by application of the law to the facts established by the inquiry.

The legal meaning of "investigate" is essentially the same: "(t)o follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry;" "to inquire; to make an investigation," "investigation" being in turn described as "(a)n administrative function, the exercise of which ordinarily does not require a hearing. 2 Am J2d Adm L Sec. 257; x x an inquiry, judicial or otherwise, for the discovery and collection of facts concerning a certain matter or matters."

"Adjudicate," commonly or popularly understood, means to adjudge, arbitrate, judge, decide, determine, resolve, rule on, settle. The dictionary defines the term as "to settle finally (the rights and duties of the parties to a court case) on the merits of issues raised: x x to pass judgment on: settle judicially: x x act as judge." And "adjudge" means "to decide or rule upon as a judge or with judicial or quasi-judicial powers: x x to award or grant judicially in a case of controversy x x."

In the legal sense, "adjudicate" means: "To settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense;" and "adjudge" means: "To pass on judicially, to decide, settle or decree, or to sentence or condemn. xx. Implies a judicial determination of a fact, and the entry of a judgment." [Italics included. Citations Omitted]

Fact-finding is not adjudication and it cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or office. The function of receiving evidence and ascertaining therefrom the facts of a controversy is not a judicial function. To be considered as such, the act of receiving evidence and arriving at factual conclusions in a controversy must be accompanied by the authority of applying the law to the factual conclusions to the end that the

controversy may be decided or resolved authoritatively, finally and definitively, subject to appeals or modes of review as may be provided by law.[60] Even respondents themselves admit that the commission is bereft of any quasi-judicial power.[61]

Contrary to petitioners' apprehension, the PTC will not supplant the Ombudsman or the DOJ or erode their respective powers. If at all, the investigative function of the commission will complement those of the two offices. As pointed out by the Solicitor General, the recommendation to prosecute is but a consequence of the overall task of the commission to conduct a fact-finding investigation."[62] The actual prosecution of suspected offenders, much less adjudication on the merits of the charges against them,[63] is certainly not a function given to the commission. The phrase, "when in the course of its investigation," under Section 2(g), highlights this fact and gives credence to a contrary interpretation from that of the petitioners. The function of determining probable cause for the filing of the appropriate complaints before the courts remains to be with the DOJ and the Ombudsman.[64]

At any rate, the Ombudsman's power to investigate under R.A. No. 6770 is not exclusive but is shared with other similarly authorized government agencies. Thus, in the case of Ombudsman v. Galicia,[65] it was written:

This power of investigation granted to the Ombudsman by the 1987 Constitution and The Ombudsman Act is not exclusive but is shared with other similarly authorized government agencies such as the PCGG and judges of municipal trial courts and municipal circuit trial courts. The power to conduct preliminary investigation on charges against public employees and officials is likewise concurrently shared with the Department of Justice. Despite the passage of the Local Government Code in 1991, the Ombudsman retains concurrent jurisdiction with the Office of the President and the local Sanggunians to investigate complaints against local elective officials. [Emphasis supplied].

Also, Executive Order No. 1 cannot contravene the power of the Ombudsman to investigate criminal cases under Section 15 (1) of R.A. No. 6770, which states:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of its primary jurisdiction, it may take over, at any stage, from any investigatory agency of government, the investigation of such cases. [Emphases supplied]

The act of investigation by the Ombudsman as enunciated above contemplates the conduct of a preliminary investigation or the determination of the existence of probable cause. This is categorically out of the PTC's sphere of functions. Its power to investigate is limited to obtaining facts so that it can advise and guide the President in the performance of his duties relative to the execution and enforcement of the laws of the land. In this regard, the PTC commits no act of usurpation of the Ombudsman's primordial duties.

The same holds true with respect to the DOJ. Its authority under Section 3 (2), Chapter 1, Title III, Book IV in the Revised Administrative Code is by no means exclusive and, thus, can be shared with a body likewise tasked to investigate the commission of crimes.

Finally, nowhere in Executive Order No. 1 can it be inferred that the findings of the PTC are to be accorded conclusiveness. Much like its predecessors, the Davide Commission, the Feliciano Commission and the Zenarosa Commission, its findings would, at best, be recommendatory in nature. And being so, the Ombudsman and the DOJ have a wider degree of latitude to decide whether or not to reject the recommendation. These offices, therefore, are not deprived of their mandated duties but will instead be aided by the reports of the PTC for possible indictments for violations of graft laws.

Violation of the Equal Protection Clause

Although the purpose of the Truth Commission falls within the investigative power of the President, the Court finds difficulty in upholding the constitutionality of Executive Order No. 1 in view of its apparent transgression of the equal protection clause enshrined in Section 1, Article III (Bill of Rights) of the 1987 Constitution. Section 1 reads:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

The petitioners assail Executive Order No. 1 because it is violative of this constitutional safeguard. They contend that it does not apply equally to all members of the same class such that the intent of singling out the "previous administration" as its sole object makes the PTC an "adventure in partisan hostility."[66] Thus, in order to be accorded with validity, the commission must also cover reports of graft and corruption in virtually all administrations previous to that of former President Arroyo.[67]

The petitioners argue that the search for truth behind the reported cases of graft and corruption must encompass acts committed not only during the administration of former President Arroyo but also during prior administrations where the "same magnitude of controversies and anomalies"[68] were reported to have been committed against the Filipino people. They assail the classification formulated by the respondents as it does not fall under the recognized exceptions because first, "there is no substantial distinction between the group of officials targeted for investigation by Executive Order No. 1 and other groups or persons who abused their public office for personal gain; and second, the selective classification is not germane to the purpose of Executive Order No. 1 to end corruption."[69] In order to attain constitutional permission, the petitioners advocate that the commission should deal with "graft and grafters prior and subsequent to the Arroyo administration with the strong arm of the law with equal force."[70]

Position of respondents

According to respondents, while Executive Order No. 1 identifies the "previous administration" as the initial subject of the investigation, following Section 17 thereof, the PTC will not confine itself to cases of large scale graft and corruption solely during the said administration.[71] Assuming arguendo that the commission would confine its proceedings to officials of the previous administration, the petitioners argue that no offense is committed against the equal protection clause for "the segregation of the transactions of public officers during the previous administration as possible subjects of investigation is a valid classification based on

substantial distinctions and is germane to the evils which the Executive Order seeks to correct."[72] To distinguish the Arroyo administration from past administrations, it recited the following:

First. E.O. No. 1 was issued in view of *widespread reports of large scale graft and corruption* in the previous administration which have eroded public confidence in public institutions. There is, therefore, an urgent call for the determination of the truth regarding certain reports of large scale graft and corruption in the government and to put a closure to them by the filing of the appropriate cases against those involved, if warranted, and to deter others from committing the evil, restore the people's faith and confidence in the Government and in their public servants.

Second. The segregation of the preceding administration as the object of fact-finding is warranted by the reality that unlike with administrations long gone, the current administration will most likely bear the immediate consequence of the policies of the previous administration.

Third. The classification of the previous administration as a separate class for investigation lies in the reality that the *evidence* of possible criminal activity, the evidence that could lead to recovery of public monies illegally dissipated, the policy lessons to be learned to ensure that anti-corruption laws are faithfully executed, are *more easily established* in the regime that immediately precede the current administration.

Fourth. Many administrations subject the transactions of their predecessors to investigations to provide closure to issues that are pivotal to national life or even as a routine measure of due diligence and good housekeeping by a nascent administration like the Presidential Commission on Good Government (PCGG), created by the late President Corazon C. Aquino under Executive Order No. 1 to pursue the recovery of ill-gotten wealth of her predecessor former President Ferdinand Marcos and his cronies, and the Saguisag Commission created by former President Joseph Estrada under Administrative Order No, 53, to form an ad-hoc and independent citizens' committee to investigate all the facts and circumstances surrounding "Philippine Centennial projects" of his predecessor, former President Fidel V. Ramos.[73] [Emphases supplied]

Concept of the Equal Protection Clause

One of the basic principles on which this government was founded is that of the equality of right which is embodied in Section 1, Article III of the 1987 Constitution. The equal protection of the laws is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play. It has been embodied in a separate clause, however, to provide for a more specific guaranty against any form of undue favoritism or hostility from the government. Arbitrariness in general may be challenged on the basis of the due process clause. But if the particular act assailed partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause.[74]

"According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed."[75] It requires public bodies and institutions to treat similarly situated individuals in a similar manner."[76] "The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statue or by its improper execution through the state's duly constituted authorities."[77] "In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective."[78]

The equal protection clause is aimed at all official state actions, not just those of the legislature.[79] Its inhibitions cover all the departments of the government including the political and executive departments, and extend to all actions of a state denying equal protection of the laws, through whatever agency or whatever guise is taken.[80]

It, however, does not require the universal application of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of ***reasonableness*.** The test has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and

(4) It applies equally to all members of the same class.[81] "Superficial differences do not make for a valid classification."[82]

For a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class.[83] "The classification will be regarded as invalid if all the members of the class are not similarly treated, both as to rights conferred and obligations imposed. It is not necessary that the classification be made with absolute symmetry, in the sense that the members of the class should possess the same characteristics in equal degree. Substantial similarity will suffice; and as long as this is achieved, all those covered by the classification are to be treated equally. The mere fact that an individual belonging to a class differs from the other members, as long as that class is substantially distinguishable from all others, does not justify the non-application of the law to him."[84]

The classification must not be based on existing circumstances only, or so constituted as to preclude addition to the number included in the class. It must be of such a nature as to embrace all those who may thereafter be in similar circumstances and conditions. It must not leave out or "underinclude" those that should otherwise fall into a certain classification. As elucidated in Victoriano v. Elizalde Rope Workers' Union[85] and reiterated in a long line of cases,[86]

The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary. [Citations omitted]

Applying these precepts to this case, Executive Order No. 1 should be struck down as violative of the equal protection clause. The clear mandate of the envisioned truth commission is to investigate and find out the truth "concerning the reported cases of graft and corruption during the previous administration"[87] only. The intent to single out the previous administration is plain, patent and manifest. Mention of it has been made in at least three portions of the questioned executive order. Specifically, these are:

WHEREAS, there is a need for a separate body dedicated solely to investigating and finding out the truth concerning the reported cases of graft and corruption during the previous administration, and which will recommend the prosecution of the offenders and secure justice for all;

SECTION 1. Creation of a Commission. – There is hereby created the **PHILIPPINETRUTH COMMISSION**, hereinafter referred to as the **"COMMISSION,"** which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration; and thereafter recommend the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.

SECTION 2. Powers and Functions. – The Commission, which shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption referred to in Section 1, involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration and thereafter submit its finding and recommendations to the President, Congress and the Ombudsman. [Emphases supplied]

In this regard, it must be borne in mind that the Arroyo administration is but just a member of a class, that is, a class of past administrations. It is not a class of its own. Not to include past administrations similarly situated constitutes arbitrariness which the equal protection clause cannot sanction. Such discriminating differentiation clearly reverberates to label the commission as a vehicle for vindictiveness and selective retribution.

Though the OSG enumerates several differences between the Arroyo administration and other past administrations, these distinctions are not substantial enough to merit the restriction of the investigation to the "previous administration" only. The reports of widespread corruption in the Arroyo administration cannot be taken as basis for distinguishing said administration from earlier administrations which were also blemished by similar widespread reports of impropriety. They are not inherent in, and do not inure solely to, the Arroyo administration. As Justice Isagani Cruz put it, "Superficial differences do not make for a valid classification."[88]

The public needs to be enlightened why Executive Order No. 1 chooses to limit the scope of the intended investigation to the previous administration only. The OSG ventures to opine that "to include other past administrations, at this point, may unnecessarily overburden the commission and lead it to lose its effectiveness."[89] The reason given is specious. It is without doubt irrelevant to the legitimate and noble objective of the PTC to stamp out or "end corruption and the evil it breeds."[90]

The probability that there would be difficulty in unearthing evidence or that the earlier reports involving the earlier administrations were already inquired into is beside the point. Obviously, deceased presidents and cases which have already prescribed can no longer be the subjects

of inquiry by the PTC. Neither is the PTC expected to conduct simultaneous investigations of previous administrations, given the body's limited time and resources. "The law does not require the impossible" *(Lex non cogit ad impossibilia).*[91]

Given the foregoing physical and legal impossibility, the Court logically recognizes the unfeasibility of investigating almost a century's worth of graft cases. However, the fact remains that Executive Order No. 1 suffers from arbitrary classification. The PTC, to be true to its mandate of searching for the truth, must not exclude the other past administrations. The PTC must, at least, have the authority to investigate all past administrations. While **reasonable prioritization** is permitted, it should not be arbitrary lest it be struck down for being unconstitutional. In the often quoted language of YickWo v. Hopkins,[92]

Though the law itself be fair on its face and impartial in appearance, yet, if applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution. [Emphasis supplied]

It could be argued that considering that the PTC is an ad hoc body, its scope is limited. The Court, however, is of the considered view that although its focus is restricted, the constitutional guarantee of equal protection under the laws should not in any way be circumvented. The Constitution is the fundamental and paramount law of the nation to which all other laws must conform and in accordance with which all private rights determined and all public authority administered.[93] Laws that do not conform to the Constitution should be stricken down for being unconstitutional.[94] While the thrust of the PTC is specific, that is, for investigation of acts of graft and corruption, Executive Order No. 1, to survive, must be read together with the provisions of the Constitution. To exclude the earlier administrations in the guise of "substantial distinctions" would only confirm the petitioners' lament that the subject executive order is only an "adventure in partisan hostility." In the case of *US v. Cyprian*,[95] it was written: "A rather limited number of such classifications have routinely been held or assumed to be

arbitrary; those include: race, national origin, gender, *political activity or membership in a political party,* union activity or membership in a labor union, or more generally the exercise of first amendment rights."

To reiterate, in order for a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class.[96] "Such a classification must not be based on existing circumstances only, or so constituted as to preclude additions to the number included within a class, but must be of such a nature as to embrace all those who may thereafter be in similar circumstances and conditions. Furthermore, all who are in situations and circumstances which are relative to the discriminatory legislation and which are indistinguishable from those of the members of the class must be brought under the influence of the law and treated by it in the same way as are the members of the class."[97]

The Court is not unaware that "mere underinclusiveness is not fatal to the validity of a law under the equal protection clause."[98] "Legislation is not unconstitutional merely because it is not all-embracing and does not include all the evils within its reach."[99] It has been written that a regulation challenged under the equal protection clause is not devoid of a rational predicate simply because it happens to be incomplete.[100] In several instances, the underinclusiveness was not considered a valid reason to strike down a law or regulation where the purpose can be attained in future legislations or regulations. These cases refer to the "step by step" process.[101] "With regard to equal protection claims, a legislature does not run the risk of losing the entire remedial scheme simply because it fails, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked."[102]

In Executive Order No. 1, however, there is no inadvertence. That the previous administration was picked out was deliberate and intentional as can be gleaned from the fact that it was underscored at least three times in the assailed executive order. It must be noted that Executive Order No. 1 does not even mention any particular act, event or report to be focused on unlike the investigative commissions created in the past. "The equal protection clause is violated by purposeful and intentional discrimination."[103]

To disprove petitioners' contention that there is deliberate discrimination, the OSG clarifies that the commission does not only confine itself to cases of large scale graft and corruption committed during the previous administration.[104] The OSG points to Section 17 of Executive Order No. 1, which provides:

SECTION 17. Special Provision Concerning Mandate. If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be so extended accordingly by way of a supplemental Executive Order.

The Court is not convinced. Although Section 17 allows the President the discretion to expand the scope of investigations of the PTC so as to include the acts of graft and corruption committed in other past administrations, it does not guarantee that they would be covered in the future. Such expanded mandate of the commission will still depend on the whim and caprice of the President. If he would decide not to include them, the section would then be meaningless. This will only fortify the fears of the petitioners that the Executive Order No. 1 was "crafted to tailor-fit the prosecution of officials and personalities of the Arroyo administration."[105]

The Court tried to seek guidance from the pronouncement in the case of *Virata v. Sandiganbayan*,[106] that the "PCGG Charter (composed of Executive Orders Nos. 1, 2 and 14) does not violate the equal protection clause." The decision, however, was devoid of any discussion on how such conclusory statement was arrived at, the principal issue in said case being only the sufficiency of a cause of action.

A final word

The issue that seems to take center stage at present is – whether or not the Supreme Court, in the exercise of its constitutionally mandated power of Judicial Review with respect to recent initiatives of the legislature and the executive department, is exercising undue interference. Is the Highest Tribunal, which is expected to be the protector of the Constitution, itself guilty of violating fundamental tenets like the doctrine of separation of powers? Time and again, this

issue has been addressed by the Court, but it seems that the present political situation calls for it to once again explain the legal basis of its action lest it continually be accused of being a hindrance to the nation's thrust to progress.

The Philippine Supreme Court, according to Article VIII, Section 1 of the 1987 Constitution, is vested with Judicial Power that "includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave of abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."

Furthermore, in Section 4(2) thereof, it is vested with the power of judicial review which is the power to declare a treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation unconstitutional. This power also includes the duty to rule on the constitutionality of the application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations. These provisions, however, have been fertile grounds of conflict between the Supreme Court, on one hand, and the two co-equal bodies of government, on the other. Many times the Court has been accused of asserting superiority over the other departments.

To answer this accusation, the words of Justice Laurel would be a good source of enlightenment, to wit: "And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them."[107]

Thus, the Court, in exercising its power of judicial review, is not imposing its own will upon a co-equal body but rather simply making sure that any act of government is done in consonance with the authorities and rights allocated to it by the Constitution. And, if after said review, the Court finds no constitutional violations of any sort, then, it has no more authority of proscribing the actions under review. Otherwise, the Court will not be deterred to pronounce said act as void and unconstitutional.

It cannot be denied that most government actions are inspired with noble intentions, all geared towards the betterment of the nation and its people. But then again, it is important to remember this ethical principle: "The end does not justify the means." No matter how noble and worthy of admiration the purpose of an act, but if the means to be employed in accomplishing it is simply irreconcilable with constitutional parameters, then it cannot still be allowed.[108] The Court cannot just turn a blind eye and simply let it pass. It will continue to uphold the Constitution and its enshrined principles.

"The Constitution must ever remain supreme. All must bow to the mandate of this law. Expediency must not be allowed to sap its strength nor greed for power debase its rectitude."[109]

Lest it be misunderstood, this is not the death knell for a truth commission as nobly envisioned by the present administration. Perhaps a revision of the executive issuance so as to include the earlier past administrations would allow it to pass the test of reasonableness and not be an affront to the Constitution. Of all the branches of the government, it is the judiciary which is the most interested in knowing the truth and so it will not allow itself to be a hindrance or obstacle to its attainment. It must, however, be emphasized that the search for the truth must be within constitutional bounds for "ours is still a government of laws and not of men."[110]

WHEREFORE, the petitions are GRANTED. Executive Order No. 1 is hereby declared UNCONSTITUTIONAL insofar as it is violative of the equal protection clause of the Constitution.

As also prayed for, the respondents are hereby ordered to cease and desist from carrying out the provisions of Executive Order No. 1.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

WE CONCUR:

RENATO C. CORONA

Chief Justice

ANTONIO T. CARPIO

Associate Justice

CONCHITA CARPIO MORALES

Associate Justice

PRESBITERO J. VELASCO, JR.

Associate Justice

ANTONIO EDUARDO B. NACHURA

Associate Justice

TERESITA J. LEONARDO-DE CASTRO

Associate Justice

ARTURO D. BRION

Associate Justice

DIOSDADO M. PERALTA

Associate Justice

LUCAS P. BERSAMIN

Associate Justice

MARIANO C. DEL CASTILLO

Associate Justice

ROBERTO A. ABAD

Associate Justice

MARTIN S. VILLARAMA, JR.

Associate Justice

JOSE PORTUGAL PEREZ

Associate Justice

MARIA LOURDES P.A. SERENO

Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

RENATO C. CORONA

Chief Justice

Notes:

[1] Angara v. The Electoral Commission, 63 Phil. 139, 158 (1936).

[2]Bernas, The 1987 Constitution of the Republic of the Philippines; A Commentary, 1996 ed., p. xxxiv, citing *Miller*, Lectures on the Constitution of the United States 64 (1893); 1 Schwartz, The Powers of Government 1 (1963).

[3] Cruz, Philippine Political law, 2002 ed. p. 12.

[4] Id.

[5] Resolution dated August 24, 2010 consolidating G.R. No. 192935 with G.R. No. 193036, *rollo,* pp. 87-88.

[6] Section 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

[7]Biraogo Petition, p. 5, rollo, p. 7.

[8] Salvador Laurel v. Hon. Desierto, G.R. No. 145368, April 12, 2002, citing F.R. Mechem, A Treatise On The Law of Public Offices and Officers.

[9] International Center for Transitional Justice, <http://www.ictj.org/en/tj/138.html (http://www.ictj.org/en/tj/138.html)> visited November 20, 2010.

[10]Freeman, The Truth Commission and Procedural Fairness, 2006 Ed., p. 12, citing *Hayner, UnspeakableTruths: Facing the Challenge of Truth Commissions*.

[11]International Center for Transitional Justice, supra note 9.

[12]*Armando Doronila, Philippine Daily Inquirer,* August 2, 2010.

<http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20100802-284444/Truth-body-told-Take-no prisoners> visited November 9, 2010.

[13]Lagman Petition, pp. 50-52, rollo, pp. 58-60.

[14] Rollo, pp. 111-216.

[15] Otherwise known as the Administrative Code of 1987.

[16] Granting Continuing Authority To The President Of The Philippines To Reorganize The National Government.

[17] Otherwise known as the General Appropriations Act of 2010.

[18] OSG Consolidated Comment, p. 33, *rollo,* p. 153, citing *Uy v. Sandiganbayan*, G.R. Nos. 105965-70, March 20, 2001, 354 SCRA 651, 660-661.

[19] Senate of the Philippines v. Ermita, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 35; and *Francisco v. House of Representatives*, 460 Phil. 830, 842 (2003).

[20] OSG Memorandum, p. 29, rollo, p. 348.

[21] G.R. No. 113105, August 19, 1994, 235 SCRA 506, 520.

[22] Supra note 19, citing *Pimentel Jr., v. Executive Secretary*, G.R. No. 158088, July 6, 2005, 462 SCRA 623, 631-632.

[23] OSG Memorandum, p. 30, rollo, p. 349.

[24] G.R. No. 171396, May 3, 2006, 489 SCRA 160, 216-218.

[25] Social Justice Society (SJS) v. Dangerous Drugs Board and Philippine Drug Enforcement Agency, G.R. No. 157870, November 3, 2008, 570 SCRA 410, 421; Tatad v. Secretary of the Department of Energy, 346 Phil 321 (1997); De Guia v. COMELEC, G.R. No. 104712, May 6, 1992, 208 SCRA 420, 422.

[26] G.R. 132527, July 29, 2005, 465 SCRA 47, 62.

[27] 84 Phil. 368, 373 (1949).

[28] "(1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and, (3) the lack of any other party with a more direct and specific interest in the questions being raised."

[29] G.R. No. 174697, July 8, 2010.

[30]Kilosbayan,Inc. v. Guingona, Jr., G.R. No. 113375, May 5, 1994, 232 SCRA 110, 139.

[31]Biraogo Memorandum, p. 7, rollo, p. 69.

[32] Id. at 6, *rollo*, p. 68.

[33] Id. at 9, *rollo*, p. 71.

[34] Id. at 10, *rollo*, p. 72.

[35] Id. at 10-11, *rollo* pp. 72-73.

[36]Lagman Memorandum, G.R. No 193036, pp. 10-11, rollo, pp. 270-271.

[37] OSG Memorandum, p. 32, rollo, p. 351.

[38] Id. at 33, rollo, p. 352.

[39] OSG Consolidated Comment, p. 24, rollo, p. 144.

[40] OSG Memorandum, pp. 38-39, rollo, pp. 357-358.

[41] Citing Department of Health v. Camposano, G.R. No. 157684, April 27, 2005, 457 SCRA 438, 450.

[42] Citing Evangelista v. Jarencio, No. L-27274, November 27, 1975, 68 SCRA 99, 104.

[43] Citing Rodriguez v. Santos Diaz, No. L-19553, February 29, 1964, 10 SCRA 441, 445.

[44] G.R. No. 166620, April 20, 2010.

[45] Consolidated Comment, p. 45, rollo, p. 165.

[46] G.R. Nos. 142801-802, July 10, 2001, 360 SCRA 718, also cited in Banda, supra.

[47] The Veterans Federation of the Philippines v. Reyes, G. R. No. 155027, February 28, 2006, 483 SCRA 526, 564; DOTC v. Mabalot, 428 Phil. 154, 164-165 (2002); Mondano v. Silvosa,97 Phil. 143 (1955).

[48] OSG Memorandum, p. 56, rollo, p. 375.

[49] G.R. No. 112745, October 16, 1997, 280 SCRA 713, 730.

[50] TSN, September 28, 2010, pp. 205-207.

[51] OSG Memorandum, p. 37, rollo, p.356.

[52] G.R. 88211, September 15, 1989, 177 SCRA 688.

[53] Id. at 691.

[54] 496 Phil. 886, 896-897 (2005).

[55] Consolidated Comment, p. 48; rollo, p. 168.

[56] Section 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

[57]Ople v. Torres, 354 Phil. 948, 967 (1998).

[58] Smart Communications, Inc. et al. v. National Telecommunications Commission, 456 Phil. 145, 156 (2003).

[59] G.R. No. 96681, December 2, 1991, 204 SCRA 483.

[60] Id. at 492.

[61] TSN, September 28, 2010, pp. 39-44**;** and OSG Memorandum, p. 67, rollo, p. 339.

[62] OSG Consolidated Comment, p. 55*, rollo*, p. 175.

[63] Id. at 56, *rollo*, p. 176.

[64] Id.

[65] G.R. No. 167711, October 10, 2008, 568 SCRA 327, 339.

[66]Lagman Petition, pp. 43, 50-52, *rollo*, pp. 51, 50-60.

[67]Lagman Memorandum, G.R. 193036, pp. 28-29, rollo, pp. 347-348.

[68]Lagman Petition, p. 31, rollo, p. 39.

[69] Id. at 28-29, *rollo*, pp. 36-37.

[70] Id. at 29, rollo, p. 37.

[71] OSG Memorandum, p. 88*; rollo*, p. 407.

[72] OSG Consolidated Comment. p. 68,*rollo*, p. 188.

[73] OSG Memorandum, pp. 90-93, *rollo,* pp. 409-412.

[74]*The Philippine Judges Association v. Hon. Pardo*, G.R. No. 105371, November 11, 1993, 227 SCRA 703, 711.

[75] Id. at 712, citing Ichong v. Hernandez, 101 Phil. 1155 (1957); Sison, Jr. v. Ancheta, No. L-59431, July 25, 1984, 130 SCRA 654; Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform, G.R. No. 7842, July 14, 1989, 175 SCRA 343, 375.

[76]*Guino v. Senkowski,* 54 F 3d 1050 (2d. Cir. 1995) cited in Am. Jur, 2d, Vol. 16 (b), p. 302.

[77]*Edward Valves, Inc. v. Wake Country*, 343 N.C. 426 cited in Am. Jur. 2d, Vol. 16 (b), p. 303.

[78]*Lehr v. Robertson*, 463 US 248, 103 cited in Am. Jur. 2d, Vol. 16 (b), p. 303.

[79] See *Columbus Bd. of Ed. v. Penick,* 443 US 449 cited Am. Jur. 2d, Vol. 16 (b), pp. 316-317.

[80] See *Lombard v. State of La.,* 373 US 267 cited in Am. Jur. 2d, Vol. 16 (b), p. 316.

[81] Beltran v. Secretary of Health, 512 Phil 560, 583 (2005).

[82] Cruz, Constitutional Law, 2003 ed., p. 128.

[83]*McErlain v. Taylor*, 207 Ind. 240 cited in Am. Jur. 2d, Vol. 16 (b), p. 367.

[84] Cruz, Constitutional Law, 2003 ed., pp. 135-136.

[85] No. L-25246, 59 SCRA 54, 77-78 (September 12, 1974).

[86]*Basa v. FederacionObrera de la IndustriaTabaquera y OtrosTrabajadores de Filipinas (FOITAF),* No. L-27113, November 19, 1974, 61 SCRA 93, 110-111; *Anuncension v. National Labor Union*, No.L-26097, November 29, 1977, 80 SCRA 350, 372-373; *Villegas v. HiuChiong Tsai Pao Ho*, No.L-29646, November 10, 1978, 86 SCRA 270, 275; *Dumlao v. Comelec*, No.L-52245, January 22, 1980, 95 SCRA 392, 404; *Ceniza v. Comelec*, No.L-52304, January 28, 1980, 95 SCRA 763, 772-773; *Himagan v. People,* G.R. No. 113811, October 7, 1994, 237 SCRA 538; *The Conference of Maritime Manning Agencies, Inc. v. POEA*, G.R. No. 114714, April 21, 1995, 243 SCRA 666, 677; *JMM Promotion and Management, Inc. v. Court of Appeals*, G.R. No. 120095, August 5, 1996, 260 SCRA 319, 331–332; and *Tiu v. Court of Appeals*, G.R. No. 127410, January 20, 1999, 301 SCRA 278, 288-289. *See also Ichong v. Hernandez,* No. L-7995, 101 Phil. 1155 (1957); *Vera v. Cuevas*, Nos. L-33693-94, May 31, 1979, 90 SCRA 379, 388; and *Tolentino v. Secretary of Finance*, G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873, and 115931, August 25, 1994, 235 SCRA 630, 684.

[87] 7th Whereas clause, Executive Order No. 1.

[88] Cruz, Constitutional Law, 2003 ed., p. 128.

[89] OSG, Memorandum, p. 89,*rollo*, p. 408.

[90] 6th Whereas clause, Executive Order No. 1

[91] Lee, Handbook of Legal Maxims, 2002 Ed., p.

[92] 118 US 357, http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=118&invol=35 (http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=118&invol=35) <accessed on December 4, 2010>.

[93]Macalintal v. COMELEC, G.R. No. 157013, July 10, 2003, 405 SCRA 614, pp. 631-632; *Manila Prince Hotel vs. GSIS*, 335 Phil. 82, 101 (1997).

[94] Id. at 632.

[95] 756 F. Supp. 388, N.. D. Ind., 1991, Jan 30, 1991, Crim No. HCR 90-42; also http://in.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19910130_0000002.NIN.htm/qx (http://in.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19910130_0000002.NIN.htm/qx) <accessed December 5, 2010>

[96]*McErlain v. Taylor*, 207 Ind. 240 cited in Am. Jur. 2d, Vol. 16 (b), p. 367.

[97]*Martin v. Tollefson*, 24 Wash. 2d 211 cited in Am. Jur. 2d, Vol. 16 (b), pp. 367-368 .

[98]*Nixon v. Administrator of General Services*, 433 US 425 cited in Am. Jur. 2d, Vol. 16 (b), p. 371.

[99]*Hunter v. Flowers*, 43 So 2d 435 cited in Am. Jur. 2d, Vol. 16 (b), p. 370.

[100]*Clements v. Fashing*, 457 US 957.

[101] See Am. Jur. 2d, Vol. 16 (b), pp. 370-371, as footnote (A state legislature may, consistently with the Equal Protection Clause, address a problem one step at a time, or even select one phase of one field and apply a remedy there, neglecting the others. [Jeffeson v. Hackney, 406 US 535].

[102]*McDonald v. Board of Election Com'rs of Chicago*, 394 US 802 cited in Am Jur 2d, Footnote No. 9.

[103]*Ricketts v. City of Hardford*, 74 F. 3d 1397 cited in Am. Jur. 2d, Vol. 16 (b), p. 303.

[104] OSG Consolidated Comment, p. 66, rollo, p.186.

[105]Lagman Memorandum, p. 30; *rollo*, p. 118.

[106] G.R. No. 86926, October 15, 1991; 202 SCRA 680.

[107]*Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936).

[108] Cruz, Philippine Political Law, 2002 ed., pp. 12-13.

[109] Id.

[110] Republic v. Southside Homeowners Association, G.R. No. 156951, September 22, 2006.

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SEPARATE

DISSENTING OPINION

ABAD, *J.:*

Brief Background

As the opinion written for the majority by Justice Jose Catral Mendoza says, President Benigno Simeon Aquino III (President P-Noy to distinguish him from former President Corazon C. Aquino) campaigned on a platform of "kung walang corrupt, walangmahirap." On being elected President, he issued Executive Order 1,[1] creating the Philippine Truth Commission of 2010 that he tasked with the investigation of reported corruption during the previous administration. The Truth Commission is to submit its findings and recommendations to the President, the Congress, and the Ombudsman.

Petitioners Louis Biraogo, Rep. Edcel C. Lagman, Rep. Rodolfo B. Albano, Jr., Rep. Simeon A. Datumanong, and Rep. Orlando B. Fua, Sr. have come to this Court to challenge the Constitutionality of Executive Order 1.

The Issues Presented

The parties present four issues:

1. Whether or not petitioners have legal standing to challenge the constitutionality of Executive Order 1;

2. Whether or not Executive Order 1 usurps the authority of Congress to create and appropriate funds for public offices, agencies, and commissions;

3. Whether or not Executive Order 1 supplants the powers of the Ombudsman and the DOJ; and

4. Whether or not Executive Order 1 violates the equal protection clause in that it singles out the previous administration for investigation.

Discussion

The majority holds that petitioners have standing before the Court; that President P-Noy has the power to create the Truth Commission; that he has not usurped the powers of Congress to create public offices and appropriate funds for them; and, finally, that the Truth Commission can conduct investigation without supplanting the powers of the Ombudsman and the Department of Justice since the Commission has not been vested with quasi-judicial powers. I fully conform to these rulings.

The majority holds, however, that Executive Order 1 violates the equal protection clause of the Constitution. It is here that I register my dissent.

The 1987 Constitution provides in section 1 of Article III (The Bill of Rights) as follows:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

The idea behind the “equal protection clause” is that public authorities should treat all persons or things equally in terms of rights granted to and responsibilities imposed on them. As an element of due process, the equal protection clause bars arbitrary discrimination in favor of or against a class whether in what the law provides and how it is enforced.

Take the comic example of a law that requires married women to wear their wedding rings at all times to warn other men not to entice women to violate their marriage vows. Such law would be unfair and discriminatory since married men, who are not covered by it, are exposed to similar enticements from women other than their wives.

But it would be just as unfair and discriminatory if people who hardly share anything in common are grouped together and treated similarly.[2] The equal protection clause is not violated by a law that applies only to persons falling within a specified class, if such law applies equally to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within it and those who do not.[3]

For example, restaurant cooks and waiters cannot complain of discrimination against an ordinance that requires them but not other workers to undergo periodic medical check-ups. Such check-ups are important for food-handlers in the interest of public health but not for ordinary office clerks. Also, a law that grants a 60-day paid leave to pregnant workers but not to other workers, male or female, is not discriminatory since female workers who just had their babies need more time to care for the latter and make adjustments for going back to work.

Here, the issue I address is whether or not President P-Noy's decision to focus the Truth Commission's investigation solely on the reported corruption during the previous administration, implicitly excluding the corruption during the administrations before it, violates the equal protection clause. Since absolute equality in treating matters is not required, the ultimate issue in this case is whether or not the President has reasonable grounds for making a distinction between corruptions committed in the recent past and those committed in the remote past. As a rule, his grounds for making a distinction would be deemed reasonable if they are germane or relevant to the purpose for which he created the Truth Commission.[4]

And what is the President's purpose in creating the Truth Commission? This can be inferred from section 1 of Executive Order 1 which states that the Commission's primary function is to –

xxx seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by public officials and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration, and thereafter recommend the appropriate action to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.

Evidently, the objective the President sets for the Truth Commission is the uncovering of the "truth" regarding reported corruption in the previous administration "to ensure that the full measure of justice [evidently upon those responsible for it] is served without fear or favor." Ultimately, the purpose of the creation of the Truth Commission is to ensure that the corrupt officials of the previous administration are exposed and brought to justice.

The majority holds that picking on the "previous administration" and not the others before it makes the Commission's investigation an "adventure in partisan hostility." To be fair, said the majority, the search for truth must include corrupt acts not only during the previous administration but also during the administrations before it where the "same magnitude of controversies and anomalies" has been reported.

The majority points out that corruption in the previous administration and corruption in the administrations before it have no substantial difference. And what difference they have, the majority adds, is not relevant to the purpose of Executive Order 1, which is to uncover corrupt acts and recommend their punishment. Superficial difference like the difference in time in this case does not make for a valid classification.

But time differentiation should not be so easily dismissed as superficial. The world in which people live has two great dimensions: the dimension of space and the dimension of time. Nobody can say that the difference in time between two acts or events makes for a superficial difference. Such difference is the substance of human existence. As the Bible says:

There is an appointed time for everything, and a time for every affair under the heavens.

A time to be born, and a time to die;
a time to plant, and a time to uproot the plant.
A time to kill, and a time to heal;
a time to tear down, and a time to build.
A time to weep, and a time to laugh;
a time to mourn, and a time to dance;
A time to scatter stones, and a time to gather them;
a time to embrace, and a time to be far from embraces.

A time to seek, and a time to lose;
a time to keep, and a time to cast away;
A time to rend, and a time to sew;
a time to be silent and a time to speak.
A time to love, and a time to hate;
a time of war, and a time of peace.

(Ecclesiastes 3:1-8, New American Bible)

Recognizing the irreversibility of time is indispensable to every sound decision that people make in their lives everyday, like not combing the hair that is no longer there. In time, parents let their married children leave to make their own homes. Also, when a loved one passes away, he who is left must know that he cannot bring back the time that is gone. He is wise to move on with his life after some period of mourning. To deny the truth that the difference in time makes for substantial difference in human lives is to deny the idea of transition from growth to decay, from life to death, and from relevant to irrelevant.

Here the past presidential administrations the country has gone through in modern history cover a period of 75 years, going back from when President Gloria Macapagal Arroyo ended her term in 2010 to the time President Manuel L. Quezon began his term in 1935. The period could even go back 111 years if the administration of President Emilio Aguinaldo from 1989 to 1901 is included. But, so as not to complicate matters, the latter's administration might just as well be excluded from this discussion.

It should be remembered that the right of the State to recover properties unlawfully acquired by public officials does not prescribe.[5] So, if the majority's advice were to be literally adopted, the Truth Commission's investigation to be fair to all should go back 75 years to include the administrations of former Presidents Arroyo, Estrada, Ramos, Aquino, Marcos, Macapagal, Garcia, Magsaysay, Quirino, Roxas, Osmena, Laurel, and Quezon.

As it happens, President P-Noy limited the Truth Commission's investigation to the 9 years of the previous administration. He did not include the 66 years of the 12 other administrations before it. The question, as already stated, is whether the distinction between the recent past

and the remote past makes for a substantial difference that is relevant to the purpose of Executive Order 1.

That the distinction makes for a substantial difference is the first point in this dissent.

1. The Right to Equal Protection

Feasibility of success. Time erodes the evidence of the past. The likelihood of finding evidence needed for conviction diminishes with the march of time. Witnesses, like everyone else, have short memories. And they become scarce, working overseas, migrating, changing addresses, or just passing away. Official or private documents needed as evidence are easily overwhelmed by the demand to file and keep even more documents generated by new activities and transactions. Thus, old documents are stored away in basements, garages, or corridors, and eventually lost track of, misplaced, or simply destroyed, whether intentionally or not. In a government that is notorious for throwing away or mishandling old records, searching for a piece of document after ten years would be uncertain, tedious, long, and costly.

When the government of President Marcos fell in 1986, the new government acted swiftly to sequester suspected wealth, impound documents believed to constitute evidence of wrong-doing, and interview witnesses who could help prosecute the Marcoses and their cronies. One would think that these actions will ensure successful prosecution of those who committed graft and corruption in that era. Yet, after just a decade, the prosecution has been mostly unable to find the right documents or call the right witnesses. Today, after 24 years, the full force of government has failed to produce even one conviction.

Clearly, it would be a waste of effort and time to scour all of 66 years of the administrations before the last, looking for evidence that would produce conviction. Time has blurred the chance of success. Limiting the Truth Commission’s investigation to the 9 years of the previous administration gives it the best chance of yielding the required proof needed for successful action against the offenders.

Historically, there have been no known or outstanding inquiries done by the Executive Department into corrupt acts of the past that went beyond the term of the immediately preceding administration. It makes sense for President P-Noy to limit the investigation to what is practical and attainable, namely, the 9 years of the previous administration. He strikes at what is here and near. Perchance, he can get a conviction. Investigating corruption in the past 75 years rather than in the nearest 9 years, under a nebulous claim of evenhandedness, is the key to failing altogether. It has been held that if the law presumably hits the evil where it is felt, it is not to be overthrown because there are other instances to which it might have been applied.[6]

Neutralization of Presidential bias. The Court can take judicial notice of the fact that President P-noy openly attacked the previous administration for its alleged corruption in the course of his election campaign. In a sense, he has developed a bias against it. Consequently, his creation of the Truth Commission, consisting of a former Chief Justice, two former Associate Justices of the Supreme Court, and two law professors serves to neutralize such bias and ensure fairness. The President did not have to include the 66 years of earlier administrations for investigation since he did not specifically target them in his election campaign.

At any rate, it does not mean that when the President created the Truth Commission, he shut the door to the investigation of corruption committed during the 66 years before the previous one. All existing government agencies that are charged with unearthing crimes committed by public officials are not precluded from following up leads and uncovering corruptions committed during the earlier years. Those corrupt officials of the remote past have not gained immunity by reason of Executive Order 1.

Matching task to size. The Truth Commission is a collegial body of just five members with no budget or permanent staffs of its own. It simply would not have the time and resources for examining hundreds if not thousands of anomalous government contracts that may have been entered into in the past 75 years up to the time of President Quezon. You cannot order five men to pull a train that a thousand men cannot move.

Good housekeeping. Directing the investigation of reported corrupt acts committed during the previous administration is, as the Solicitor General pointed out, consistent with good housekeeping. For example, a new treasurer would be prudent to ensure that the former treasurer he succeeds has balanced his accounts and submitted himself to a closing audit even after the new treasurer has taken over. This prevents the latter having to unfairly assume the liabilities of his predecessor for shortages in the cash box. Of course, the new treasurer is not required to look farther into the accounts of the earlier treasurers.

In like manner, it is reasonable for President P-Noy to cause the investigation of the anomalies reportedly committed during the previous administration to which he succeeded. He has to locate government funds that have not been accounted for. He has to stanch the bleeding that the government could be suffering even now by reason of anomalous contracts that are still on-going. Such is a part of good housekeeping. It does not violate the equal protection clause by its non-inclusion of the earlier administrations in its review. The latter's dealings is remotely relevant to good housekeeping that is intended to manage a smooth transition from one administration to the next.

2. The President's Judgment
as against the Court's

That is the first point. The second point is that the Court needs to stand within the limits of its power to review the actions of a co-equal branch, like those of the President, within the sphere of its constitutional authority. Since, as the majority concedes, the creation of the Truth Commission is within the constitutional powers of President P-Noy to undertake, then to him, not to the Court, belongs the discretion to define the limits of the investigation as he deems fit. The Court cannot pit its judgment against the judgment of the President in such matter.

And when can the Supreme Court interfere with the exercise of that discretion? The answer is, as provided in Section 1, Article VIII of the 1987 Constitution, only when the President gravely abuses his exercise of such discretion. This means that, in restricting the Truth Commission's investigation only to corruptions committed during the previous administration, he acted capriciously and whimsically or in an arbitrary or despotic manner.[7]

To act capriciously and whimsically is to act freakishly, abruptly, or erratically, like laughing one moment and crying the next without apparent reason. Does this characterize the President's action in this case, considering that he merely acted to set a feasible target, neutralize political bias, assign the Commission a task suitable to its limited capacity, and observe correct housekeeping procedures? Did he act arbitrarily in the manner of little children changing the rules of the game in the middle of the play or despotically in the manner of a dictator? Unless he did, the Court must rein in its horses. It cannot itself exceed the limits of its power of review under the Constitution.

Besides, the Court is not better placed than the President to make the decision he made. Unlike the President, the Court does not have the full resources of the government available to it. It does not have all the information and data it would need for deciding what objective is fair and viable for a five-member body like the Truth Commission. Only when the President's actions are plainly irrational and arbitrary even to the man on the street can the Court step in from Mount Olympus and stop such actions.

Notably, none of those who have been reported as involved in corruption in the previous administration have come forward to complain that the creation of the Truth Commission has violated their rights to equal protection. If they committed no wrong, and I believe many would fall in this category, they would probably have an interest in pushing for the convening of the Commission. On the other hand, if they believe that the investigation unfairly threatens their liberties, they can, if subpoenaed, to testify invoke their right to silence. As stated in the majority opinion, the findings of the Commission would not bind them. Such findings would not diminish their right to defend themselves at the appropriate time and forum.

For the above reasons, I join the main dissent of Justice Antonio T. Carpio.

ROBERTO A. ABAD
Associate Justice

Notes:

[1] Dated July 30, 2010.

[2] Rene B. Gorospe, I Constitutional Law (2004 Edition) 210.

[3] 2 Cooley, Constitutional Limitations, 824-825.

[4] People v. Cayat, 68 Phil. 12 (1939), citing leading American cases.

[5] 1987 Constitution of the Philippines, Article 11, Section 15.

[6]Keokee Coke Co. v. Taylor, 234 U.S. 224, 227.

[7] Perez v. Court of Appeals, G.R. No. 162580, January 27, 2006, 480 SCRA 411, 416.

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SEPARATE OPINION

BERSAMIN, *J.:*

I register my full concurrence with the Majority's well reasoned conclusion to strike down Executive Order No. 1 (E.O. No. 1) for its incurable unconstitutionality.

I share and adopt the perspectives of my colleagues in the Majority on why the issuance has to be struck down. I render this Separate Opinion only to express some thoughts on a few matters.

I

Locus Standi of Petitioners

I hold that the petitioners have locus standi.

In particular reference to the petitioners in G.R. No. 193036,I think that their being incumbent Members of the House of Representatives gave them the requisite legal standing to challenge E. O. No. 1 as an impermissible intrusion of the Executive into the domain of the Legislature. Indeed, to the extent that the powers of Congress are impaired, so is the power of each Member, whose office confers a right to participate in the exercise of the powers of that

institution; consequently, an act of the Executive that injures the institution of Congress causes a derivative but nonetheless substantial injury that a Member of Congress can assail.[1] Moreover, any intrusion of one Department in the domain of another Department diminishes the enduring idea underlying the incorporation in the Fundamental Law of the time-honored republican concept of separation of powers.

Justice Mendoza's main opinion, which well explains why the petitioners have locus standi, is congruent with my view on the matter that I expressed in *De Castro v. Judicial and Bar Council, et al.*,[2]viz:

Black defines *locus standi* as "a right of appearance in a court of justice on a given question." In public or constitutional litigations, the Court is often burdened with the determination of the locus standi of the petitioners due to the ever-present need to regulate the invocation of the intervention of the Court to correct any official action or policy in order to avoid obstructing the efficient functioning of public officials and offices involved in public service. It is required, therefore, that the petitioner must have a personal stake in the outcome of the controversy, for, as indicated in Agan, Jr. v. Philippine International Air Terminals Co., Inc.:

The question on legal standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Accordingly, it has been held that the interest of a person assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of.

It is true that as early as in 1937, in *People v. Vera*, the Court adopted the direct injury test for determining whether a petitioner in a public action had locus standi. There, the Court held that the person who would assail the validity of a statute must have "a personal and substantial

interest in the case such that he has sustained, or will sustain direct injury as a result." *Vera* was followed in *Custodio v. President of the Senate*, *Manila Race Horse Trainers' Association v. De la Fuente*, *Anti-Chinese League of the Philippines v. Felix,* and *Pascual v. Secretary of Public Works*.

Yet, the Court has also held that the requirement of *locus standi*, being a mere procedural technicality, can be waived by the Court in the exercise of its discretion. For instance, in 1949, in *Araneta v. Dinglasan*, the Court liberalized the approach when the cases had "transcendental importance." Some notable controversies whose petitioners did not pass the *direct injury test*were allowed to be treated in the same way as in *Araneta v. Dinglasan*.

In the 1975 decision in *Aquino v. Commission on Elections*, this Court decided to resolve the issues raised by the petition due to their "far-reaching implications," even if the petitioner had no personality to file the suit. The liberal approach of *Aquino v. Commission on Elections* has been adopted in several notable cases, permitting ordinary citizens, legislators, and civic organizations to bring their suits involving the constitutionality or validity of laws, regulations, and rulings.

However, the assertion of a public right as a predicate for challenging a supposedly illegal or unconstitutional executive or legislative action rests on the theory that the petitioner represents the public in general. Although such petitioner may not be as adversely affected by the action complained against as are others, it is enough that he sufficiently demonstrates in his petition that he is entitled to protection or relief from the Court in the vindication of a public right.

Quite often, as here, the petitioner in a public action sues as a citizen or taxpayer to gain locus standi. That is not surprising, for even if the issue may appear to concern only the public in general, such capacities nonetheless equip the petitioner with adequate interest to sue. In *David v. Macapagal-Arroyo*, the Court aptly explains why:

Case law in most jurisdictions now allows both "citizen" and "taxpayer" standing in public actions. The distinction was first laid down in *Beauchamp v. Silk*, where it was held that the plaintiff in a taxpayer's suit is in a different category from the plaintiff in a citizen's suit. In the

former, the plaintiff is affected by the expenditure of public funds, while in the latter, he is but the mere instrument of the public concern. As held by the New York Supreme Court in *People ex rel Case v. Collins*: "In matter of mere public right, however…the people are the real parties…It is at least the right, if not the duty, of every citizen to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied." With respect to taxpayer's suits, *Terr v. Jordan* held that "the right of a citizen and a taxpayer to maintain an action in courts to restrain the unlawful use of public funds to his injury cannot be denied."

xxx

In any event, the Court retains the broad discretion to waive the requirement of legal standing in favor of any petitioner when the matter involved has transcendental importance, or otherwise requires a liberalization of the requirement.

Yet, if any doubt still lingers about the locus standi of any petitioner, we dispel the doubt now in order to remove any obstacle or obstruction to the resolution of the essential issue squarely presented herein. We are not to shirk from discharging our solemn duty by reason alone of an obstacle more technical than otherwise. In Agan, Jr. v. Philippine International Air Terminals Co., Inc., we pointed out: "Standing is a peculiar concept in constitutional law because in some cases, suits are not brought by parties who have been personally injured by the operation of a law or any other government act but by concerned citizens, taxpayers or voters who actually sue in the public interest." But even if, strictly speaking, the petitioners "are not covered by the definition, it is still within the wide discretion of the Court to waive the requirement and so remove the impediment to its addressing and resolving the serious constitutional questions raised."

II

The President Has No Power to Create A Public Office

A public office may be created only through any of the following modes, namely: (a) by the Constitution; or (b) by statute enacted by Congress; or (c) by authority of law (through a valid delegation of power).[3]

The power to create a public office is essentially legislative, and, therefore, it belongs to Congress. It is not shared by Congress with the President, until and unless Congress enacts legislation that delegates a part of the power to the President, or any other officer or agency.

Yet, the Solicitor General contends that the legal basis for the President's creation of the Truth Commission through E. O. No. 1 is Section 31, Chapter 10, Book III, of the Administrative Code of 1987.

Section 31, Chapter 10, Book III, of the Administrative Code of 1987, which reads:

Section 31. Continuing Authority of the President to Reorganize his Office. – The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:

1. Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another;

2. Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and

3. Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies.

nowhere refers to the creation of a public office by the President. On the contrary, only a little effort is needed to know from reading the text of the provision that what has been granted is limited to an authority for reorganization through any of the modes expressly mentioned in the provision.

The Truth Commission has not existed before E. O. No. 1 gave it life on July 30, 2010. Without a doubt, it is a new office, something we come to know from the plain words of Section 1 of E. O. No. 1 itself, to wit:

Section 1. Creation of a Commission. – There is hereby created the **PHILIPPINETRUTH COMMISSION**, hereinafter referred to as the **"COMMISSION"**, which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration; and thereafter recommend the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.

The Commission shall be composed of a Chairman and four (4) members who will act as an independent collegial body.

If the Truth Commission is an entirely new office, then it is not the result of any reorganization undertaken pursuant to Section 31, Chapter 10, Book III, of the Administrative Code of 1987. Thus, the contention of the Solicitor General is absolutely unwarranted.

Neither may the creation of the Truth Commission be made to rest for its validity on the fact that the Constitution, through its Section 17, Article VII, invests the President with the duty to ensure that the laws are faithfully executed. In my view, the duty of faithful execution of the laws necessarily presumes the prior existence of a law or rule to execute on the part of the President. But, here, there is no law or rule that the President has based his issuance of E. O. No. 1.

I cannot also bring myself to accept the notion that the creation of the Truth Commission is traceable to the President's power of control over the Executive Department. It is already settled that the President's power of control can only mean "the power of an officer to alter, modify, or set aside what a subordinate officer had done in the performance of his duties, and to substitute the judgment of the former for that of the latter."[4] As such, the creation by the President of a public office like the Truth Commission, without either a provision of the Constitution or a proper law enacted by

Congress authorizing such creation, is not an act that the power of control includes.

III

Truth Commission Replicates and Usurps the
Duties and Functions of the
Office of the Ombudsman

I find that the Truth Commission replicates and usurps the duties and functions of the Office of the Ombudsman. Hence, the Truth Commission is superfluous and may erode the public trust and confidence in the Office of the Ombudsman.

The Office of the Ombudsman is a constitutionally-created quasi-judicial body established to investigate and prosecute illegal acts and omissions of those who serve in the Government. Section 5, Article XI of the 1987 Constitution enumerates the powers, functions, and duties of the Office of the Ombudsman, including the power to:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

xxx

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

xxx

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

The Framers of the Constitution, particularly those of them who composed the Committee on Accountability of Public Officers, intended the Office of the Ombudsman to be strong and effective, in order to enable the Office of the Ombudsman to carry out its mandate as the Protector of the People against the inept, abusive, and corrupt in the Government. This intent is clear from the proceedings on the establishment of the Office of the Ombudsman, as follows:

SPONSORSHIP SPEECH OF COMMISSIONER MONSOD

MR. MONSOD. Madam President, the Committee on Accountability of Public Officers is respectfully submitting its proposed Article in the Constitution, and we would just want to make a few remarks on the articles and sections that we have included.

xxx

With respect to the Sandiganbayan and the Tanodbayan, the Committee decided to make a distinction between the purely prosecutory function of the Tanodbayan and the function of a pure Ombudsman who will use the prestige and persuasive powers of his office. To call the attention of government officials to any impropriety, misconduct or injustice, we conceive the Ombudsman as a champion of the citizens x xx The concept of the Ombudsman here is admittedly a little bit different from the 1973 concept x xx The idea here is to address ourselves to the problem that those who have unlawfully benefitted from the acquisition of public property over the years, through technicalities or practice, have gained immunity and that, therefore, the right of the people to recover should be respected x x x.[5]

xxx

SPONSORSHIP SPEECH OF COMMISSIONER COLAYCO

MR. COLAYCO. Thank you, Madam President.

The Committee is proposing the creation of an office which can act in a quick, inexpensive and effective manner on complaints against the administrative inaction, abuse and arbitrariness of government officials and employees in dealing with the people. xxx.

xxx

[W]e have proposed as briefly as possible in our resolution an office which will not require any formal condition for the filing of a complaint. Under our proposal, a person can file a complaint even by telephone and without much ado, the office of the Ombudsman is under obligation to see to it that the complaint is acted upon, not merely attended to but acted upon. xxx. If the

employee admits that there was reason behind the complaint, he is told to do what the complainant wanted him to do without much ado. And then that is followed up by the corresponding report to the department of the government which has supervision over the employee at fault, with the proper recommendation.

xxx

Under our proposal, the Ombudsman is empowered to investigate, to inquire into and to demand the production of documents involving transactions and contracts of the government where disbursement of public funds is reported. xxx [t]he main thrust is action; the disciplinary or punitive remedy is secondary. On a higher level then, the Ombudsman is going to be the eyes and ears of the people. Where administrative action demanded is not forthcoming x xx he (Ombudsman) is authorized to make public the nature of the complaint and the inaction of the official concerned, x x x.[6]

xxx

SPONSORSHIP SPEECH OF COMMISSIONER NOLLEDO

MR. NOLLEDO. Thank you, Madam President.

xxx

Madam President, the creation of an Ombudsman x xx is in answer to the crying need of our people for an honest and responsive government. The office of the Ombudsman as proposed by the Committee on Accountability of Public Officers, x xx is really an institution primarily for the citizens as against the malpractices and corruption in the government. As an official critic, the Ombudsman will study the law, the procedure and practice in the government, and make appropriate recommendations for a more systematic operation of the governmental machinery, free from bureaucratic inconveniences. As a mobilizer, the Ombudsman will see to it that there be a steady flow of services to the individual consumers of government. And as a

watchdog, the Ombudsman will look after the general, as well as specific, performances of all government officials and employees so that the law may not be administered with an evil eye or an uneven hand.[7]

On the other hand, E. O. No. 1 enumerates the objectives of the creation of the Truth Commission, thus:

EXECUTIVE ORDER NO. 1

CREATING THE PHILIPPINE TRUTH COMMISSION OF 2010

WHEREAS, Article XI, Section 1 of the 1987 Constitution of the Philippines solemnly enshrines the principle that a public office is a public trust and mandates that public officers and employees, who are servants of the people, must at all times be accountable to the latter, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives;

xxx

WHEREAS, there is an urgent call for the determination of the truth regarding certain reports of large scale graft and corruption in the government and to put a closure to them by the filing of the appropriate cases against those involved, if warranted, and to deter others from committing the evil, restore the people's faith and confidence in the Government and in their public servants;

WHEREAS, there is a need for a separate body dedicated solely to investigating and finding out the truth concerning the reported cases of graft and corruption during the previous administration, and which will recommend the prosecution of the offenders and secure justice for all;

WHEREAS, Book III, Chapter 10, Section 31 of Executive Order No. 292, otherwise known as the Revised Administrative Code of the Philippines, gives the President the continuing authority to reorganize the Office of the President.

NOW, THEREFORE, I, **BENIGNO SIMEON AQUINO III**, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Creation of a Commission. – There is hereby created the **PHILIPPINETRUTH COMMISSION**, hereinafter referred to as the **"COMMISSION,"** which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration; and thereafter recommend the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.

xxx

A comparison between the aforequoted objectives of the Office of the Ombudsman and the Truth Commission quickly reveals that the Truth Commission is superfluous, because it replicates or imitates the work of the Office of the Ombudsman. The result is that the Truth Commission can even usurp the functions, duties, and responsibilities of the Office of the Ombudsman. That usurpation is not a desirable result, considering that the public faith and trust in the Office of the Ombudsman, as a constitutionally-created office imbued with specific powers and duties to investigate and prosecute graft and corruption, may be eroded.

ACCORDINGLY, I vote to grant the petitions.

LUCAS P. BERSAMIN
Associate Justice

Notes:

[1]*Philippine Constitution Association v. Hon. Enriquez,* G.R. Nos. 113105, 113174, 113766 and 113888, August 19, 1994, 235 SCRA 506.

[2] G.R. Nos. 191002, 191032, 191057, 191149, 191342 and 191420, and A.M. No. 10-2-5-SC, March 17, 2010.

[3] *Secretary of the Department of Transportation and Communications v. Malabot*, G.R. No. 138200, February 27, 2002, 378 SCRA 128.

[4]Mondano v. Silvosa, 97 Phil. 143.

[5] Record of the Deliberation of the 1986 Constitutional Commission, R.C.C. No. 40, Saturday, July 26, 1986, pp. 265.

[6] Id., at 265-266.

[7] Id., at 267.

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SEPARATE OPINION

BRION, *J.*:

I concur, through this Separate Opinion, with the conclusion that the Executive Order No. 1 (EO 1 or EO) creating the Truth Commission is fatally defective and thus should be struck down.

I base my conclusion:

(1) On due process grounds;

(2) On the unconstitutional impact of the EO on the established legal framework of the criminal justice system;

(3) On the violation of the rule on separation of powers;

(4) On the violations of the personal rights of the investigated persons and their constitutional right to a fair trial;[1] and

(5) On the violation of the equal protection clause.

Two inter-related features of the EO primarily contribute to the resulting violations. The first is the use of the title Truth Commission, which, as used in the EO, is fraught with hidden and prejudicial implications beyond the seemingly simple truth that purportedly characterizes the Commission. The second relates to the truth-telling function of the Truth Commission under the terms of the EO. Together, these features radiate outwards with prejudicial effects, resulting in the above violations.

The full disclosure of the truth about irregular and criminal government activities, particularly about graft and corruption, is a very worthy ideal that those in government must fully support; the ideal cannot be disputed, sidetracked or much less denied. It is a matter that the Constitution itself is deeply concerned about as shown by Article XI on Accountability of Public Officers.

This concern, however, co-exists with many others and is not the be-all and end-all of the Charter. The means and manner of addressing this constitutional concern, for example, rate very highly in the hierarchy of constitutional values, particularly their effect on the structure and operations of government and the rights of third parties.

The working of government is based on a well-laid and purposeful constitutional plan, essentially based on the doctrine of separation of powers, that can only be altered by the ultimate sovereign—the people. Short of this sovereign action, not one of the departments of government—neither the Executive, nor the Legislature, and nor the Judiciary—can modify this constitutional plan, whether directly or indirectly.

Concern for the individual is another overriding constitutional value. Significantly, the Constitution does not distinguish between the guilty and the innocent in its coverage and grant of rights and guarantees. In fact, it has very specific guarantees for all accused based on its general concern for every Filipino's life, liberty, security and property. The Constituion, too, ensures that persons of the same class, whether natural or juridical, are treated equally, and that the government does not discriminate in its actions.

All these, this Court must zealously guard. We in the Court cannot ever allow a disturbance of the equilibrium of the constitutional structure in favour of one or the other branch, especially in favour of the Judiciary. Much less can we pre-judge any potential accused, even in the name of truth-telling, retribution, national healing or social justice. The justice that the Constitution envisions is largely expressed and embodied in the Constitution itself and this concept of justice, more than anything else, the Judiciary must serve and satisfy. In doing this, the Judiciary must stand as a neutral and apolitical judge and cannot be an advocate other than for the primacy of the Constitution.

These, in brief, reflect the underlying reasons for the cited grounds for the invalidity of E.O. 1.

I. THE EO AND THE "TRUTH" COMMISSION.

A. THE TERMS OF THE EO AND THE RULES; NATURE OF THE "TRUTH COMMISSION"

The Philippine Truth Commission (Truth Commission or Commission) is a body "created" by the President of the Philippines by way of an Executive Order (EO 1 or EO) entitled "Executive Order No. 1, Creating the Philippine Truth Commission of 2010." The Truth Commission's express and avowed purpose is – [2]

"to seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by public officials and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration, and thereafter recommend the appropriate action to be taken thereon to ensure that the full measure of justice shall be served without fear or favor."

Under these terms and by the Solicitor General's admissions and representations, the Truth Commission has three basic functions, namely, fact-finding,[3] policy recommendation,[4] and truth-telling,[5] all with respect to reported massive graft and corruption committed by officials and employees of the previous administration.

The EO defines the Truth Commission as an "independent collegial body" with a Chairman and four members;[6] and provides for the staff,[7] facilities[8] and budgetary support[9] it can rely on, all of which are sourced from or coursed through the Office of the President. It specifically empowers the Truth Commission to "collect, receive, review and evaluate evidence."[10] It defines how the Commission will operate and how its proceedings will be conducted.[11] Notably, its hearings shall be open to the public, except only when they are held in executive sessions for reasons of national security, public safety or when demanded by witnesses' personal security concerns.[12] It is tasked to submit its findings and recommendations on graft and corruption to the President, Congress and the Ombudsman,[13] and submit special interim reports and a comprehensive final report which shall be published.[14] Witnesses or resource persons are given the right to counsel,[15] as well as security protection to be provided by government police agencies.[16]

The Rules of Procedure of the Philippine Truth Commission of 2010 (Rules), promulgated pursuant to Section 2(j) of EO 1, further flesh out the operations of the Commission.[17] Section 4 assures that "due process shall at all times be observed in the application of the Rules." It provides for formal complaints that may be filed before it,[18] and that after evaluation, the parties who appear responsible under the complaints shall be provided copies of the complaints and supporting documents, and be required to comment on or file counter-affidavits within ten (10) days.[19] The Rules declare that the Commission is not bound by the technical rules of evidence,[20] reiterate the protection afforded to witnesses provided under the EO,[21] and confirm that hearings shall be open to the public.[22]

B. THE TITLE "TRUTH COMMISSION"
AND DUE PROCESS

Both the parties' memoranda dwelt on the origins and nature of the term "Truth Commission," with both using their reading of the term's history and usages to support their respective positions.[23] What comes across in available literature is that no nation has a lock on the meaning of the term; there is only a long line of practice that attaches the term to a body established upon restoration of democracy after a period of massive violence and

repression.[24] The term truth commission has been specifically used as a title for the body investigating the human rights violations[25] that attended past violence and repression,[26] and in some instances for a body working for reconciliation in society.[27]

The traditional circumstances that give rise to the use of a truth commission along the lines of established international practice are not present in the Philippine setting. The Philippines has a new democratically-elected President, whose election has been fully accepted without protest by all presidential candidates and by the people. A peaceful transition of administration took place, where Congress harmoniously convened, with the past President now sitting as a member of the House of Representatives. While charges of human rights violations may have been lodged against the government during the past administration, these charges are not those addressed by EO 1.[28] Rather, EO 1 focuses entirely on graft and corruption. Significantly, reconciliation does not appear to be a goal—either in the EO, in the pleadings filed by the parties, or in the oral arguments—thus, removing a justification for any massive information campaign aimed at healing divisions that may exist in the nation.

As a matter of law, that a body called a Truth Commission is tasked to investigate past instances of graft and corruption would not per se be an irregularity that should cause its invalidation. The use of the word “truth” is not ordinarily a ground for objection. Not even the Constitution itself defines or tells us what truth is; the Charter, fleshed out by the statutes, can only outline the process of arriving at the truth. After the Constitution and the statutes, however, have laid down the prescribed procedure, then that procedure must be observed in securing the truth. Any deviation could be a violation depending on the attendant circumstances.

No international law can also prevent a sovereign country from using the term as the title of a body tasked to investigate graft and corruption affecting its citizens within its borders. At the same time, international law cannot be invoked as a source of legitimacy for the use of the title when it is not based on the internationally-recognized conditions of its use.

No local law likewise specifically prohibits or regulates the use of the term "truth commission." Apart from the procedural "deviation" above adverted to, what may render the use of the term legally objectionable is the standard of reason, applicable to all government actions, as applied to the attendant circumstances surrounding the use in the EO of the title Truth Commission.[29] The use of this standard is unavoidable since the title Truth Commission is used in a public instrument that defines the Commission's functions and affects both the government and private parties.[30] The Commission's work affects third parties as it is specifically tasked to investigate and prosecute officials and employees of the previous administration. This line of work effectively relates it to the processes of the criminal justice system.

In the simplest due process terms, the EO—as a governmental action—must have a reasonable objective and must use equally reasonable means to achieve this objective.[31] When the EO—viewed from the prism of its title and its truth-telling function—is considered a means of achieving the objective of fighting graft and corruption, it would be invalid if it unreasonably or oppressively affects parties, whether they be government or private.

C. THE COMMISSION'S FUNCTIONS

As worded, the EO establishes the Commission as an investigative body tasked to act on cases of graft and corruption committed during the previous administration. This is an area that the law has assigned to the primary jurisdiction of the Ombudsman to investigate and prosecute.[32] If probable cause exists, these same cases fall under the exclusive jurisdiction of the Sandiganbayan[33] whose decisions are appealable to the Supreme Court.[34]

Whether a Commission can engage in fact-finding, whose input can aid the President in policy formulation, is not a disputed issue. What is actively disputed is whether the Truth Commission shall undertake its tasks in a purely investigative fact-finding capacity or in the exercise of quasi-judicial powers. This issue impacts on the level of fairness that should be observed (and the standard of reason that should apply), and thus carries due process implications. Equally important to the issue of due process are the function of truth-telling and the effects of this function when considered with the title "Truth Commission."

C.1. The Truth-Telling Function

The Solicitor General fully verbalized the truth-telling function when he declared that it is a means of letting the people know the truth in the allegations of graft and corruption against the past administration.[35] The Solicitor General, in response to the questions of J. Sereno, said:

Justice Sereno: . . .I go now to the truth-telling part of the commission. In other words, can you describe to us the truth telling and truth seeking part of the commission?

Solicitor General Cadiz: Your Honor, of course our people will find closure if aside from the truth finding of facts, **those who have been found by the body to have committed graft and corruption will be prosecuted** by the Ombudsman. It is. . .Your Honor, there is a crime committed and therefore punishment must be meted out. However, Your Honor, **truth-telling part, the mere narration of facts, the telling of the truth, will likewise I think to a certain degree, satisfy our people**.

Justice Sereno: Are you saying therefore the truth-telling, that the narration like the other narrations in the past commissions has an independent value apart from the recommendations to indict which particular persons?

Solicitor General Cadiz: I agree Your Honor. And it is certainly, as the EO says, it's a Truth Commission **the narration of facts by the members of the Commission, I think, will be appreciated by the people independent of the indictment that is expected likewise**. [Emphasis supplied.]

His statement is justified by the EO's mandate to seek and find the truth under Section 1; the opening to the public of the hearing and proceedings under Section 6; and the publication of the Commission's final report under Section 15 of the EO.[36]

C.2. Legal Implications of Truth-Telling

Truth-telling, as its name connotes, does not exist solely for the sake of "truth"; the "telling" side is equally important as the Solicitor General impressed upon this Court during the oral arguments.[37] Thus, to achieve its objectives, truth-telling needs an audience to whom the truth

shall be told.[38] This requirement opens up the reality that EO 1 really speaks in two forums.

The first forum, as expressly provided in the EO, is composed of the persons to be investigated and the recipients of the Commission's reports who are expected to act on these reports, specifically, the President (who needs investigative and policy formulation assistance); Congress (who may use the Commission's information for its own legislative purposes); and the Ombudsman as the investigative and prosecutory constitutional office[39] to which, under the EO, the Commission must forward its interim and final reports. The Commission's hearings and proceedings are important venues for this forum, as this is where the investigated persons can defend themselves against the accusations made. The element of policy formulation, on the other hand, is present through the Commission's interim and final reports from which appropriate remedial policy measures can be distilled. The element of truth-telling—in the sense of communicating to the public the developments as they happen and through the interim and final reports—exists but only plays a secondary role, as the public is not a direct participant in this forum.

The second forum—not as explicitly defined as the first but which must implicitly and necessarily be there—is that shared with the general public as the audience to whom the President (through the EO and the Truth Commission) wishes to tell the story of the allegedly massive graft and corruption during the previous administration. This is the distinct domain of truth-telling as the Solicitor General himself impliedly admits in his quoted arguments.[40] Section 6 of the EO fully supports truth-telling, as it opens up the Commission's hearings or proceedings to the public (and hence, to the mass media), subject only to an executive session "where matters of national security or public safety are involved or when the personal safety of the witness warrants the holding of such executive or closed-door session hearing."

These separate forums are not distinguished merely for purposes of academic study; they are there, plainly from the terms of the EO, and carry clear distinctions from which separate legal consequences arise.

Both forums involve third parties, either as persons to be investigated or as part of the general public (in whose behalf criminal complaints are nominally brought and who are the recipients of the Commission's truth-telling communications) so that, at the very least, standards of fairness must be observed.[41] In the investigative function, the standard depends on whether the tasks performed are purely investigative or are quasi-judicial, but this distinction is not very relevant to the discussions of this opinion. In truth-telling, on the other hand, the level of the required fairness would depend on the objective of this function and the level of finality attained with respect to this objective.[42]

In the first forum, no element of finality characterizes the Commission's reports since—from the perspective of the EO's express purposes of prosecution and policy formulation—they are merely recommendatory and are submitted for the President's, Congress' and the Ombudsman's consideration. Both the President and Congress may reject the reports for purposes of their respective policy formulation activities; the Ombudsman may likewise theoretically and nominally reject them (although with possibly disastrous results as discussed below).

In the second forum, a very high element of finality exists as the information communicated through the hearings, proceedings and the reports are directly "told" the people as the "truth" of the graft and corruption that transpired during the previous administration. In other words, the Commission's outputs are already the end products, with the people as the direct consumers. In this sense, the element of fairness that must exist in the second forum must approximate the rights of an accused in a criminal trial as the consequence of truth-telling is no less than a final "conviction" before the bar of public opinion based on the "truth" the Commission "finds." Thus, if the Commission is to observe the rights of due process as Rule 1, Section 4 of its Rules guarantees, then the right of investigated persons to cross-examine witnesses against them,[43] the right against self-incrimination,[44] and all the rights attendant to a fair trial must be observed. The rights of persons under investigation under Section 12 of the Bill of Rights of the Constitution[45] must likewise be respected.

II. THE EO'S LEGAL INFIRMITIES.

A. THE TITLE “TRUTH COMMISSION” + THE TRUTH-TELLING FUNCTION = VIOLATION OF DUE PROCESS

A.1. The Impact of the Commission’s “Truth”

The first problem of the EO is its use of the title “Truth Commission” and its objective of truth-telling; these assume that what the Truth Commission speaks of is the “truth” because of its title and of its truth-telling function; thus, anything other than what the Commission reports would either be a distortion of the truth, or may even be an “untruth.”

This problem surfaced during the oral arguments on queries about the effect of the title “Truth Commission” on the authority of the duly constituted tribunals that may thereafter rule on the matters that the Commission shall report on.[46] Since the Commission’s report will constitute the “truth,” any subsequent contrary finding by the Ombudsman[47] would necessarily be suspect as an “untruth;” it is up then to the Ombudsman to convince the public that its findings are true.

To appreciate the extent of this problem, it must be considered that the hearings or proceedings, where charges of graft and corruption shall be aired, shall be open to the public. The Commission’s report shall likewise be published.[48] These features cannot but mean full media coverage.

Based on common and usual Philippine experience with its very active media exemplified by the recent taking of Chinese and Canadian hostages at the Luneta, a full opening to the media of the Commission’s hearings, proceedings and reports means a veritable media feast that, in the case of the Truth Commission, shall occur on small but detailed daily doses, from the naming of all the persons under investigation all the way up to the Commission’s final report. By the time the Commission report is issued, or even before then, the public shall have been saturated with the details of the charges made through the publicly-aired written and testimonial submissions of witnesses, variously viewed from the vantage points of straight reporting, three-minute TV news clips, or the slants and personal views of media opinion writers and extended TV coverage. All these are highlighted as the power of the media and the

environment that it creates can never be underestimated. Hearing the same "truth" on radio and television and seeing it in print often enough can affect the way of thinking and the perception, even of those who are determined, in their conscious minds, to avoid bias.[49]

As expected, this is a view that those supporting the validity of the EO either dismisses as an argument that merely relies on a replaceable name,[50] or with more general argument couched under the question "Who Fears the Truth."[51]

The dismissive argument, to be sure, would have been meritorious if only the name Truth Commission had not been supported by the Commission's truth-telling function; or, if the name "Truth Commission" were a uniquely Filipino appellation that does not carry an established meaning under international practice and usage. Even if it were to be claimed that the EO's use of the name is unique because the Philippines' version of the Truth Commission addresses past graft and corruption and not violence and human rights violations as in other countries, the name Truth Commission, however, cannot simply be dissociated from its international usage. The term connotes abuses of untold proportions in the past by a repressive undemocratic regime—a connotation that may be applicable to the allegations of graft and corruption, but is incongruous when it did not arise from a seriously troubled regime; even the present administration cannot dispute that it assumed office in a peaceful transition of power after relatively clean and peaceful elections.

The "Who Fears the Truth?" arguments, on the other hand, completely miss the point of this Separate Opinion. *This Opinion does not dispute that past graft and corruption must investigated and fully exposed*; any statement to the contrary in the Dissent are unfounded rhetoric written solely for its own partisan audience. What this Opinion clearly posits as legally objectionable is the government's manner of "telling;" any such action by government must be made according to the norms and limits of the Constitution to which all departments of government—including the Executive—are subject. Specifically, the Executive cannot be left unchecked when its methods grossly violate the Constitution. This matter is discussed in full below.

A.2. Truth-telling and the Ombudsman

To return to the scenario described above, it is this scenario that will confront the Ombudsman when the Commission's report is submitted to it. At that point, there would have been a full and extended public debate heavily influenced by the Commission's "truthful" conclusions. Thus, when and if the Ombudsman finds the evidence from the report unconvincing or below the level that probable cause requires, it stands to incur the public ire, as the public shall have by then been fully informed of the "facts" and the "truth" in the Commission's report that the Ombudsman shall appear to have disregarded.

This consequence does not seem to be a serious concern for the framers and defenders of the EO, as the Commission's truth-telling function by then would have been exercised and fully served. In the Solicitor General's words "*Your Honor, there is crime committed and therefore punishment must be meted out. However, your Honor, truth-telling part, the mere narration of facts, the telling of the truth, will likewise I think to a certain degree satisfy our people*." On the question of whether truth-telling has an independent value separate from the indictment—he said: "And it is certainly, as the EO says, it's a Truth Commission the narration of facts by the members of the Commission, I think, will be appreciated by the people independent of the indictment that is expected likewise."[52]

In other words, faced with the findings of the Commission, the Ombudsman who enters a contrary ruling effectively carries the burden of proving that its findings, not those of the Commission, are correct. To say the least, this resulting reversal of roles is legally strange since the Ombudsman is the body officially established and designated by the Constitution to investigate graft and other crimes committed by public officers, while the Commission is a mere "creation" of the Executive Order. The Ombudsman, too, by statutory mandate has primary jurisdiction over the investigation and prosecution of graft and corruption, while the Commission's role is merely recommendatory.

Thus, what the EO patently expresses as a primary role for the Commission is negated in actual application by the title Truth Commission and its truth-telling function. Expressed in terms of the forums the EO spawned, the EO's principal intent to use the Truth Commission as a second forum instrument is unmasked; the first forum—the officially sanctioned forum for the prosecution of crimes—becomes merely a convenient cover for the second forum.

A.3. Truth-telling and the Courts

The effects of truth-telling could go beyond those that affect the Ombudsman. If the Ombudsman concurs with the Commission and brings the recommended graft and corruption charges before the Sandiganbayan—a constitutionally-established court—this court itself would be subject to the same truth-telling challenge if it decides to acquit the accused. For that matter, even this Court, will be perceived to have sided with an "untruth" when and if it goes against the Commission's report. Thus, the authority, independence, and even the integrity of these constitutional bodies—the Ombudsman, the Sandiganbayan, and the Supreme Court—would have been effectively compromised, to the prejudice of the justice system. All these, of course, begin with the premise that the Truth Commission has the mandate to find the "truth," as it name implies, and has a truth-telling function that it can fully exercise through its own efforts and through the media.

A.4. Truth-telling and the Public.

A.4.1. Priming and Other Prejudicial Effects.

At this point in the political development of the nation, the public is already a very critical audience who can examine announced results and can form its own conclusions about the culpability or innocence of the investigated persons, irrespective of what conclusions investigative commissions may arrive at. This is a reality that cannot be doubted as the public has been exposed in the past to these investigative commissions.

The present Truth Commission operating under the terms of the EO, however, introduces a ***new twist*** that the public and the country have not met before. For the first time, a Truth Commission, tasked with a truth-telling function, shall speak on the "truth" of what acts of graft and corruption were actually committed and who the guilty parties are. This official communication from a governmental body—the Truth Commission—whose express mandate is to find and "tell the truth" cannot but make a difference in the public perception.

At the very least, the widely-publicized conclusions of the Truth Commission shall serve as a mechanism for "priming" [53] the public, even the Ombudsman and the courts, to the Commission's way of thinking. Pervasively repeated as an official government pronouncement, ***the Commission's influence can go beyond the level of priming and can affect the public environment as well as the thinking of both the decision makers in the criminal justice system and the public in general***.

Otherwise stated, the Commission's publicly announced conclusions cannot but assume the appearance of truth once they penetrate and effectively color the public's perception, through repetition without significant contradiction as official government findings. These conclusions thus graduate to the level of "truth" in self-fulfillment of the name the Commission bears; *the subtle manipulation of the Commission's name and functions, fades in the background or simply becomes explainable incidents that cannot defeat the accepted truth*.

A very interesting related material about the effect of core beliefs on the decision-making of judges is the point raised by United States Supreme Court Associate Justice Benjamin N. Cardozo[54] in his book The Nature of the Judicial Process[55] where he said:

… Of the power of favour or prejudice in any sordid or vulgar or evil sense, I have found no trace, not even the faintest, among the judges whom I have known. But every day there is borne in on me a new conviction of the inescapable relation between the truth without us and the truth within. The spirit of the age, as it is revealed to each of us, is too often only the spirit of the group in which the accidents of birth or education or occupation or fellowship have given us place. No effort or revolution of the mind will overthrow utterly and at all times the empire of the subconscious loyalties. "Our beliefs and opinions," says James Harvey Robinson, "like our standards of conduct come to us insensibly as products of our companionship with our fellow men, not as results of our personal experience and the inferences we individually make from our own observations. We are constantly misled by our extraordinary faculty of 'rationalizing'—that is, of devising plausible arguments by accepting what is imposed upon us by the traditions of the group to which we belong. We are abjectly credulous by nature, and instinctively accept the verdict of the group. We are suggestible not merely when under the spell of an excited mob, or a fervent revival, but we are ever and always listening to the still small voice of the herd, and

are ever ready to defend and justify the instructions and warnings, and accept them as the mature results of our own reasoning." This was written, not of judges specially, but of men and women of all classes.[56] [Emphasis supplied]

Thus, Justice Cardozo accepted that "subconscious loyalties" to the "spirit" of the group, i.e., the core beliefs within, is a major factor that affects the decision of a judge. In the context of EO 1, that "spirit" or core belief is what a generally trusted government's[57] repeated invocation of "truth" apparently aims to reach. This goal assumes significance given the Solicitor General's statement that truth-telling is an end in itself. Read with what Justice Cardozo said, this goal translates to the more concrete and currently understandable aim—**to establish the "truth" as part of the accepted public belief**; the EO's aim is achieved irrespective of what the pertinent adjudicatory bodies may conclude, as even they could be influenced by the generally accepted "truth."

Further on, Justice Cardozo, speaking in the context of the development of case law in common law, went on to say, quoting Henderson:[58]

When an adherent to a systematic faith is brought continuously in touch with influences and exposed to desires inconsistent with that faith, a process of unconscious cerebration may take place, by which a growing store of hostile mental inclinations may accumulate, strongly motivating action and decision, but seldom emerging clearly into consciousness. In the meantime, the formulas of the old faith are retained and repeated by force of habit, until one day the realization comes that conduct and sympathies and fundamental desires have become so inconsistent with the logical framework that it must be discarded. Then begins the task of building up and rationalizing a new faith.

Although written in another context, this statement—relating to how one's belief is supplanted by another—runs parallel to how the belief system of an individual judge can be subtly affected by inconsistent influences and how he ultimately succumbs to a new belief.

Without doubt, the process of converting to a new belief is an unavoidable and continuous process that every decision maker undergoes as the belief system he started with, changes and evolves through in-court experiences and exposure to outside influences. Such exposure

cannot be faulted, particularly when brought on by the media working pursuant to its exercise of the freedoms of the press and speech, and speaking in the course of the clash of ideas in the public forum. The same exposure, however, is not as neutral and fault-free when it is precipitated by the government acting as a catalytic agent to hasten the achievement of its own ends, in this case, the disclosure of the "truth" regarding the alleged graft and corruption during the previous regime.

In the context of the EO, the Executive can investigate within the limits of its legal parameters and can likewise publicize the results of its investigations to the full limit of allowable transparency. But in so doing, it cannot act as catalyst by labelling the action of the Commission it has created as officially-sanctioned and authoritative truth-telling before the officially-designated bodies—the Ombudsman and the courts—have spoken. While the emergence of truth is a basic and necessary component of the justice system, the truth-seeking and truth-finding processes cannot be speeded up through steps that shortcut and bypass processes established by the Constitution and the laws. As heretofore mentioned, the international experiences that gave rise to the title Truth Commission were transitional situations where, for peculiar reasons (such as the temporary absence of an established judicial system or the need to speed up the transition to democratic rule), the use of ad hoc commissions were called for. In the Philippine setting, the closest similar situation would be the immediate aftermath of the 1986 EDSA Revolution as the country struggled in the transition from authoritarian martial law regime into a full-fledged democracy. To be sure, ***the shortcut to the emergence of truth, fashioned under the terms of EO 1, finds no justification after the 1987 Constitution and its rights, freedoms and guarantees have been fully put in place.***

A.4.2. The Effects on the Judicial System

To fully appreciate the potential prejudicial effects of truth-telling on the judicial system, the effects of media exposure—from the point of view of what transpires and the circumstances present under truth-telling and under the present justice system—deserve examination.

Under the present justice system, the media may fully report, as they do report, all the details of a reported crime and may even give the suspects detailed focus. These reports, however, are not branded as the "truth" but as matters that will soon be brought to the appropriate public authorities for proper investigation and prosecution, if warranted. In the courts, cases are handled on the basis of the rules of evidence and with due respect for the constitutional rights of the accused, and are reported based on actual developments, subject only to judicial requirements to ensure orderly proceedings and the observance of the rights of the accused. Only after the courts have finally spoken shall there be any conclusive narrative report of what actually transpired and how accused individuals may have participated in committing the offense charged. At this point, any public report and analysis of the findings can no longer adversely affect the constitutional rights of the accused as they had been given all the opportunities to tell their side in court under the protective guarantees of the Constitution.

In contrast, the circumstances that underlie Commission reports are different. The "truth" that the Commission shall publicize shall be based on "facts" that have not been tested and admitted according to the rules of evidence; by its own express rules, the technical rules of evidence do not apply to the Commission.[59] The reported facts may have also been secured under circumstances violative of the rights of the persons investigated under the guarantees of the Constitution. Thus, what the Commission reports might not at all pass the tests of guilt that apply under the present justice system, yet they will be reported with the full support of the government as the "truth" to the public. As fully discussed below, these circumstances all work to the active prejudice of the investigated persons whose reputations, at the very least, are blackened once they are reported by the Commission as participants in graft and corruption, even if the courts subsequently find them innocent of these charges.

A.5. Truth-telling: an unreasonable means to a reasonable objective.

Viewed from the above perspectives, what becomes plainly evident is an EO that, as a means of fighting graft and corruption, will effectively and prejudicially affect the parties inter-acting with the Truth Commission. The EO will erode the authority and even the integrity of the

Ombudsman and the courts in acting on matters brought before them under the terms of the Constitution; its premature and "truthful" report of guilt will condition the public's mind to reject any finding other than those of the Commission.

Under this environment, the findings or results of the second forum described above overwhelm the processes and whatever may be the findings or results of the first forum. In other words, the findings or results of the second forum—obtained without any assurance of the observance of constitutional guarantees—would not only create heightened expectations and exert unwanted pressure, but even induce changed perceptions and bias in the processes of the first forum in the manner analogous to what Justice Cardozo described above. The first casualties, of course, are the investigated persons and their basic rights, as fully explained elsewhere in this Opinion.

While EO 1 may, therefore, serve a laudable anti-graft and corruption purpose and may have been launched by the President in good faith and with all sincerity, its truth-telling function, undertaken in the manner outlined in the EO and its implementing rules, is not a means that this Court can hold as reasonable and valid, when viewed from the prism of due process. From this vantage point, the Commission is not only a mislabelled body but one whose potential outputs must as well be discarded for being unacceptable under the norms of the Constitution.

B. DISTORTION OF EXISTING LEGAL FRAMEWORK

The EO and its truth-telling function must also be struck down as they distort the constitutional and statutory plan of the criminal justice system without the authority of law and with an unconstitutional impact on the system.

B.1. The Existing Legal Framework

The Constitution has given the country a well-laid out and balanced division of powers, distributed among the legislative, executive and judicial branches, with specially established offices geared to accomplish specific objectives to strengthen the whole constitutional structure.

The Legislature is provided, in relation with the dispensation of justice, the authority to create courts with defined jurisdictions below the level of the Supreme Court;[60] to define the required qualifications for judges;[61] to define what acts are criminal and what penalties they shall carry;[62] and to provide the budgets for the courts.[63]

The Executive branch is tasked with the enforcement of the laws that the Legislature shall pass. In the dispensation of justice, the Executive has the prerogative of appointing justices and judges,[64] and the authority to investigate and prosecute crimes through a Department of Justice constituted in accordance the Administrative Code.[65] Specifically provided and established by the Constitution, for a task that would otherwise fall under the Executive's investigatory and prosecutory authority, is an independent Ombudsman for the purpose of acting on, investigating and prosecuting allegedly criminal acts or omissions of public officers and employees in the exercise of their functions. While the Ombudsman's jurisdiction is not exclusive, it is primary; it takes precedence and overrides any investigatory and prosecutory action by the Department of Justice.[66]

The Judiciary, on the other hand, is given the task of standing in judgment over the criminal cases brought before it, either at the first instance through the municipal and the regional trial courts, or on appeal or certiorari, through the appellate courts and ultimately to the Supreme Court.[67] An exception to these generalities is the Sandiganbayan, a special statutorily-created court with the exclusive jurisdiction over criminal acts committed by public officers and employees in the exercise of their functions.[68] Underlying all these is the Supreme Court's authority to promulgate the rules of procedure applicable to courts and their proceedings,[69] to appoint all officials and employees of the Judiciary other than judges,[70] and to exercise supervision over all courts and judiciary employees.[71]

In the usual course, an act allegedly violative of our criminal laws may be brought to the attention of the police authorities for unilateral fact-finding investigation. If a basis for a complaint exists, then the matter is brought before the prosecutor's office for formal investigation, through an inquest or a preliminary investigation, to determine if probable cause exists to justify the filing of a formal complaint or information before the courts. Aside from

those initiated at the instance of the aggrieved private parties, the fact-finding investigation may be made at the instance of the President or of senior officials of the Executive branch, to be undertaken by police authorities, by the investigatory agencies of the Department of Justice, or by specially constituted or delegated officials or employees of the Executive branch; the preliminary investigation for the determination of probable cause is a task statutorily vested in the prosecutor's office.[72] Up to this point, these activities lie within the Executive branch of government and may be called its *extrajudicial participation in the justice system*.

By specific authority of the Constitution and the law, a deviation from the above general process occurs in the case of acts allegedly committed by public officers and employees in the performance of their duties where, as mentioned above, the Ombudsman has primary jurisdiction. While the Executive branch itself may undertake a unilateral fact-finding, and the prosecutor's office may conduct preliminary investigation for purposes of filing a complaint or information with the courts, the Ombudsman's primary jurisdiction gives this office precedence and dominance once it decides to take over a case.[73]

Whether a complaint or information emanates from the prosecutor's office or from the Ombudsman, jurisdiction to hear and try the case belongs to the courts, mandated to determine—under the formal rules of evidence of the Rules of Court and with due observance of the constitutional rights of the accused—the guilt or innocence of the accused. A case involving criminal acts or omissions of public officers and employees in the performance of duties falls at the first instance within the exclusive jurisdiction of the Sandiganbayan,[74] subject to higher recourse to the Supreme Court. This is the *strictly judicial aspect of the criminal justice system*.

Under the above processes, our laws have delegated the handling of criminal cases to the justice system and there the handling should solely lie, supported by all the forces the law can muster, until the disputed matter is fully resolved. The proceedings—whether before the Prosecutor's Office, the Ombudsman, or before the courts—are open to the public and are thereby made transparent; freedom of information[75] and of the press[76] guarantee media participation, consistent with the justice system's orderly proceedings and the protection of the rights of parties.

The extrajudicial intervention of the Commission, as provided in the EO, even for the avowed purpose of "assisting" the Ombudsman, directly disrupts the established order, as the Constitution and the law do not envision a situation where fact-finding recommendations, **already labelled as "true,"** would be submitted to the Ombudsman by an entity within the Executive branch. This arrangement is simply not within the dispensation of justice scheme, as the determination of whether probable cause exists cannot be defeated, rendered suspect, or otherwise eroded by any prior process whose results are represented to be the "truth" of the alleged criminal acts. The Ombudsman may be bound by the findings of a court, particularly those of this Court, but not of any other body, most especially a body outside the regular criminal justice system. Neither can the strictly judicial aspect of the justice system be saddled with this type of fact-finding, as the determination of the guilt or innocence of an accused lies strictly and solely with the courts. Nor can the EO cloak its intent of undercutting the authority of the designated authorities to rule on the merits of the alleged graft and corruption through a statement that its findings are recommendatory; as has been discussed above, this express provision is negated in actual application by the title Truth Commission and its truth-telling function.

A necessary consequence of the deviation from the established constitutional and statutory plan is the extension of the situs of the justice system from its constitutionally and statutorily designated locations (equivalent to the above-described first forum), since the Commission will investigate matters that are bound to go to the justice system. In other words, the Commission's activities, including its truth-telling function and the second forum this function creates, become the prelude to the entry of criminal matters into the Ombudsman and into the strictly judicial aspect of the system.

In practical terms, this extension undermines the established order in the judicial system by directly bringing in considerations that are extraneous to the adjudication of criminal cases, and by co-mingling and confusing these with the standards of the criminal justice system. The result, unavoidably, is a qualitative change in the criminal justice system that is based, not on a legislative policy change, but on an executive fiat.

Because of truth-telling and its consequence of actively bringing in public opinion as a consideration, standards and usages other than those strictly laid down or allowed by the Constitution, by the laws and by the Rules of Court will play a part in the criminal justice system. For example, public comments on the merits of cases that are still sub judice may become rampant as comments on a truth commission's findings, not on the cases pending before the courts. The commission's "truthful" findings, made without respect for the rules on evidence and the rights of the accused, would become the standards of public perception of and reaction to cases, not the evidence as found by the courts based on the rules of evidence.

Once the door is opened to the Truth Commission approach and public opinion enters as a consideration in the judicial handling of criminal cases, then the rules of judging would have effectively changed; reliance on the law, the rules and jurisprudence would have been weakened to the extent that judges are on the lookout, not only for what the law and the rules say, but also for what the public feels about the case. In this eventuality, even a noisy minority can change the course of a case simply because of their noise and the media attention they get. (Such tactics have been attempted in the immediate past where pressure has been brought to bear on this Court through street demonstrations bordering on anarchy, the marshalling of opinions locally and internationally, and highly partisan media comments.) The primacy of public opinion may, without doubt, appeal to some but this is simply not the way of a Judiciary constitutionally-designed to follow the rule of law.

Another consequent adverse impact could be erosion of what the Constitution has very carefully fashioned to be a system where the interpretation of the law and the dispensation of justice are to be administered apolitically by the Judiciary. Politics always enters the picture once public opinion begins to be a significant consideration. At this point, even politicians—ever attuned to the public pulse—may register their own statements in the public arena on the merits of the cases even while matters are sub judice. The effects could be worse where the case under consideration carries its own political dimensions, as in the present case where the target involves the misdeeds of the previous administration.

Whether the Judiciary shall involve, or be involved, in politics, or whether it should consider, or be affected by, political considerations in adjudication, has been firmly decided by the Constitution and our laws in favour of insulation through provisions on the independence of the Judiciary—the unelected branch of government whose standard of action is the rule of law rather than the public pulse. This policy has not been proven to be unsound. Even if it is unsound, any change will have to be effected through legitimate channels—through the sovereignty that can change the Constitution, to the extent that the Judiciary's and the Ombudsman's independence and the exercise of judicial discretion are concerned, and through the Congress of the Philippines, with respect to other innovations that do not require constitutional changes.

To be sure, the President of the Philippines, through an executive or administrative order and without authority of law, cannot introduce changes or innovations into the justice system and significantly water down the authoritative power of the courts and of duly designated constitutional bodies in dispensing justice. The nobility of the President's intentions is not enough to render his act legal. As has been said often enough, ours is a government of laws, not of men.

C. LIMITS OF THE EXERCISE OF EXECUTIVE POWER IN THE JUSTICE SYSTEM

While the Executive participates in the dispensation of justice under our constitutional and statutory system through its investigatory and prosecutory arms and has every authority in law to ensure that the law is enforced and that violators are prosecuted, even these powers have limits.

The independence of the Ombudsman and its freedom from interference from all other departments of government in the performance of its functions is a barrier that cannot be breached, directly or indirectly, except only as the Constitution and the laws may allow. No such exception has been allowed or given to the President other than through the prosecution the Department of Justice may undertake[77] when the Ombudsman has not asserted its primary

jurisdiction. The concurrent jurisdiction given to the Department of Justice to prosecute criminal cases, incidentally, is a grant specific to that office,[78] not to any other office that the Executive may create through an executive order.

The Executive can, without doubt, recommend that specific violators be prosecuted and the basis for this recommendation need not even come from the Department of Justice; the basis may be the findings of the Office of the President itself independently of its Department of Justice. Notably, the other branches of government may also, and do in fact, make recommendations to the Ombudsman in the way that Congress, in the course of its fact-finding for legislative purposes, unearths anomalies that it reports to the Ombudsman. Even the Supreme Court recommends that Judiciary officials and employees found administratively liable be also criminally prosecuted.

The Executive can also designate officials and employees of the Executive Department (or even appoint presidential assistants or consultants)[79] to undertake fact-finding investigation for its use pursuant to the vast powers and responsibilities of the Presidency, but it cannot create a separate body, in the way and under the terms it created the Truth Commission, without offending the Constitution.

The following indicators, however, show that the President was not simply appointing presidential assistants or assistants when he constituted the Truth Commission as an investigating or fact-finding body.

First, the President "created" the Truth Commission; the act of creation goes beyond the mere naming, designation or appointment of assistants and consultants. There is no need to "create"—i.e., to constitute or establish something out of nothing, or to establish for the first time[80]—if only the designation or appointment of a presidential assistant or consultant is intended. To "create" an office, too, as the petitioners rightfully claim, is a function of the Legislature under the constitutional division of powers.[81] Note in this regard, and as more fully discussed below, that what the Revised Administrative Code, through its Section 31, allows the President is to "reorganize," not to create a public office within the Executive department.

Second, the Truth Commission, as created by the EO, appears to be a separate body[82] that is clearly beyond being merely a group of people tasked by the President to accomplish a specific task within his immediate office; its members do not operate in the way that presidential assistants and consultants usually do.

It is not insignificant that the Commission has its own Rules of Procedure that it issued on its own on the authority of the EO. Note that these are not the rules of the Office of the President but of another body, although one constituted by the President.

The Commission has its own complete set of officers, beginning from the Chair and members of the Commission; it has its own consultants, experts, and employees, although the latter are merely drawn from the Executive department;[83] and it even has provisions for its own budget, although these funds ride on and are to be drawn from the budget of the Office of the President.

Third, the Commission has its own identity, separate and distinct from the Office of the President, although it still falls within the structural framework of that office. The Commission undertakes its own "independent" investigation[84] that, according to the Solicitor General, will not be controlled by the Office of the President;[85] and it communicates on its own, under its own name, to other branches of government outside of the Executive branch.

Lastly, the Commission as an office has been vested with functions that not even the Office of the President possesses by authority of law, and which the President, consequently, cannot delegate. Specifically, the Commission has its truth-telling function, because it has been given the task to disclose the "truth" by the President, thus giving its report the imprimatur of truth well ahead of any determination in this regard by the constitutional bodies authorized to determine the existence of probable cause and the guilt or culpability of individuals.

If the President cannot give the official label of truth independently of the courts in a fact-finding in a criminal case, either by himself or through the Department of Justice, it only follows that he cannot delegate this task to any assistant, consultant, or subordinate, even granting that he can order a fact-finding investigation based on the powers of his office. This

truth-telling function differentiates the Truth Commission from other commissions constituted in the past such as the Agrava, Feliciano and Melo Commissions; the pronouncements of the latter bodies did not carry the imprimatur of truth, and were mere preliminary findings for the President's consideration. An exact recent case to drive home this point is the Chinese hostage incident where the Office of the President modified the Report submitted by a duly-constituted group headed by Secretary Leila de Lima.[86] Apparently, the findings of the De Lima committee did not carry the imprimatur of truth and were merely recommendatory; otherwise the Office of the President would not have modified its findings and recommendations.

Still on the point of the President's authority to delegate tasks to a body he has constituted, in no case can the President order a fact-finding whose results will operate to undercut the authority and integrity of the Ombudsman in a reported violation of the criminal laws by a public servant. The President's authority—outside of the instance when the Department of Justice acts in default of the Ombudsman—is to bring to the attention of, or make recommendations to, the Ombudsman violations of the law that the Executive branch uncovers in the course of law enforcement. This authority should be no different from that which Congress and the Supreme Court exercise on the same point.

Given all the possibilities open to the President for a legitimate fact-finding intervention—namely, through fact-finding by the Department of Justice or by the Office of the President itself, utilizing its own officials, employees, consultants or assistants—the President is not wanting in measures within the parameters allowed by law to fight graft and corruption and to address specific instances that come to his attention. To be sure, the Philippine situation right now is far from the situations in South Africa, Rwanda, and South America,[87] where quick transitional justice[88] had to be achieved because these countries were coming from a period of non-democratic rule and their desired justice systems were not yet fully in place. This reality removes any justification for the President to resort to extralegal (or even illegal) measures and to institutions and mechanisms outside of those already in place, in proceeding against grafters in the previous administration.

If the President and Congress are dissatisfied with the Ombudsman's performance of duty, the constitutionally-provided remedy is to impeach the Ombudsman based on the constitutionally-provided grounds for removal. The remedy is not through the creation of a parallel office that either duplicates or renders ineffective the Ombudsman's actions. By the latter action, the President already situates himself and the Executive Department into the justice system in a manner that the Constitution and the law do not allow.

D. THE PRESIDENT HAS NO AUTHORITY EITHER UNDER THE CONSTITUTION OR UNDER THE LAWS TO CREATE THE TRUTH COMMISSION.

Under the 1987 Constitution, the authority to create offices is lodged exclusively in Congress. This is a necessary implication[89] of its "plenary legislative power."[90] Thus, except as otherwise provided by the Constitution or statutory grant, no public office can be created except by Congress; any unauthorized action in this regard violates the doctrine of separation of powers.

In essence, according to Father Joaquin Bernas, "separation of powers means that legislation belongs to Congress, execution to the executive, settlement of legal controversies to the judiciary."[91] This means that the President cannot, under the present Constitution and in the guise of "executing the laws," perform an act that would impinge on Congress' exclusive power to create laws, including the power to create a public office.

In the present case, the exclusive authority of Congress in creating a public office is not questioned. The issue raised regarding the President's power to create the Truth Commission boils down to whether the Constitution allows the creation of the Truth Commission by the President or by an act of Congress.

D.1 The Section 31 Argument.

EO 1, by its express terms, [92] is premised on "Book III, Chapter 10, Section 31 of Executive Order No. 292, otherwise known as the Revised Administrative Code of the Philippines, which gives the President the

continuing authority to reorganize the Office of the President. The Solicitor General, of course, did not steadfastly hold on to this view; in the course of the oral arguments and in his Memorandum, he invoked other bases for the President's authority to issue EO 1. In the process, he likewise made various claims, not all of them consistent with one another, on the nature of the Truth Commission that EO 1 created.

Section 31 shows that it is a very potent presidential power, as it empowers him to (1) to re-organize his own internal office; (2) transfer any function or office from the Office of the President to the various executive departments; and (3) transfer any function or office from the various executive departments to the Office of the President.

To reorganize presupposes that *an office is or offices are already existing* and that (1) a reduction is effected, either of staff or of its functions, for transfer to another or for abolition because of redundancy; (2) offices are merged resulting in the retention of one as the dominant office; (3) two offices are abolished resulting in the emergence of a new office carrying the attributes of its predecessors as well as their responsibilities; or (4) a new office is created by dividing the functions and staff of an existing office. BuklodngKawaning EIIB v. Hon. Executive Secretary addresses this point when it said:

[R]eorganization involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. It takes place when there is an alteration of the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them.[93]

These traditional concepts of reorganization do not appear to have taken place in the establishment of the Truth Commission. As heretofore mentioned, by its plain terms, it was "created" and did not simply emerge from the functions or the personality of another office, whether within or outside the Office of the President. Thus, it is a completely new body that the President constituted, not a body that appropriated the powers of, or derived its powers from, the investigatory and prosecutory powers of the Department of Justice or any other investigatory body within the Executive branch.

From the Solicitor General's Memorandum, it appears that the inspiration for the EO came from the use and experiences of truth commissions in other countries that were coming from "determinate periods of abusive rule or conflict" for purposes of making "recommendations for [the] redress and future prevention"[94] of similar abusive rule or conflict. It is a body to establish the "truth of what abuses actually happened in the past;" the Solicitor General even suggests that the "doctrine of separation of powers and the extent of the powers of co-equal branches of government should not be so construed as to restrain the Executive from uncovering the truth about betrayals of public trust, from addressing their enabling conditions, and from preventing their recurrence."[95] By these perorations, the Solicitor General unwittingly strengthens the view that no reorganization ever took place when the Truth Commission was created; what the President "created" was a new office that does not trace its roots to any existing office or function from the Office of the President or from the executive departments and agencies he controls.

Thus, the President cannot legally invoke Section 31 to create the Truth Commission. The requirements for the application of this Section are simply not present; any insistence on the use of this Section can only lead to the invalidity of EO 1.

D.2. The PD 1416 and Residual Powers Argument

Independently of the EO's express legal basis, the Solicitor-General introduced a new basis of authority, theorizing that "the power of the President to reorganize the executive branch" is justifiable under Presidential Decree (PD) No. 1416, as amended by PD No. 1772, based on the President's residual powers under Section 20, Title I, Book III of E.O. No. 292." He cites in this regard the case of Larin v. Executive Secretary[96] and according to him:

xxx This provision speaks of such other powers vested in the President under the law. What law then which gives him the power to reorganize? It is Presidential Decree No. 1772 which amended Presidential Decree No. 1416. These decrees expressly grant the President of the Philippines the continuing authority to reorganize the national government, which includes the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities and to standardize salaries and materials.

The validity of these two decrees are unquestionable. The 1987 Constitution clearly provides that "all laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked."So far, there is yet no law amending or repealing said decrees.[97] [Emphasis supplied]

Unfortunately, even the invocation of the transitory clause of the 1987 Constitution (regarding the validity of laws and decrees not inconsistent with the Constitution) cannot save EO 1, as PD 1416 is a legislation that has long lost its potency.

Contemporary history teaches us that PD 1416 was passed under completely different factual and legal milieus that are not present today, thus rendering this presidential decree an anachronism that can no longer be invoked.

Prior to the EDSA Revolution of 1986 (and the 1987 Constitution), President Marcos exercised legislative powers and issued PD 1416, as amended by PD 1772, which, by its express terms, allowed the President to reorganize and/or create offices within the National Government. This was sanctioned in the exercise of the President's martial law powers and on the basis of Article XVII, Section 3(2) of the 1973 Constitution.[98]

Upon the adoption of the 1987 Constitution, and the re-introduction of the presidential form of government, the "separation of legislative and executive powers"[99] was restored. Similarly recognized were the limits on the exercise of the carefully carved-out and designated powers of each branch of government. Thus, Congress regained the exclusive power to create public offices; PD 1416, as amended by PD 1776—a creation of the legal order under President Marcos—lost its authority as a justification for the creation of an office by the President.

That PD 1416, as amended by PD 1776, has been overtaken and rendered an obsolete law, is not a new position taken within this Court. In his separate concurring opinion in Banda v. Executive Secretary,[100] Justice Antonio T. Carpio pointedly posited that the ruling in Larin v. Executive Secretary[101] (reiterated in BuklodngKawaning EIIB v. Hon. Sec. Zamora[102] and Tondo Medical Center Employees Association v. Court of Appeals[103]), which relied on Section

20, Chapter 7, Book II of the Administrative Code of 1987 in relation with P.D. 1416, cannot validate Executive Order No. 378 assailed in that case because "P.D. 1416, as amended, with its blending of legislative and executive powers, is a vestige of an autrocratic era, totally anachronistic to our present-day constitutional democracy." [104]

Thus, the present and firmly established legal reality is that under the 1987 Constitution and the Revised Administrative Code, the President cannot create a public office except to the extent that he is allowed by Section 31, Chapter 10, Book III of the Revised Administrative Code. As discussed above, even this narrow window cannot be used as the President did not comply with the requirements of Section 31.

D.3. The Authority of the President under the Faithful Execution Clause

Article VII, Section 17 of the 1987 Constitution directs and authorizes the President to faithfully execute the laws and the potency of this power cannot be underestimated. Owing perhaps to the latitude granted to the President under this constitutional provision, the Solicitor General posited that the President's power to create the Truth Commission may be justified under this general grant of authority. In particular, the Solicitor General argues that the "President's power to conduct investigations to aid him in ensuring the faithful execution of laws—in this case, fundamental laws on public accountability and transparency—is inherent in the President's powers as the Chief Executive." [105] The Solicitor General further argues: "That the authority of the President to conduct investigations and to create bodies to execute this power is not explicitly mentioned in the Constitution or in statutes does not mean he is bereft of such authority."[106]

That the President cannot, in the absence of any statutory justification, refuse to execute the laws when called for is a principle fully recognized by jurisprudence. In In re Neagle, the US Supreme Court held that the faithful execution clause is "not limited to the enforcement of acts of Congress according to their express terms."[107] According to Father Bernas, Neagle "saw as law that had to be faithfully executed not just formal acts of the legislature but any duty or obligation inferable from the Constitution or from statutes."[108]

Under his broad powers to execute the laws, the President can undoubtedly create ad hoc bodies for purposes of investigating reported crimes. The President, however, has to observe the limits imposed on him by the constitutional plan: he must respect the separation of powers and the independence of other bodies which have their own constitutional and statutory mandates, as discussed above. Contrary to what J. Antonio Eduardo B. Nachura claims in his Dissent, the President cannot claim the right to create a public office in the course of implementing the law, as this power lodged exclusively in Congress. An investigating body, furthermore, must operate within the Executive branch; the President cannot create an office outside the Executive department.

These legal realities spawned the problems that the Solicitor General created for himself when he made conflicting claims about the Truth Commission during the oral arguments. For accuracy, the excerpts from the oral arguments are best quoted verbatim.[109]Associate Justice Nachura: Mr. Solicitor General, most of my questions have actually been asked already and there are few things that I would like to be clarified on. Well, following the questions asked by Justice Carpio, I would like a clarification from you, a definite answer, is the Truth Commission a public office?

Solicitor General Cadiz: No, Your Honor.
Associate Justice Nachura: Ah, you mean it is not a public office?

Solicitor General Cadiz: It is not a public office in the concept that it has to be created by Congress, Your Honor.
Associate Justice Nachura: Oh, come on, I agree with you that the President can create public offices, that was what, ah, one of the questions I asked Congressman Lagman.

Solicitor General Cadiz: Thank you, your Honor.
Associate Justice Nachura: Because he was insisting that only Congress could create public office although, he said, the President can create public offices but only in the context of the authority granted under the Administrative Code of 1987. So, it is a public office?

Solicitor General Cadiz: Yes, Your Honor.
Associate Justice Nachura: This is definite, categorical. You are certain now that Truth Commission (interrupted)

Solicitor General Cadiz: Yes, Your Honor, under the Office of the President Proper, yes, Your Honor.
Associate Justice Nachura: Again?

Solicitor General Cadiz: That this Truth Commission is a public office, Your Honor, created under the Office of the President.
Associate Justice Nachura: Okay, created under the Office of the President, because it is the President who created it. And the President can create offices only within the executive department. He cannot create a public office outside of the executive department, alright.

Solicitor General Cadiz: Yes, Your Honor.
Associate Justice Nachura: Okay. So, the Commissioners who are appointed are what, Presidential Assistants? Are they Presidential Assistants?

Solicitor General Cadiz: They are Commissioners, Your Honor.
Associate Justice Nachura: They are, therefore, alter-egos of the President?

Solicitor General Cadiz: No, Your Honor. There is created a Truth Commission, and Commissioners are appointed and it so stated here that they are independent.
Associate Justice Nachura: Aha, okay.

Solicitor General Cadiz: Of the Office of the President.
Associate Justice Nachura: Are you saying now that the Commissioners are not under the power and control of the President of the Philippines?

Solicitor General Cadiz: It is so stated in the Executive Order, Your Honor.
Associate Justice Nachura: Aha, alright. So, the Truth Commission is not an office within the executive department, because it is not under the power of control of the President, then, Section 17 of Article VII would not apply to them, is that it?

Solicitor General Cadiz: Your Honor, the President has delineated his power by creating an Executive Order which created the Commission, which says, that this is an independent body, Your Honor.
Associate Justice Nachura: Okay. So, what you are saying is, this is a creation of the President, it is under the President's power of control, but the President has chosen not to exercise the power of control by declaring that it shall be an independent body?

Solicitor General Cadiz: Yes, Your Honor.
Associate Justice Nachura: That is your position. I would like you to place that in your memorandum and see. I would like to see how you will develop that argument.

The Solicitor General, despite his promise to respond through his Memorandum, never bothered to explain point-by-point his unusual positions and conclusions during the oral arguments, responding only with generalities that were not responsive or in point.[110]

Specifically, while admitting that the Truth Commission is a "creation" of the President under his office pursuant to the latter's authority under the Administrative Code of 1987, the Solicitor General incongruously claimed that the Commission is "independent" of the Office of the President and is not under his control. Mercifully, J. Nachura suggested that the President may have created a body under his control but has chosen not to exercise the power of control by declaring that it is an independent body, to which the Solicitor General fully agreed.

Truth to tell (no pun intended), the Solicitor General appears under these positions to be playing ***a game of smoke and mirrors*** with the Court. For purposes of the creation of the Truth Commission, he posits that the move is fully within the President's authority and in the performance of his executive functions. This claim, of course, must necessarily be based on the premise that execution is by the President himself or by people who are within the Executive Department and within the President's power of supervision and control, as the President cannot delegate his powers beyond the Executive Department. At the same time, he claims that the Commissioners (whom he refuses to refer to as Presidential Assistants or as alter egos of the President)[111] are independent of the President, apparently because the President has waived his power of control over them.

All these necessarily lead to the question: can the President really create an office within the Executive branch that is independent of his control? The short answer is he cannot, and the short reason again is the constitutional plan. The execution and implementation of the laws have been placed by the Constitution on the shoulders of the President and on none other.[112] He cannot delegate his executive powers to any person or entity outside the Executive department except by authority of the Constitution or the law (which authority in this case he does not have), nor can he delegate his authority to undertake fact-finding as an incident of his executive power, and at the same time take the position that he has no responsibility for the fact-finding because it is independent of him and his office.

Under the constitutional plan, the creation of this kind of office with this kind of independence is lodged only in the Legislature.[113] For example, it is only the Legislature which can create a body like the National Labor Relations Commission whose decisions are final and are neither appealable to the President nor to his alter ego, the Secretary of Labor.[114] Yet another example, President Corazon Aquino herself, because the creation of an independent commission was outside her executive powers, deemed it necessary to act pursuant to a legislative fiat in constituting the first Davide Commission of 1989.[115]

Apparently, the President wanted to create a separate, distinct and independent Commission because he wants to continuously impress upon the public—his audience in the second forum—that this Commission can tell the "truth" without any control or prompting from the Office of the President and without need of waiting for definitive word from those constitutionally-assigned to undertake this task. Here, truth-telling again rears its ugly head and is unmasked for what it really is—an attempt to bypass the constitutional plan on how crimes are investigated and resolved with finality.

Otherwise stated, if indeed the President can create the Commission as a fact-finding or investigating body, the Commission must perforce be an entity that is within the Executive branch and as such is subject to the control and supervision of the President. In fact, the circumstances surrounding the existence of the Commission—already outlined above in terms of its processes, facilities, budget and staff—cannot but lead to control. Likewise, if indeed the Truth Commission is under the control of the President who issued the EO with openly-

admitted political motivation,[116] then the Solicitor General's representation about the Commission's independently-arrived "truth" may fall under the classification of a smoke and mirror political move. Sad to state, the Solicitor General chose to aim for the best of all worlds in making representations about the creation and the nature of the Commission. We cannot allow this approach to pass unnoticed and without the observations it deserves.

If the President wants a truly independent Commission, then that Commission must be created through an act of Congress; otherwise, that independent Commission will be an unconstitutional body. Note as added examples in this regard that previous presidential fact-finding bodies, created either by Executive or Administrative Orders (i.e., Feliciano, Melo, Zeñarosa and IIRC Commissions), were all part of the Executive department and their findings, even without any express representation in the orders creating them, were necessarily subject to the power of the President to review, alter, modify or revise according to the best judgment of the President. That the President who received these commissions' reports did not alter the recommendations made is not an argument that the President can create an "independent" commission, as the Presidents receiving the commissions' reports could have, but simply did not, choose to interfere with these past commissions' findings.

In sum, this Court cannot and should not accept an arrangement where: (1) the President creates an office pursuant to his constitutional power to execute the laws and to his Administrative Code powers to reorganize the Executive branch, and (2) at the same time or thereafter allow the President to disavow any link with the created body or its results through a claim of independence and waiver of control. This arrangement bypasses and mocks the constitutional plan on the separation of powers; among others, it encroaches into Congress' authority to create an office. This consequence must necessarily be fatal for the arrangement is inimical to the doctrine of separation of powers whose purpose, according to Father Joaquin Bernas, is:

to prevent concentration of powers in one department and thereby to avoid tyranny. But the price paid for the insurance against tyranny is the risk of a degree of inefficiency and even the danger of gridlock. As Justice Brandeis put it, "the doctrine of separation of powers was

adopted…not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of governmental powers among the three departments, to save the people from autocracy."[117]

Indeed, to allow one department of government, without the authority of law or the Constitution, to be granted the authority to bestow an advanced imprimatur of "truth" bespeaks of a concentration of power that may well overshadow any initiative to combat graft and corruption; in its own way, this grant itself is an open invitation to the very evils sought to be avoided.

E. VIOLATIONS OF THE RIGHTS OF INVESTIGATED PERSONS

E.1 Violation of Personal Rights

Separately from the above effects, truth-telling as envisioned under the EO, carries prejudicial effects on the persons it immediately targets, namely: the officials, employees and private individuals alleged to have committed graft and corruption during the previous administration. This consequence proceeds from the above discussed truth-telling premise that—whether the Commission reports (recommending the charging of specific individuals) are proven or not in the appropriate courts—the Commission's function of truth-telling function would have been served and the Commission would have effectively acted against the charged individuals.

The most obvious prejudicial effect of the truth-telling function on the persons investigated is on their persons, reputation and property. Simply being singled out as "charged" in a truth-telling report will inevitably mean disturbance of one's routines, activities and relationships; the preparation for a defense that will cost money, time and energy; changes in personal, job and business relationships with others; and adverse effects on jobs and businesses. Worse, reputations can forever be tarnished after one is labelled as a participant in massive graft and corruption.

Conceivably, these prejudicial effects may be dismissed as speculative arguments that are not justified by any supporting evidence and, hence, cannot effectively be cited as factual basis for the invalidity of the EO. Evidence, however, is hardly necessary where the prejudicial effects are

self-evident, i.e., given that the announced and undisputed government position that truth-telling per se, in the manner envisioned by the EO and its implementing rules, is an independent objective the government wants to achieve. When the government itself has been heard on the "truth," the probability of prejudice for the individual charged is not only a likelihood; it approaches the level of certainty.

In testing the validity of a government act or statute, such potential for harm suffices to invalidate the challenged act; evidence of actual harm is not necessary in the way it is necessary for a criminal conviction or to justify an award for damages. In plainer terms, the certainty of consequent damage requires no evidence or further reasoning when the government itself declares that for as long as the "story" of the allegedly massive graft and corruption during the past administration is told, the Commission would have fulfilled one of its functions to satisfaction; under this reckless approach, it is self-evident that the mistaken object of the "truth" told must necessarily suffer.

In the context of this effect, the government statement translates to the message: forget the damage the persons investigated may suffer on their persons and reputation; forget the rights they are entitled to under the Constitution; give primacy to the story told. This kind of message, of course, is unacceptable under a Constitution that establishes the strongest safeguards, through the Bill of Rights, in favor of the individual's right to life, security and property against the overwhelming might of the government.

E.2 Denial of the right to a fair criminal trial.

The essence of the due process guarantee in a criminal case, as provided under Section 14(1) of the Constitution, is the right to a fair trial. What is fair depends on compliance with the express guarantees of the Constitution, and on the circumstances of each case.

When the Commission's report itself is characterized, prior to trial, and held out by the government to be the true story of the graft and corruption charged, the chances of individuals to have a fair trial in a subsequent criminal case cannot be very great.

Consider on this point that not even the main actors in the criminal justice system—the Ombudsman, the Sandiganbayan and even this Court—can avoid the cloud of "untruth" and a doubtful taint in their integrity after the government has publicized the Commission's findings as the truth. If the rulings of these constitutional bodies themselves can be suspect, individual defenses for sure cannot rise any higher.

Where the government simply wants to tell its story, already labelled as true, well ahead of any court proceedings, and judicial notice is taken of the kind of publicity and the ferment in public opinion that news of government scandals generate, it does not require a leap of faith to conclude that an accused brought to court against overwhelming public opinion starts his case with a less than equal chance of acquittal. The presumption of innocence notwithstanding, the playing field cannot but be uneven in a criminal trial when the accused enters trial with a government-sponsored badge of guilt on his forehead.[118] The presumption of innocence in law cannot serve an accused in a biased atmosphere pointing to guilt in fact because the government and public opinion have spoken against the accused.

Viewed from the perspective of its cause, the prejudicial publicity, that adversely affects the chances of an accused for a fair trial after the EO has done its job, is not the kind that occurs solely because of the identity of the individual accused. This prejudice results from a cause systemic to the EO because of its truth-telling feature that allows the government to call its proceedings and reports a process of truth-telling where the tales cannot but be true. This kind of systemic aberration has no place in the country's dispensation of criminal justice system and should be struck down as invalid before it can fully work itself into the criminal justice system as an acceptable intervention.

F. THE TRUTH COMMISSION AND THE EQUAL PROTECTION CLAUSE

The guarantee of equal protection of the law is a branch of the right to due process embodied in Article III, Section 1 of the Constitution. It is rooted in the same concept of fairness that underlies the due process clause. In its simplest sense, it requires equal treatment, i.e., the

absence of discrimination, for all those under the same situation. An early case, People v. Cayat,[119] articulated the requisites determinative of valid and reasonable classification under the equal protection clause, and stated that it must

(1) rest on substantial distinctions;

(2) be germane to the purpose of the law;

(3) not be limited to existing conditions only; and

(4) apply equally to all members of the same class.

In our jurisdiction, we mainly decide equal protection challenges using a **"rational basis"** test, coupled with a "deferential" scrutiny of legislative classifications and a reluctance to invalidate a law unless there is a showing of a clear and unequivocal breach of the Constitution.[120] Our views on the matter, however, have not remained static, and have been attuned to the jurisprudential developments in the United States on the levels of scrutiny that are applied to determine the acceptability of any differences in treatment that may result from the law. [121]

Serrano v. Gallant Maritime Services, Inc.[122] summarizes the three tests employed in this jurisdiction as follows:

There are three levels of scrutiny at which the Court reviews the constitutionality of a classification embodied in a law: a) the deferential or rational basis scrutiny in which the challenged classification needs only be shown to be rationally related to serving a legitimate state interest; b) the middle-tier or intermediate scrutiny in which the government must show that the challenged classification serves an important state interest and that the classification is at least substantially related to serving that interest; and c) strict judicial scrutiny in which a legislative classification which impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class is presumed unconstitutional, and the burden is upon the government to prove that the classification is necessary to achieve a ***compelling state interest*** and that it is the ***least restrictive means*** to protect such interest. [Emphasis supplied]

The most exacting of the three tests is evidently the strict scrutiny test, which requires the government to show that the challenged classification serves a compelling state interest and that the classification is necessary to serve that interest.[123] Briefly stated, the strict scrutiny test is applied when the challenged statute either:

(1) classifies on the basis of an inherently suspect characteristic; or

(2) infringes fundamental constitutional rights.

In these situations, the usual presumption of constitutionality is reversed, and it falls upon the government to demonstrate that its classification has been narrowly tailored to further compelling governmental interests; otherwise, the law shall be declared unconstitutional for violating the equal protection clause.[124]

In EO 1, for the first time in Philippine history, the Executive created a public office to address the "reports of graft and corruption of such magnitude that shock and offend the moral and ethical sensibilities of the people, committed….during the previous administration" through fact-finding, policy formulation and truth-telling.[125] While fact-finding has been undertaken by previous investigative commissions for purposes of possible prosecution and policy-formulation, a first for the current Truth Commission is its task of truth-telling. The Commission not only has to investigate reported graft and corruption; it also has the authority to announce to the public the "truth" regarding alleged graft and corruption committed during the previous administration.

EO 1's problem with the equal protection clause lies in the truth-telling function it gave the Truth Commission.

As extensively discussed earlier in this Opinion, truth-telling is not an ordinary task, as the Commission's reports to the government and the public are already given the imprimatur of truth way before the allegations of graft and corruption are ever proven in court. This feature, by itself, is a unique differential treatment that cannot but be considered in the application of the jurisprudential equal protection clause requirements.

Equally unique is the focus of the Commission's investigation—it solely addresses alleged graft and corruption committed during the past administration. This focus is further narrowed down to "third level public officers and higher, their co-principal, accomplices and accessories from the private sector, if any, during the previous administration."[126] Under these terms, the subject of the EO is limited only to a very select group—the highest officials, not any ordinary government official at the time. Notably excluded under these express terms are third level and higher officials of other previous administrations who can still be possibly be charged of similar levels of graft and corruption they might have perpetrated during their incumbency. Likewise excepted are the third level officials of the present administration who may likewise commit the same level of graft and corruption during the term of the Commission.

Thus, from the points of truth-telling and the focus on the people to be investigated, at least a double layer of differential treatment characterizes the Truth Commission's investigation. Given these disparate treatment, the equal protection question that arises is: does the resulting classification and segregation of third level officials of the previous administration and their differential treatment rest on substantial distinctions? Stated more plainly, is there reasonable basis to differentiate the officials of the previous administration, both from the focus given to them in relation with all other officials as pointed out above, and in the truth-telling treatment accorded to them by the Commission?

Still a deeper question to be answered is: what level of scrutiny should be given to the patent discrimination in focus and in treatment that the EO abets? Although this question is stated last, it should have been the initial consideration, as its determination governs the level of scrutiny to be accorded; if the strict scrutiny test is appropriate, the government, not the party questioning a classification, carries the burden of showing that permissible classification took place. This critical consideration partly accounts, too, for the relegation to the last, among the EO's cited grounds for invalidity, of the equal protection clause violation; the applicable level of scrutiny may depend on the prior determination of whether, as held in Serrano, the disparate treatment is attended by infringement of fundamental constitutional rights.

"Fundamental rights" whose infringement leads to strict scrutiny under the equal protection clause are those basic liberties explicitly or implicitly guaranteed in the Constitution. Justice Carpio-Morales, although in dissent in Central Bank Employees Association, Inc. v. BangkoSentralng Pilipinas,[127] elaborated on this point when she said:

Most fundamental rights cases decided in the United States require equal protection analysis because these cases would involve a review of statutes which classify persons and impose differing restrictions on the ability of a certain class of persons to exercise a fundamental right. Fundamental rights include only those basic liberties explicitly or implicitly guaranteed by the U.S. Constitution. And precisely because these statutes affect fundamental liberties, any experiment involving basic freedoms which the legislature conducts must be critically examined under the lens of Strict Scrutiny.

Fundamental rights which give rise to Strict Scrutiny include the right of procreation, the right to marry, the right to exercise First Amendment freedoms such as free speech, political expression, press, assembly, and so forth, the right to travel, and the right to vote. [Emphasis supplied]

In the present case, as shown by the previously cited grounds for the EO's invalidity, EO No. 1 infringes the personal due process rights of the investigated persons, as well as their constitutional right to a fair trial. Indisputably, both these rights—one of them guaranteed under Section 1, Article III, and under Section 14 of the same Article—are, by jurisprudential definition, fundamental rights. With these infringements, the question now thus shifts to the application of the strict scrutiny test—an exercise not novel in this jurisdiction.

In the above-cited Central Bank Employees Association, Inc. case,[128] we stated:

Congress retains its wide discretion in providing for a valid classification, and its policies should be accorded recognition and respect by the courts of justice except when they run afoul of the Constitution.**The deference stops where the classification violates a fundamental right, or prejudices persons accorded special protection by the Constitution.** When these violations

arise, this Court must discharge its primary role as the vanguard of constitutional guaranties, **and require a stricter and more exacting adherence to constitutional limitations.** Rational basis should not suffice.

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But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict. A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.[Underscoring supplied]

Stripped of the usual deference accorded to it, the government must show that a compelling state interest exists to justify the differential treatment that EO 1 fosters.

Serrano v. Gallant Maritime Services, Inc.[129] helpfully tells us the compelling state interest that is critical in a strict scrutiny examination:

What constitutes compelling state interest is measured by the scale of rights and powers arrayed in the Constitution and calibrated by history. It is akin to the paramount interest of the state for which some individual liberties must give way, such as the public interest in safeguarding health or maintaining medical standards, or in maintaining access to information on matters of public concern.

In this same cited case, the Court categorically ruled that "the burden is upon the government to prove that the classification is necessary to achieve a ***compelling state interest*** and that it is the ***least restrictive means*** to protect such interest."[130]

On its face, the compelling state interest the EO cites is the "urgent call for the determination of the truth regarding certain reports of large scale graft and corruption in the government and to put a closure to them by the filing of the appropriate cases against those involved if

warranted, and to deter others from committing the evil, restore the people's faith and confidence in the Government and in their public servants."[131] Under these terms, what appears important to the government as means or mediums in its fight against graft and corruption are (1) to expose the graft and corruption the past administration committed; (2) to prosecute the malefactors, if possible; and (3) to set an example for others. Whether a compelling State interest exists can best be tested through the prism of the means the government has opted to utilize.

In the usual course and irrespective of who the malefactors are and when they committed their transgressions, grafters and corruptors ought to be prosecuted. This is not only a goal but a duty of government. Thus, by itself, the prosecution that the EO envisions is not any different from all other actions the government undertakes day to day under the criminal justice system in proceeding against the grafters and the corrupt. In other words, expressed as a duty, the compelling drive to prosecute must be the same irrespective of the administration under which the graft and corruption were perpetrated. If indeed this is so, what compelling reasons can there be to drive the government to use the EO and its unusual terms in proceeding against the officials of the previous administration?

If the EO's terms are to be the yardstick, the basis for the separate focus is the "extent and magnitude" of the reported graft and corruption which "shock and offend the moral and ethical sensibilities of the people." What this "extent and magnitude" is or what specific incidents of massive graft are referred to, however, have been left vague. Likewise, no explanation has been given on why special measures—i.e., the special focus on the targeted officials, the creation of a new office, and the grant of truth-telling authority—have been taken.

Effectively, by acting as he did, the President simply gave the Commission the license to an open hunting season to tell the "truth" against the previous administration; the Commission can investigate an alleged single billion-peso scam, as well as transactions during the past administration that, collectively, may reach the same amount. Only the Commission, in its wisdom, is to judge what allegations or reports of graft and corruption to cover for as long as these were during the past administration. In the absence of any specific guiding principle or directive, indicative of its rationale, the conclusion is unavoidable that the EO carries no special

compelling reason to single out officials of the previous administration; what is important is that the graft be attributed to the previous administration. In other words, the real reason for the EO's focus lies elsewhere, not necessarily in the nature or extent of the matters to be investigated.

If, as strongly hinted by the Solicitor General, dissatisfaction exists regarding the Ombudsman's zeal, efforts, results, and lack of impartiality, these concerns should be addressed through the remedies provided under the Constitution and the laws, not by bypassing the established remedies under these instruments. Certainly, the remedy is not through the creation of new public office without the authority of Congress.

Every successful prosecution of a graft and corruption violation ought to be an opportunity to set an example and to send a message to the public that the government seriously intends to discharge its duties and responsibilities in the area of graft and corruption. To be sure, the conviction of a third level officer is a high profile accomplishment that the government can and should announce to all as evidence of its efforts and of the lesson that the conviction conveys. This government's accomplishment, however, does not need to be against an official or officials of the previous administration in order to be a lesson; it can be any third level or higher official from any administration, including the present. ***In fact, the present administration's serious intent in fighting graft may all the more be highlighted if it will also proceed against its own people***.

It is noteworthy that the terms of the EO itself do not provide any specific reason why, for purposes of conveying a message against graft and corruption, the focus should be on officials of the previous administration under the EO's special truth-telling terms. As mentioned above, the extent of the alleged graft and corruption during the previous administration does not appear to be a sufficient reason for distinction under the EO's vague terms. Additionally, if a lesson for the public is really intended, the government already has similar successful prosecutions to its credit and can have many more graphic examples to draw from; it does not need to be driven to unusual means to show the graft and corruption committed under the previous administration. The host of examples and methodologies already available to the

government only demonstrate that the focus on, and differential treatment of, specific officials for public lesson purposes involves a classification unsupported by any special overriding reason.

Given the lack of sufficiently compelling reasons to use two (2) of the three (3) objectives or interests the government cited in EO 1, what is left of these expressed interests is simply the desire to expose the graft and corruption the previous administration might have committed. Interestingly, the EO itself partly provides the guiding spirit that might have moved the Executive to its intended expose as it unabashedly points to the President's promise made in the last election—"Kung walang corrupt, walang mahirap."[132] There, too, is the Solicitor General's very calculated statement that truth-telling is an end in itself that the EO wishes to achieve.

Juxtaposing these overt indicators with the EO's singleness of focus on the previous administration, what emerges in bold relief is the conclusion that the EO was issued largely for political ends: the President wants his election promise fulfilled in a dramatic and unforgettable way; none could be more so than criminal convictions, or at least, exposure of the "truth" that would forever mark his political opponents; thus, the focus on the previous administration and the stress on establishing their corrupt ways as the "truth."

Viewed in these lights, the political motivation behind the EO becomes inescapable. Political considerations, of course, cannot be considered a legitimate state purpose as basis for proper classification.[133] They may be specially compelling but only for the point of view of a political party or interest, not from the point of view of an equality-sensitive State.

In sum, no sufficient and compelling state interest appears to be served by the EO to justify the differential treatment of the past administration's officials. In fact, exposure of the sins of the previous administration through truth-telling should not even be viewed as "least restrictive" as it is in fact a means with pernicious effects on government and on third parties.

For these reasons, the conclusion that the EO violates the equal protection clause is unavoidable.

G. A FEW LAST WORDS

Our ruling in this case should not in any way detract from the concept that the Judiciary is the least dangerous branch of government. The Judiciary has no direct control over policy nor over the national purse, in the way that the Legislature does. Neither does it implement laws nor exercise power over those who can enforce laws and national policy. All that it has is the power to safeguard the Constitution in a manner independent of the two other branches of government. Ours is merely the power to check and ensure that constitutional powers and guarantees are observed, and constitutional limits are not violated.

Under this constitutional arrangement, the Judiciary offers the least threat to the people and their rights, and the least threat, too, to the two other branches of government. If we rule against the other two branches of government at all in cases properly brought before us, we do so only to exercise our sworn duty under the Constitution. We do not prevent the two other branches from undertaking their respective constitutional roles; we merely confine them to the limits set by the Constitution.

This is how we view our present action in declaring the invalidity of EO 1. We do not thereby impugn the nobility of the Executive's objective of fighting graft and corruption. We simply tell the Executive to secure this objective within the means and manner the Constitution ordains, perhaps in a way that would enable us to fully support the Executive.

To be sure, no cause exists to even impliedly use the term "imperial judiciary" [134] in characterizing our action in this case.

This Court, by constitutional design and for good reasons, is not an elective body and, as already stated above, has neither reason nor occasion to delve into politics—the realm already occupied by the two other branches of government. It cannot exercise any ascendancy over the two other branches of government as it is, in fact, dependent on these two branches in many ways, most particularly for its budget, for the laws and policies that are the main subjects for its interpretation, and for the enforcement of its decisions. While it has the power to interpret the Constitution, the Judiciary itself, however, is subject to the same Constitution and, for this reason, must in fact be very careful and zealous in ensuring that it respects the

very instrument it is sworn to safeguard. We are aware, too, that we "cannot be the repository of all remedies"[135] and cannot presume that we can cure all the ills of society through the powers the Constitution extended to us. Thus, this Court—by its nature and functions—cannot be in any way be "imperial," nor has it any intention to be so. Otherwise, we ourselves shall violate the very instrument we are sworn to uphold.

As evident in the way this Court resolved the present case, it had no way but to declare EO invalid for the many reasons set forth above. The cited grounds are neither flimsy nor contrived; they rest on solid legal bases. Unfortunately, no other approach exists in constitutional interpretation except to construe the assailed governmental issuances in their best possible lights or to reflect these effects in a creative way where these approaches are at all possible. Even construction in the best lights or a creative interpretation, however, cannot be done where the cited grounds are major, grave and affect the very core of the contested issuance—the situation we have in the present case.

Nor can this Court be too active or creative in advocating a position for or against a cause without risking its integrity in the performance of its role as the middle man with the authority to decide disputed constitutional issues. The better (and safer) course for democracy is to have a Court that holds on to traditional values, departing from these values only when these values have become inconsistent with the spirit and intent of the Constitution.

In the present case, as should be evident in reading the ponencia and this Separate Opinion, we have closely adhered to traditional lines. If this can be called activism at all, we have been an activist for tradition. Thereby, we invalidated the act of the Executive without however foreclosing or jeopardizing his opportunity to work for the same objective in some future, more legally reasoned, and better framed course of action.

ARTURO D. BRION
Associate Justice

Notes:

[1] Constitution, Article III, Section 1 and 14, which states:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: *Provided*, that he has been duly notified and his failure to appear is unjustifiable.

[2] Executive Order No. 1, "**Creating the Philippine Truth Commission of 2010," Section 1.**

[3] TSN, September 28, 2010, pp. 23, 39-40, 52, 60, 73-75, 123-126.

[4] Id. at 182.

[5] Id. at 58-60.

[6] EO 1, Section 1, par. 2.

[7] Id., Section 2, paragraphs. H and I; Sections 3, 4 and 5.

[8] Id., Sections 12, 13.

[9] Id., Section 11.

[10] Id., Section 2 (b).

[11] Id., Sections 2 (c), (d), (e), (f), (g), (h), (i) and 6.

[12] Id., Section 6.

[13] Id., Section 2.

[14] Id., Section 15.

[15] Id., Section 7.

[16] Id., Section 8.

[17] Resolution 001, "Rules of Procedure of the Philippine Truth Commission," September 20, 2010.

[18] Rules, Rule 4, Section 1(b).

[19] Id., Rule 4, Section 1(b), paragraph 2.

[20] Rules, Rule 4, Section 2.

[21] EO 1, Section 8.

[22] Rules, Rule 5.

[23] Petitioner Lagman's Petition for *Certiorari*, *rollo*, pp. 34-43; Respondents' Memorandum, *id*. at 322-323.

[24] See Mark Freeman, Truth Commissions and Procedural Fairness (2006).

[25] Freeman, supra note 24 at 12-13 citing Priscilla Hayner, Unspeakable Truths: Facing the Challenge of Truth Commissions (2nd ed., 2004), p. 14.

[26] Freeman, supra note 24 at 14 [Freeman points out that Hayner omitted the element in the definition that "truth commissions focus on severe acts of violence or repression." He stated further that "[s]uch acts may take many forms, ranging from arbitrary detention to torture to

enforced disappearance to summary execution."

[27] Theresa Klosterman, The Feasibility and Propriety of a Truth Commission in Cambodia: Too Little? Too Late?15 Ariz. J. Int'l & Comp. L. 833, 843-844 (1998). See also Priscilla Hayner, *Fifteen Truth Commissions 1974 to 1994: A Comparative Study,* 16 HUM. RTS. Q. 597, 600, 607 (1994).

[28] An attempt has been made during the oral arguments to characterize massive graft and corruption as a violation of human rights, but this characterization does not appear to be based on the settled definition of human rights (TSN, Sept. 7, 2010, p. 83-84).

[29] See Villanueva v. CA, G.R. No. 110921, January 28, 1998, 285 SCRA 180; Fabia v. IAC, G.R. No. L-66101 November 21, 1984, 133 SCRA 364; Lacoste v. Hernandez, G.R. No.L-63796-97, May 21, 1984, 129 SCRA 373; Lu v. Yorkshire Insurance, 43 Phil. 633 (1922); People v. Macasinag, G.R. No.L-18779, August 18, 1922, 43 Phil. 674 (1922); Correa v. Mateo, 55 Phil. 79 (1930); People v. Macasinag, 43 Phil. 674 (1922).

[30] See Joaquin G. Bernas, S.J. The 1987 Constitution Of The Republic Of The Philippines: A Commentary (2009 ed.), p. 118.

[31] See Id. at 119, citing U.S. v. Toribio, 15 Phil. 85 (1910), which quoted Lawton v. Steel:

> [T]*he State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests*. (Barbier vs. Connolly, 113 U.S. 27; Kidd vs. Pearson, 128 U.S. 1.) To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose

unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the court.

[32] Republic Act No. 6770, Section 15, par.1, November 17, 1989, "An Act Providing For the Functional and Structural Organization of the Office of the Ombudsman, and For Other Purposes," See also Ombudsman v. Enoc, G.R. Nos. 145957-68, January 25, 2002, 374 SCRA 691. See also Ombudsman v. Breva, G.R. No. 145938, February 10, 2006, 482 SCRA 182.

[33] Presidential Decree No. 1606, December 10, 1978, "Revising Presidential Decree No. 1486, Creating a Special Court to be known as Sandiganbayan and for other purposes," as amended by Republic Act No. 8249, February 5, 1997, "An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending For The Purpose Presidential Decree No. 1606, As Amended, Providing Funds Therefor, And For Other Purposes." See also PCGG v. Hon. Emmanuel G. Peña, etc., et al.,G.R. No. L-77663, April 12, 1988, 159 SCRA 556.

[34] *Id*.at 561-562, citing Presidential Decree No. 1606, Section 7, which provides that "decisions and final orders [of the Sandiganbayan] shall be subject of review on certiorari by the Supreme Court in accordance with Rule 45 of the Rules of Court."

[35] TSN, September 28, 2010, pp. 58–60, 147.

[36] The Dissent of J. Sereno itself echoes and reechoes with the truth-telling intent of the Truth Commission and even speaks of "the need to shape collective memory as a way for the public to confront injustice and move towards a more just society" (p. 27, dissent). It proceeds to claim that this Separate Opinion "eliminates the vital role of the Filipino people in constructing collective memories of injustices as basis for redress." J. Sereno's Dissenting Opinion, pp. 27-28.

[37] TSN, September 28, 2010, pp. 146 – 147.

[38] See e.g. Bilbija, et al., eds., The Art of Truth Telling About Authoritarian Rule (2005), p. 14.

[39] Constitution, Article XI, Sections 12 and 13.

[40] Supra note 35.

[41] See Freeman, supra note 24, pp. 88-155.

[42] See Freeman, id. at 88.

[43] Constitution, Article III, Section 14 (2), supra note 1.

[44] Constitution, Article III, Section 17.

[45] Constitution, Article III, Section 12.

[46] TSN, September 28, 2010, pp. 149-151.

[47] The Commission is bound to furnish the Ombudsman a copy of its partial and final reports for the Ombudsman's consideration and action, under Sec. 2 of the EO.

[48] EO 1, Section 16.

[49] See generally Malcolm Gladwell, Blink (2005); see also, Cardozo, The Nature of the Judicial Process, pp. 167-180, and as quoted elsewhere in this Separate Opinion, infra note 55.

[50] J. Carpio's Dissenting Opinion, pp. 19-211.

[51] J. Sereno's Dissenting Opinion, pp. 25- 29.

[52] TSN, September 28, 2010, p. 59.

[53] See Gladwell, supra note 49, pp. 49-73.

[54] Born May 24, 1870, New York; died July 9, 1938, Port Chester, NY. US Supreme Court – 1932-1938. He was also a Judge of NY Court of Appeals from 1914 to 1932, and was its Chief Judge in the last 6 years of his term with the Court of Appeals. See http://www.courts.state.ny.us/history/cardozo.htm (http://www.courts.state.ny.us/history/cardozo.htm) [last visited December 2, 2010].

[55] Benjamin N. Cardozo, The Nature of the Judicial Process, (1921).

[56] Id. at 175-176.

[57] According to a recent SWS Survey conducted from October 20-29, 2010 http://www.mb.com.ph/articles/287833/80-filipinos-still-trust-aquino-despite-ratings-dip (http://www.mb.com.ph/articles/287833/80-filipinos-still-trust-aquino-despite-ratings-dip) [last visited November 17, 2010].

[58] Supra note55, pp. 178-179, citing *Foreign Corporations in American Constitutional Law*, p. 164 cf. Powell "The Changing Law of Foreign Corporations," 33 Pol. Science Quarterly, p. 569.

[59] Rules, Rule 4, Section 2.

[60] Constitution, Article VIII, Section 2. See also Bernas, supra note 30, p. 959.

[61] Id., Article VIII, Section 7 (2).

[62] People v. Maceren, G.R. No. L-32166 October 18, 1977, 79 SCRA 450, 461 citing 1 Am. Jur. 2nd, sec. 127, p. 938; Texas Co. v. Montgomery, 73 F. Supp. 527: It has been held that "to declare what shall constitute a crime and how it shall be punished is a power vested exclusively in the legislature, and it may not be delegated to any other body or agency."

[63] Constitution, Article VIII, Section 5.

[64] Constitution, Article VIII, Section 8.

[65] Revised Administrative Code, Book II, Chapter II, Section 22.

[66]Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice, G.R. No. 159747, April 13, 2004, 427 SCRA 46. See also Ombudsman v. Enoc, supra note 32.

[67] See Batas PambansaBlg. 129, "An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and For Other Purposes."

[68] Republic Act No. 8249, supra note 33, Section 4.

[69] Constitution, Article VIII, Section 5 (5).

[70] Id., Article VIII, Section 5 (6).

[71] Id., Article VIII, Section 6.

[72] Revised Administrative Code, Chapter I, Title III, Book IV. See also Honasan II v. Panel of Investigators, supra note 66.

[73] Ibid. See Section 15, par. 1, Republic Act No. 6770.

[74] For officials in Salary Grade 27 and beyond.

[75] Constitution, Article III, Section 7.

[76] Id., Article III, Section 4.

[77]Honasan II v. Panel of Investigators, supra note 66.

[78] See Honasan II v. Panel of Investigators, supra note 66. See also Rules of Court, Rule 112, Sections 2 and 4.

[79] Revised Administrative Code, Chapter 9 (D), Title II, Book III.

[80] Black's Law Dictionary (5th ed., 1979), p. 330.

[81]BuklodngKawaning EIIB v. Executive Secretary, G.R. Nos. 142801-802, July 10, 2001, 360 SCRA 718, 726, citing Isagani Cruz, The Law on Public Officers (1999 ed.), p. 4.

[82] EO 1, Section 1.

[83] EO 1, Sections 3 and 5.

[84] EO 1, Section 1.

[85] TSN, September 28, 2010, p. 166.

[86]See http://www.gmanews.tv/story/201465/full-text-iirc-report-on-august-23-2010-rizal-park-hostage-taking-incident, [last visited November 17, 2010].

[87] See Jonathan Horowitz, Racial (Re) Construction: The Case of the South African Truth and Reconciliation Commission, 17 Nat'l Black L.J. 67 (2003); Evelyn Bradley, In Search for Justice – A Truth and Reconciliation Commission for Rwanda, 7 J. Int'l L. &Prac. 129 (1998).

[88] See Catherine O'Rourke, The Shifting Signifier of "Community in Transitional Justice: A Feminist Analysis¸ 23 Wis. J.L. Gender &Soc'y 269 (2008) citing Transitional Justice and Rule of Law Interest Group, American Society of International Law, Statement of Purpose, http://www.asil.org/interest-groups-view.cfm?groupid=32.

[89]Isagani Cruz, Philippine Political Law (1998 ed.) p. 79. See also Bernas, supra note 30, pp. 676-677, stating: "Thus, any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress."

[90]*Ibid*. See also Canonizado v. Aguirre, G.R. No. 133132, January 25, 2000, 323 SCRA 312; BuklodngKawaning EIIB v. Zamora, G.R. Nos. 142801-802, July 10, 2001, 360 SCRA 718.

[91]Bernas, supra note 30, p. 678.

[92] EO 1, 8th and last Whereas Clause.

[93]BuklodngKawaning EIIB v. Hon. Executive Secretary, supra note 81.

[94] Solicitor General's Memorandum, *rollo,* p. 332.

[95] Id. at 324.

[96] G.R. No. 112745, October 16, 1997, 280 SCRA 713.

[97] Solicitor General's Consolidated Comment, *rollo,* pp. 148-149.

[98]*Aquino v. COMELEC,* No. L-40004, January 31, 1975, 62 SCRA 275.

[99] Gonzales v. PAGCOR, G. R. No. 144891, May 27, 2004, 429 SCRA 533,545.

[100] G.R. No. 166620, April 20, 2010.

[101] Supra note 96.

[102] Supra note 81.

[103] G.R. No. 167324, July 17, 2007, 527 SCRA 746.

[104] J. Carpio's Separate Concurring Opinion. Supra note 100.

[105] Solicitor General's Consolidated Comment, *rollo,* p. 160.

[106] Id. at 41.

[107] 135 U.S. 1, 59 (1890).

[108]Bernas, supra note 30, p. 895.

[109] TSN, September 28, 2010, pp. 209-214.

[110] Part of the argument the Solicitor General relied upon was Department of Health v. Campasano, (G.R. No. 157684. April 27, 2005, 457 SCRA 438) Solicitor General's Consolidated Comment, *rollo,* pp. 145-146. Reliance on this case, however, is misplaced. In Campasano, the Court upheld the power of the President to create an ad hoc investigating committee in the Department of Health on the basis of the President's constitutional power of control over the Executive Department as well as his obligation under the faithful execution clause to ensure that all executive officials and employees faithfully comply with the law. The Court's ruling in Campasano is not determinative of the present case as the Truth Commission is claimed to be a body entirely distinct and independent from the Office of the President. This conclusion is bolstered by the Solicitor General's own admission during oral arguments that the Truth Commission, particularly the Commissioners are not under the power of control by the President. In fact, the Solicitor General went as far as to admit that the President has in fact relinquished the power of control over the Commission to underscore its independence.

[111] TSN, September 28, 2010, p. 214.

[112] Constitution, Article VII, Section 1: 'The Executive Power shall be vested in the President of the Philippines." See Bernas, supra note 30, p. 820: "With the 1987 Constitution, the constitutional system returns to the presidential model of the 1935 Constitution: executive power is vested in the President." Father Bernas further states: "In vesting executive power in one person rather than in a plural executive, the evident intention was to invest the power holder with energy."

[113] Constitution, Article VI, Section 1: "The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum." See Vera v. Avelino, 77 Phil. 192, 212 (1946): "any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress x xx" cited in Bernas, supra note 30, pp. 676-677.

[114] Even in the case of the NLRC, however, presidential control cannot be avoided as the NLRC is part of the Executive branch and the President, through his Secretary of Labor, sets the policies on labor and employment (expressed through rules and regulations and interpretation)

that, consistent with the existing laws and jurisprudence, must be followed.

[115] Republic Act 6832, otherwise known as "An Act Creating A Commission To Conduct A Thorough Fact-Finding Investigation Of The Failed Coup D'État Of December 1989, Recommend Measures To Prevent The Occurrence Of Similar Attempts At A Violent Seizure Of Power, And For Other Purposes." Its Section 1 provides:

> Section 1. Creation, Objectives and Powers. — There is hereby created an **independent Commission** which shall investigate all the facts and circumstances of the failed coup d'état of December 1989, and recommend measures to prevent similar attempts at a violent seizure of power. [Emphasis supplied]

[116] See 6th Whereas Clause, EO 1.

[117]Bernas, supra note 30, p. 678.

[118] See e.g. Allenet de Ribemont v. France, February 10, 1995, 15175/89 [1995] ECHR 5, where the European Court of Human Rights held that the right to presumption of innocence may be "infringed not only by a judge or court but also by other public authorities." The ECHR likewise held:

> The presumption of innocence enshrined in paragraph 2 of Article 6 (art. 6-2) is one of the elements of the fair criminal trial that is required by paragraph 1 (art. 6-1) (see, among other authorities, the Deweer v. Belgium judgment, of 27 February 1980, Series A no. 35, p. 30, para. 56, and the Minelli judgment previously cited, p. 15, para. 27). It will be violated if a judicial decision concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court regards the accused as guilty (see the Minelli judgment previously cited, p. 18, para. 37). [emphasis supplied]

[119] 68 Phil. 12 (1939).

[120] Central Bank Employees Association, Inc. v. BangkoSentralngPilipinas, G.R. No. 148208, December 15, 2004, 446 SCRA 299, 370.

[121] See Central Bank Employees Association, Inc. v. BangkoSentalngPilipinas, *id.,* where the Court expanded the concept of suspect classification; See also Serrano v. Gallant Maritime Services, Inc., infra where the Court applied the strict scrutiny test.

[122] G.R. No. 167614, March 24 2009, 582 SCRA 254, 277-278.

[123] Supra note 30, pp. 139-140.

[124] J. Carpio-Morales' Dissenting Opinion. Supra note 120, p. 485.

[125] See Item I (c) of this Concurring Opinion, p. 8.

[126] EO 1, Section 2.

[127] Supra note 120, pp. 495-496.

[128] Id. at 387, 390.

[129] Supra note 120, p. 296.

[130] Id. at 278 citing Grutter v. Bollinger,539 US 306 (2003); Bernal v. Fainter, 467 US 216 (1984).

[131] EO 1, 5th Whereas Clause.

[132] EO 1, 6th Whereas Clause.

[133]Carbonaro v. Reeher, 392 F. Supp. 753 (E.D. Pa. 1975).

[134] See then Associate Justice Reynato S. Puno's Concurring and Dissenting Opinion in Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc., G.R. No. 160261, November 10, 2003, 415 SCRA 44, 211, where former Chief Justice Puno

spoke of an "imperial judiciary," viz:

> The 1987 Constitution expanded the parameters of judicial power, but that by no means is a justification for the errant thought that the Constitution created an imperial judiciary. An imperial judiciary composed of the unelected, whose sole constituency is the blindfolded lady without the right to vote, is counter-majoritarian, hence, inherently inimical to the central ideal of democracy. We cannot pretend to be an imperial judiciary for in a government whose cornerstone rests on the doctrine of separation of powers, we cannot be the repository of all remedies.

[135] Ibid.

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SEPARATE OPINION

CORONA, *C.J.:*

Of Truth and Truth Commissions

The fundamental base upon which a truth commission is created is the right to the truth.[1] While the right to the truth is yet to be established as a right under customary law[2] or as a general principle of international law,[3] it has nevertheless emerged as a "legal concept at the national, regional and international levels, and relates to the obligation of the state to provide information to victims or to their families or even society as a whole about the circumstances surrounding serious violations of human rights."[4]

A truth commission has been generally defined[5] as a "body set up to investigate a past history of violations of human rights in a particular country …,"[6] and includes four elements:

… First, a truth commission focuses on the past. Second, a truth commission is not focused on a specific event, but attempts to paint the overall picture of certain human rights abuses, or violations of international humanitarian law, over a period of time. Third, a truth commission

usually exists temporarily and for a pre-defined period of time, ceasing to exist with the submission of a report of its findings. Finally, a truth commission is always vested with some sort of authority, by way of its sponsor, that allows it greater access to information, greater security or protection to dig into sensitive issues, and a greater impact with its report.[7]

As reported by Amnesty International,[8] there are at least 33 truth commissions established in 28 countries from 1974 to 2007 and this includes the Philippines, which created the Presidential Committee on Human Rights (PCHR) in 1986 under the post-Marcos administration of Pres. Corazon C. Aquino.

The Philippine Experience

Notably, Pres. Corazon C. Aquino created not one but two truth commissions.[9] Aside from the PCHR, which was created to address human rights violations, the Presidential Commission on Good Government or PCGG was also established. The PCGG was tasked with assisting the President in the "recovery of all in-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," among others.[10] Unlike the present embattled and controversial Truth Commission, however, the PCGG was created by Pres. Corazon C. Aquino pursuant to her legislative powers under Executive Order No. 1, [11]which in turn, was sanctioned by Proclamation No. 3.[12]

And unlike the PCGG, the present Truth Commission suffers from both legal and constitutional infirmities and must be struck down as unconstitutional.

Power To Create Public Offices: Inherently Legislative

The separation of powers is a fundamental principle in our system of government.[13] This principle is one of the cornerstones of our constitutional democracy and it cannot be eroded without endangering our government.[14] The 1987 Constitution divides governmental power into three co-equal branches: the executive, the legislative and the judicial. It delineates the powers of the three branches: the legislature is generally limited to the enactment of laws, the executive department to the enforcement of laws and the judiciary to their interpretation and application to cases and controversies.[15] Each branch is independent and supreme within its own sphere and the encroachment by one branch on another is to be avoided at all costs.

The power under scrutiny in this case is the creation of a public office. It is settled that, except for the offices created by the Constitution, the creation of a public office is primarily a legislative function. The legislature decides what offices are suitable, necessary or convenient for the administration of government.[16]

The question is whether Congress, by law, has delegated to the Chief Executive this power to create a public office.

In creating the Truth Commission, Executive Order No. 1 (E.O. No. 1) points to Section 31, Chapter 10, Book III of E.O. No. 292 or the Administrative Code of 1987 as its legal basis:

Section 31. Continuing Authority of the President to Reorganize his Office. — The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:

(1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Staff Support System, by abolishing, consolidating, or merging units thereof or transferring functions from one unit to another;

(2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and

(3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies. (Emphasis supplied)

This provision pertains to the President's continuing delegated power to reorganize the Office of the President. The well-settled principle is that the President has the power to reorganize the offices and agencies in the executive department in line with his constitutionally granted power of control over executive offices and by virtue of his delegated legislative power to reorganize them under existing statutes.[17] Needless to state, such power must always be in accordance with the Constitution, relevant laws and prevailing jurisprudence.[18]

In creating the Truth Commission, did the President merely exercise his continuing authority to reorganize the executive department? No.

Considering that the President was exercising a delegated power, his actions should have conformed to the standards set by the law, that is, that the reorganization be in the interest of "simplicity, economy and efficiency." Were such objectives met? They were not. The Truth Commission clearly duplicates and supplants the functions and powers of the Office of the Ombudsman and/or the Department of Justice, as will be discussed in detail later. How can the creation of a new commission with the same duplicative functions as those of already existing offices result in economy or a more efficient bureaucracy?[19] Such a creation becomes even more questionable considering that the 1987 Constitution itself mandates the Ombudsman to investigate graft and corruption cases.[20]

The Truth Commission in the Light of The Equal Protection Clause

Equal protection is a fundamental right guaranteed by the Constitution. Section 1, Article III of the 1987 Constitution reads:

… nor shall any person be denied the equal protection of the laws.

It is a right afforded every man. The right to equal protection does not require a universal application of the laws to all persons or things without distinction.[21] It requires simply that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.[22]

In certain cases, however, as when things or persons are different in fact or circumstance, they may be treated in law differently.[23] In Victoriano vs. Elizalde Rope Workers Union,[24] the Court declared:

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.

Thus, for a classification to be valid it must pass the test of reasonableness,[25] which requires that:

(1) it be based on substantial distinctions;

(2) it must be germane to the purpose of the law;

(3) it must not be limited to present conditions; and

(4) it must apply equally to all members of the same class.

All four requisites must be complied with for the classification to be valid and constitutional.

The constitutionality of E. O. No. 1 is being attacked on the ground that it violates the equal protection clause.

Petitioners argue that E.O. No. 1 violates the equal protection clause as it deliberately vests the Truth Commission with jurisdiction and authority to solely target officials and employees of the Arroyo Administration.[26] Moreover, they claim that there is no substantial distinction of graft reportedly committed under the Arroyo administration and graft committed under previous administrations to warrant the creation of a Truth Commission which will investigate for prosecution officials and employees of the past administration.[27]

Respondents, on the other hand, argue that the creation of the Truth Commission does not violate the equal protection clause. According to them, while E.O. No. 1 names the previous administration as the initial subject of the investigation, it does not confine itself to cases of graft and corruption committed solely during the past administration. Section 17 of E.O. No. 1 clearly speaks of the President's power to expand its coverage to previous administrations. Moreover, respondents argue that the segregation of the transactions of public officers during the previous administration as possible subjects of investigation is a valid classification based on substantial distinctions and is germane to the evils which the executive order seeks to correct.[28]

On its face, E.O. No. 1 clearly singles out the previous administration as the Truth Commission's sole subject of investigation.

Section 1. Creation of a Commission – There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION", which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people committed by public officers and employees, their co-principals, accomplices and accessories from the private sector, if any during the previous administration; and thereafter recommend the appropriate action to be taken to ensure that the full measure of justice shall be served without fear or favor.

Section 2. Powers and Functions. – The Commission, which shall have the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption referred to in Section 1, involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any during the previous administration and thereafter submit its findings and recommendations to the President, Congress and the Ombudsman. xxx" (Emphasis supplied)

Notwithstanding Section 17, which provides:

If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administration, such mandate may be so extended accordingly by way of supplemental Executive Order." (Emphasis supplied),

such expanded mandate of the Truth Commission will still depend on the whim and caprice of the President. If the President decides not to expand the coverage of the investigation, then the Truth Commission's sole directive is the investigation of officials and employees of the Arroyo administration.

Given the indubitably clear mandate of E.O. No. 1, does the identification of the Arroyo administration as the subject of the Truth Commission's investigation pass the jurisprudential test of reasonableness? Stated differently, does the mandate of E.O. No. 1 violate the equal protection clause of the Constitution? Yes.

I rule in favor of petitioners.

(1) No Substantial Distinction –

There is no substantial distinction between the corruption which occurred during the past administration and the corruption of the administrations prior to it. Allegations of graft and corruption in the government are unfortunately prevalent regardless of who the President happens to be. Respondents' claim of widespread systemic corruption is not unique only to the past administration.

(2) Not Germane to the Purpose of the Law –

The purpose of E.O. No. 1 (to put an end to corruption in the government) is stated clearly in the preamble of the aforesaid order:

WHEREAS, the President's battle-cry during his campaign for the Presidency in the last elections "kung walang corrupt, walangmahirap" expresses a solemn pledge that if elected, he would end corruption and the evil it breeds; xxx

In the light of the unmistakable purpose of E.O. No. 1, the classification of the past regime as separate from the past administrations is not germane to the purpose of the law. Corruption did not occur only in the past administration. To stamp out corruption, we must go beyond the façade of each administration and investigate all public officials and employees alleged to have committed graft in any previous administration.

(3) E.O. No. 1 does Not Apply to Future Conditions –

As correctly pointed out by petitioners, the classification does not even refer to present conditions, much more to future conditions vis-avis the commission of graft and corruption. It is limited to a particular past administration and not to all past administrations.[29]

We go back to the text of the executive order in question.

xxx

Whereas, there is a need for a separate body dedicated solely to investigating and finding out the truth concerning the reported cases if graft and corruption during the previous administration, and which will recommend the prosecution of the offenders and secure justice for all;

xxx

Section 1. Creating of a Commission. – There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION", which shall primarily seek and find the truth on, and toward this end investigate reports of graft and corruption, x xx if any, during the previous administration; xxx

Section 2. Power and Functions. Powers and Functions. – The Commission, which shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption x xx, if any, during the previous administration and thereafter submit its findings and recommendations to the President, Congress and the Ombudsman. xxx

The above-quoted provisions show that the sole subject of the investigation will be public officers and employees of the previous administration only, that is, until such time if and when the President decides to expand the Truth Commission's mandate to include other administrations (if he does so at all).

(4) E.O. No. 1 Does Not Apply to the Same Class –

Lastly, E.O. No. 1 does not apply to all of those belonging to the same class for it only applies to the public officers and employees of the past administration. It excludes from its purview the graft and the grafters of administrations prior to the last one. Graft is not exclusive to the previous presidency alone, hence there is no justification to limit the scope of the mandate only to the previous administration.

Fact-Finding or Investigation?

The nature of the powers and functions allocated by the President to the Truth Commission by virtue of E.O. No. 1 is investigatory,[30] with the purposes of determining probable cause of the commission of "graft and corruption under pertinent applicable laws" and referring such finding and evidence to the proper authorities for prosecution.[31]

The respondents pass off these powers and functions as merely fact-finding, short of investigatory. I do not think so. Sugar-coating the description of the Truth Commission's processes and functions so as to make it "sound harmless" falls short of constitutional requirements. It has in its hands the vast arsenal of the government to intimidate, harass and humiliate its perceived political enemies outside the lawful prosecutorial avenues provided by law in the Ombudsman or the Department of Justice.

The scope of the investigatory powers and functions assigned by the President to the Truth Commission encompasses all "public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration"[32]

There is no doubt in my mind that what the President granted the Truth Commission is the **authority** to conduct preliminary investigation of complaints of graft and corruption against his immediate predecessor and her associates.

The respondents see nothing wrong with that. They believe that, pursuant to his power of control and general supervision under Article VII of the Constitution,[33] the President can create an ad-hoc committee like the Truth Commission to investigate graft and corruption cases. And the President can endow it with authority parallel to that of the Ombudsman to conduct preliminary investigations. Citing *Ombudsman v. Galicia*[34]the power of the Ombudsman to conduct preliminary investigations is not exclusive but shared with other similarly authorized government agencies.

I take a different view. The operative word is "authorized".

Indeed, the power of control and supervision of the President includes the power to discipline which in turn implies the power to investigate.[35] No Congress or Court can derogate from that power[36] but the Constitution itself may set certain limits.[37] And the Constitution has in fact carved out the preliminary investigatory aspect of the control power and allocated the same to the following:

(a) to Congress over presidential appointees who are impeachable officers (Article XI, Sections 2 and 3);

(b) to the Supreme Court over members of the courts and the personnel thereof (Article VIII, Section 6); and

(c) to the Ombudsman over any other public official, employee, office or agency (Article XI, Section 13 (1)).

However, even as the Constitution has granted to the Ombudsman the power to investigate other public officials and employees, such power is not absolute and exclusive. Congress has the power to further define the powers of the Ombudsman and, impliedly, to authorize other offices to conduct such investigation over their respective officials and personnel.[38]

The Constitution has vested in Congress alone the power to grant to any office concurrent jurisdiction with the Ombudsman to conduct preliminary investigation of cases of graft and corruption.

In a myriad of cases, this Court has recognized the concurrent jurisdiction of other bodies vis-à-vis the Ombudsman to conduct preliminary investigation of complaints of graft and corruption as **authorized by law**, meaning, for any other person or agency to be able to conduct such investigations, there must be a law authorizing him or it to do so.

In *Ombudsman v. Galicia* (cited in the ponencia)as well as *Ombudsman v. Estandarte*,[39] the Court recognized the concurrent jurisdiction of the Division School Superintendent vis-à-vis the Ombudsman to conduct preliminary investigation of complaints of graft and corruption committed by public school teachers. Such concurrent jurisdiction of the Division School Superintendent was granted by law, specifically RA 4670 or the *Magna Carta* for Public School Teachers.[40]

Likewise, in *Ombudsman v. Medrano*[41]the Courtheld that by virtue of RA 4670 the Department of Education Investigating Committee has concurrent jurisdiction with the Ombudsman to conduct a preliminary investigation of complaints against public school teachers.

Even the SangguniangPanlungsod has concurrent jurisdiction with the Ombudsman to look into complaints against the punong barangay.[42] Such concurrent authority is found in RA 7160 or the Local Government Code.

The Department of Justice is another agency with jurisdiction concurrent with the Ombudsman to conduct preliminary investigation of public officials and employees.[43] Its concurrent jurisdiction is based on the 1987 Administrative Code.

Certainly, there is a law, the Administrative Code, which authorized the Office of the President to exercise jurisdiction concurrent with the Ombudsman to conduct preliminary investigation of graft and corruption cases. However, the scope and focus of its preliminary investigation are restricted. Under the principle that the power to appoint includes the power to remove, each President has had his or her own version of a presidential committee to investigate graft and corruption, the last being President Gloria Macapagal Arroyo's Presidential Anti-Graft Commission (PAGC) under E.O. No. 268. The PAGC exercised concurrent authority with the Ombudsman to investigate complaints of graft and corruption against presidential appointees who are not impeachable officers and non-presidential appointees in conspiracy with the latter. It is in this light that *DOH v. Camposano, et al*.[44] as cited in the *ponencia* should be understood. At that time, the PCAGC (now defunct) had no investigatory power over non-presidential appointees; hence the President created an ad-hoc committee to investigate both the principal respondent who was a presidential appointee and her co-conspirators who were non-presidential appointees. The PAGC (now also defunct), however, was authorized to investigate both presidential appointees and non-presidential appointees who were in conspiracy with each other.

However, although pursuant to his power of control the President may supplant and directly exercise the investigatory functions of departments and agencies within the executive department,[45] his power of control under the Constitution and the Administrative Code is confined only to the executive department.[46] Without any law authorizing him, the President cannot legally create a committee to extend his investigatory reach across the boundaries of the executive department to "public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration" without

setting apart those who are still in the executive department from those who are not. Only the Ombudsman has the investigatory jurisdiction over them under Article XI, Section 13. There is no law granting to the President the authority to create a committee with concurrent investigatory jurisdiction of this nature.

The President acted in violation of the Constitution and without authority of law when he created a Truth Commission under E.O. No. 1 to exercise concurrent jurisdiction with the Ombudsman to conduct the preliminary investigation of complaints of graft and corruption against public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration.

Investigation or Quasi-Adjudication?

Respondents argue that the Truth Commission is merely an investigative and fact-finding body tasked to gather facts, draw conclusions therefrom and recommend the appropriate actions or measures to be taken. Petitioners, however, argue that the Truth Commission is vested with quasi-judicial powers. Offices with such awesome powers cannot be legally created by the President through mere executive orders.

Petitioners are correct.

The definition of investigation was extensively discussed in Cariño v. Commission on Human Rights:[47]

"Investigate," commonly understood, means to examine, explore, inquire or delve or probe into, research on, study. The dictionary definition of "investigate" is "to observe or study closely: inquire into systematically: "to search or inquire into: . . . to subject to an official probe . . .: to conduct an official inquiry." The purpose of investigation, of course, is to discover, to find out, to learn, obtain information. Nowhere included or intimated is the notion of settling, deciding or resolving a controversy involved in the facts inquired into by application of the law to the facts established by the inquiry.

The legal meaning of "investigate" is essentially the same: "(t)o follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry;" "to inquire; to make an investigation," "investigation" being in turn described as "(a)n administrative function, the exercise of which ordinarily does not require a hearing. 2 Am J2d Adm L Sec. 257; . . . an inquiry, judicial or otherwise, for the discovery and collection of facts concerning a certain matter or matters." [48] (Italics in the original)

The exercise of quasi-judicial power goes beyond mere investigation and fact-finding. Quasi-judicial power has been defined as

… the power of the administrative agency to adjudicate the rights of persons before it. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.[49] (Emphasis supplied)

Despite respondents' denial that the Truth Commission is infused with quasi-judicial powers, it is patent from the provisions of E.O. No. 1 itself that such powers are indeed vested in the Truth Commission, particularly in Section 2, paragraphs (b) and (g):

b) Collect, receive, review, and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate, …

xxx

g) Turn over from time to time, for expeditious prosecution, to the appropriate prosecutorial authorities, by means of a special or interim report and recommendation, all evidence on corruption of public officers and employees and their private sector co-principals, accomplices or accessories, if any, when in the course of its investigation the Commission finds that there is reasonable ground to believe they are liable for graft and corruption under pertinent applicable laws;

xxx

The powers to "evaluate evidence" and "find reasonable ground to believe that someone is liable for graft and corruption" are not merely fact-finding or investigatory. These are quasi-judicial in nature because they actually go into the weighing of evidence, drawing up of legal conclusions from them as basis for their official action and the exercise of discretion of a judicial or quasi-judicial nature.

The evaluation of the sufficiency of the evidence is a quasi-judicial/judicial function. It involves an assessment of the evidence which is an exercise of judicial discretion. We have defined discretion

as the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed.[50]

It is the "the act or the liberty to decide, according to the principles of justice and one's ideas of what is right and proper under the circumstances, without willfulness or favor."[51]

Likewise, the power to establish if there is reasonable ground to believe that certain persons are liable for graft and corruption under pertinent applicable laws is quasi-judicial in nature because it is akin to the discretion exercised by a prosecutor in the determination of probable cause during a preliminary investigation. It involves a judicial (or quasi-judicial) appraisal of the facts for the purpose of determining if a violation has in fact been committed.

Although such a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair. The officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused. Indeed, a preliminary investigation is in effect a realistic judicial appraisal of the merits of the case. Sufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound as a matter of law to order an acquittal. A preliminary investigation has then been called a judicial inquiry. It is a judicial proceeding. An act becomes judicial when there is opportunity to be heard and for, the production and weighing of evidence, and a decision is rendered thereon.

The authority of a prosecutor or investigating officer duly empowered to preside or to conduct a preliminary investigation is no less than that of a municipal judge or even a regional trial court judge. While the investigating officer, strictly speaking is not a "judge," by the nature of his functions he is and must be considered to be a quasi judicial officer. [52]

Hence, the Truth Commission is vested with quasi-judicial discretion in the discharge of its functions.

As a mere creation of the executive and without a law granting it the power to investigate person and agencies outside the executive department, the Truth Commission can only perform administrative functions, not quasi-judicial functions. "Administrative agencies are not considered courts; they are neither part of the judicial system nor are they deemed judicial tribunals."[53]

Executive Order No. 1 and the Philippine Truth Commission of 2010, being contrary to the Constitution, should be nullified.

I therefore vote that the petitions be **GRANTED**.

RENATO C. CORONA
Chief Justice

Notes:

[1] Promotion and Protection of Human Rights (Study on the Right to the Truth): Report of the Office of the United Nations High Commissioner for Human Rights, United Nations Economic and Social Council (E/CN.4/2006/91), 8 February 2006.

[2] See YasminNaqvi, The Right to the Truth in International Law: Fact or Fiction?, International Review of the Red Cross (2006), 88:862:254-268.

[3] Ibid., 268.

[4] Ibid., 245.

[5] But see Eric Brahm, What is a Truth Commission and Why Does it Matter?, Peace and Conflict Review (Spring 2009), 3:2:1-14, which proposes that "Mark Freeman's (2006) typology of human rights investigations as the definition offering the most analytical clarity and the strongest potential to move the field forward." Freeman [*Truth Commissions and Procedural Fairness* (2006), New York: Cambridge University Press; E.H.R.L.R., 2008, 2, 294-297] defines a truth commission as an "ad hoc, autonomous, and victim-centered commission of inquiry set up in and authorized by a state for the primary purposes of (1) investigating and reporting on the principal causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in the state during determinate periods of abusive rule or conflict, and (2) making recommendations for their redress and future prevention."

[6] Priscilla B. Hayner, Fifteen Truth Commissions – 1974 to 1994: A Comparative Study, Human Rights Quarterly (Nov. 1994), 16:4:600.

[7] Ibid., 604.

[8] http://www.amnesty.org/en/library/asset/POL30/009/2007/en/7988f852-d38a-11dd-a329-2f46302a8cc6/ pol300092007en.html (http://www.amnesty.org/en/library/asset/POL30/009/2007/en/7988f852-d38a-11dd-a329-2f46302a8cc6/%20pol300092007en.html), viewed on 9 November 2010.

[9] Ruben Carranza, *Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?*, The International Journal of Transitional Justice, Vol. 2, 2008, 322.

[10] Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government, G.R. No. 75885, May 27, 1987, 150 SCRA 181, 202.

[11] Promulgated on February 28, 1986, creating the Presidential Commission on Good Government.

[12] Promulgated on March 25, 1986, promulgating the Provisional Constitution (also known as the Freedom Constitution). Article II, Section 1 thereof stated that the President shall continue to exercise legislative power until a legislature is elected and convened under a new constitution x xx.

[13] Angara v. Electoral Commission, 68 Phil. 139, 156 (1936).

[14] Secretary of Justice v. Lantion, G.R. No. 139465, 17 October 2000.

[15]*Anak Mindanao Party-List Group v. The Executive Secretary*, G.R. No. 166052, 29 August 2007.

[16] Eugenio v. Civil Service Commission, 312 Phil. 1145, 1152 (1995) citing AM JUR 2d on Public Officers and Employees.

[17] Banda v. Ermita, G.R. No. 166620, April 20, 2010.

[18] Ibid.

[19]BuklodngKawaniang EIIB v. Sec. Zamora, 413 Phil. 281, 295.

[20] Office of the Ombudsman v. Samaniego, G.R. No. 175573, 11 September 2008.

[21] Chamber of Real Estate and Builders' Associations, Inc. v. Executive Secretary Alberto Romulo (G.R. No. 160756, 2010)

[22]Quinto v. Comelec (G.R. No. 189698, 2009)

[23]AbakadaGuro v. Hon. Cesar V. Purisima (G.R. No. 166715, 2008)

[24] 59 SCRA 54, 1974.

[25] League of Cities of the Philippines v. COMELEC (G.R. No. 176951; G.R. No. 177499; 2008; G.R. No. 178056, 2008)

[26] Par. 69, Lagman, et al's Petition

[27] Par. 67, Lagman, et al's Petition

[28] OSG Memorandum, pp. 88-90.

[29] Par. 73, Lagman, et al's Petition

[30] Section 2. xxx b) Collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate, and to this end require any agency, official or employee of the Executive Branch, including government-owned or controlled corporations, to produce documents, books, records and other papers xxx.

[31] Section 2. xxx g) Turn over from time to time, for expeditious prosecution, to the appropriate prosecutorial authorities, by means of a special or interim report and recommendation, all evidence on corruption of public officers and employees and their private sector co-principals, accomplices or accessories, if any, when in the course of its investigation the Commission finds that there is reasonable ground to believe that they are liable for graft and corruption under pertinent applicable laws xxx.

[32] Id.

[33] Section 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

[34] 568 SCRA 327 (2008)

[35]Joson v. Executive Secretary, et al., G.R. No. 131255, May 20, 1998; Villaluz v. Zaldivar, et al. (En Banc), G.R. No. L-22754, December 31, 1965.

[36]Rufino v. Endriga, G.R. No. 139554, July 21, 2006.

[37]Ang-Angco v. Hon. Natalio Castillo, et al., G.R. No. L-17169, November 30, 1963.

[38] Article XI states:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

xxx

(8) xxx exercise such other powers or perform such functions or duties as may be provided by law.

[39] G.R. No. 168670, April 13, 2007, 521 SCRA 155.

[40] See also *Emin v. De Leon* (G.R. No. 139794, February 27, 2002, 378 SCRA 143) on the concurrent authority of the Civil Service Commission and the DEPED Investigating Committee under RA 4670. See further *Puse v. Santos-Puse* (G.R. No. 183678, March 15, 2010) where the Court held that the concurrent jurisdiction of the DEPED and CSC to cause preliminary investigation is also shared by the Board of Professional Teachers under RA 7836 or Philippine Teachers Professionalization Act of 1994.

[41] G.R. No. 177580, October 17, 2008.

[42] See *Ombudsman v. Rolson Rodriguez*, G.R. No. 172700, July 23, 2010 citing *Laxina, Sr. v.Ombudsman*, G.R. No. 153155, 30 September 2005, 471 SCRA 542.

[43]*SevillaDecin v. SPO1 MelzasarTayco, et al*., G.R. No. 149991, February 14, 2007; *Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice*, G.R. No. 159747, April 13, 2004.

[44] G.R. No. 157684. April 27, 2005.

[45] See *Review Center Association of the Philippines v. Executive Secretary Eduardo Ermita, et al*., G.R. No. 180046 , April 2, 2009; *Bermudez v. Executive Secretary*, G.R. No. 131429, August 4, 1999.

[46] KMU v. Director General, et al., G.R. No. 167798, April 19, 2006.

[47] G.R. No. 96681, 2 December 1991, 204 SCRA 483.

[48] Id., pp. 495-496.

[49]*Dole Philippines Inc. v. Esteva,* G.R. No. 161115, 30 November 2006, 509 SCRA 332, 369-370.

[50]Manotoc v. Court of Appeals, G.R. No. 130974, 16 August 2006.

[51] Philippine Long Distance Telephone Co. Inc. v. ManggagawangKomunikasyonsaPilipinas, G.R. No. 162783, 14 July 2005.

[52]Cojuangco, Jr. v. Presidential Commission on Good Government, G.R. Nos. 92319-20, 2 October 2, 1990. This is an En Banc case that had been reiterated in two other En Banc cases, namely, Olivas v. Office of the Ombudsman (G.R. No. 102420, 20 December 1994) and Uy v. Office of the Ombudsman (G.R. Nos. 156399-400, 27 June 2008, 556 SCRA 73). Thus it cannot be said to have been overturned by Balangauan v. Court f Appeals, Special Nineteenth Division, Cebu City (G.R. No. 174350, 13 August 2008, 562 SCRA 184) a decision of the Court through the Third Division wherein the Court declared: “It must be remembered that a preliminary investigation is not a quasi-judicial proceeding…. (p. 203)”

[53]Meralco v. Energy Regulatory Board, G.R. No. 145399, 17 March 2006.

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CONCURRING OPINION

LEONARDO-DE CASTRO, *J.:*

I concur in the result of the ponencia of Justice Jose Catral Mendoza and join the separate opinions of my colleagues, Chief Justice Renato C. Corona, Justice Arturo D. Brion and Justice Jose Portugal Perez. I vote to declare Executive Order No. 1 (EO No. 1) unconstitutional, as a well-intentioned, but ill-devised, presidential issuance that transgresses the boundaries of executive power and responsibility set by the Constitution and our laws.

While I agree with the majority consensus that equal protection is an issue that must be resolved in these consolidated petitions, the weightier legal obstacles to the creation of the Philippine Truth Commission (the Commission) by executive order deserve greater attention in this discussion.

If the Commission created by EO No. 1 were a living person, it would be suffering from the most acute identity crisis. Is it an independent body? Is it a mere ad hoc fact-finding body under the control of the President? And in either case, what legal repercussion does its creation have on our constitutionally and statutorily developed system for investigating and prosecuting graft and corruption cases?

Indeed, from the answers to these questions, it becomes evident that those who have designed this constitutional anomaly designated as a “truth commission” have painted themselves into a legal corner with no escape.

If the Commission is an office independent of the President, then its creation by executive fiat is unconstitutional.

The concept of a “truth commission” in other jurisdictions has a primordial characteristic—independence. As a body created to investigate and report on the “truth” of historical events (ordinarily involving State violations of human rights en masse) in a country in transition from

an authoritarian regime to a democratic one or from a conflict situation to one of peace, the freedom of the members of the truth commission from any form of influence is paramount to ensure the credibility of any findings it may make.

Thus, "truth commissions" have been described in this wise:

Truth commissions are non-judicial, independent panels of inquiry typically set up to establish the facts and context of serious violations of human rights or of international humanitarian law in a country's past. Commissions' members are usually empowered to conduct research, support victims, and propose policy recommendations to prevent recurrence of crimes. Through their investigations, the commissions may aim to discover and learn more about past abuses, or formally acknowledge them. They may aim to prepare the way for prosecutions and recommend institutional reforms. Most commissions focus on victims' needs as a path toward reconciliation and reducing conflict about what occurred in the past.[1] (Emphases supplied.)

Notably, the Office of the United Nations High Commissioner for Human Rights likewise lists operational independence as one of the core principles in the establishment of a truth commission:

The legitimacy and public confidence that are essential for a successful truth commission process depend on the commission's ability to carry out its work without political interference. Once established, the commission should operate free of direct influence or control by the Government, including in its research and investigations, budgetary decision-making, and in its report and recommendations. Where financial oversight is needed, operational independence should be preserved. Political authorities should give clear signals that the commission will be operating independently.[2] (Emphases supplied.)

With due respect, I disagree with Justice Antonio T. Carpio's opinion that the naming of the body created by EO No. 1 as the "Philippine Truth Commission" was a mere attempt to be novel, to depart from the tired and repetitious scheme of naming a commission after its appointed head/leader or of calling it a "fact-finding" body. Obviously, the title given to the Commission is meant to convey the message that it is independent of the Office of the President.

Those who dissent from the majority position gloss over the fact that EO No. 1 itself expressly states that the Commission's members shall "act as an independent collegial body."[3] During oral arguments, the Solicitor General confirmed that what EO No. 1 intended is for the Commission to be an independent body over which the President has no power of control.[4] The Solicitor General further claimed that one of the functions of the Commission is "truth-telling." Verily, the creation of the Philippine Truth Commission and its naming as such were done as a deliberate reference to the tradition of independent truth commissions as they are conceived in international law, albeit adapted to a particular factual situation in this jurisdiction.

If this Philippine Truth Commission is an office independent of the President and not subject to the latter's control and supervision, then the creation of the Commission must be done by legislative action and not by executive order. It is undisputed that under our constitutional framework only Congress has the power to create public offices and grant to them such functions and powers as may be necessary to fulfill their purpose. Even in the international sphere, the creation of the more familiar truth commissions has been done by an act of legislature.[5]

Neither can the creation of the Commission be justified as an exercise of the delegated legislative authority of the President to reorganize his office and the executive department under Section 31, Chapter 10, Title III, Book III of the Administrative Code of 1987. The acts of reorganization authorized under said provision are limited to the following:

SEC. 31. Continuing Authority of the President to Reorganize his Office. The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, ***shall have continuing authority to reorganize the administrative structure of the Office of the President***. For this purpose, he may take any of the following actions:

(1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another;

(2) Transfer any function under the Office of the President to any other Department or Agency as well as***transfer functions to the Office of the President from other Departments and Agencies****;* and

(3) Transfer any agency under the Office of the President to any other department or agency as well as ***transfer agencies to the Office of the President from other Departments or Agencies.*** (Emphases supplied.)

There is nothing in EO No. 1 that indicates that the Commission is a part of the executive department or of the Office of the President Proper. Indeed, it is Justice Carpio who suggests that the President may appoint the commissioners of the Philippine Truth Commission as presidential special assistants or advisers in order that the Commission be subsumed in the Office of the President Proper and to clearly place EO No. 1 within the ambit of Section 31. To my mind, the fact that the commissioners are proposed to be appointed as presidential advisers is an indication that the Philippine Truth Commission was initially planned to be independent of the President and the subsequent appointment of the commissioners as presidential advisers will be merely curative of the patent defect in the creation of the Commission by an Executive Order, as an independent body.

I agree with Justice Brion that what EO No. 1 sought to accomplish was not a mere reorganization under the delegated legislative authority of the President. The creation of the Philippine Truth Commission did not involve any restructuring of the Office of the President Proper nor the transfer of any function or office from the Office of the President to the various executive departments and vice-versa. The Commission is an entirely new specie of public office which, as discussed in the concurring opinions, is not exercising inherently executive powers or functions but infringing on functions reserved by the Constitution and our laws to other offices.

If the Commission is under the control and supervision of the President, and not an independent body, the danger that the Commission may be used for partisan political ends is real and not imagined.

For the sake of argument, let us accept for the moment the propositions of our dissenting colleagues that:

(a) The Commission is not a separate public office independent of the President;

(b) The Commission is an executive body (or a part of the Office of the President Proper) that may be created by the President through an executive order under Section 31; and

(c) The Commission is merely an ad hoc fact-finding body intended to apprise the President of facts that will aid him in the fulfillment of his duty to ensure the faithful execution of the laws.

If the foregoing statements are true, then what EO No. 1 created is a body under the control and supervision of the President. In fact, if the commissioners are to be considered special advisers to the President, the Commission would be a body that serves at the pleasure of the President. Proponents who support the creation of the Commission in the manner provided for under EO No. 1 should drop all arguments regarding the purported independence and objectivity of the proceedings before it.

Indeed, EO No. 1 itself is replete with provisions that indicate that the existence and operations of the Commission will be dependent on the Office of the President. Its budget shall be provided by the Office of the President[6] and therefore it has no fiscal autonomy. The reports of the Commission shall be published upon the directive of the President.[7] Further, if we follow the legal premises of our dissenting colleagues to their logical conclusion, then the Commission as a body created by executive order may likewise be abolished (if it is part of the Presidential Special Assistants/Advisers System of the Office of the President Proper) or restructured by executive order. EO No. 1 may be amended, modified, and repealed all by executive order. More importantly, if the Commission is subject to the power of control of the President, he may reverse, revise or modify the actions of the Commission or even substitute his own decision for that of the Commission.

Whether by name or by nature, the Philippine Truth Commission cannot be deemed politically "neutral" so as to assure a completely impartial conduct of its purported fact-finding mandate. I further concur with Chief Justice Corona that attempts to "sugar coat" the Philippine Truth Commission's functions as "harmless" deserve no credence.

The purported functions to be served by the Commission, as the concurring opinions vividly illustrate, will subvert the functions of the Ombudsman and the constitutional and statutory developed criminal justice system.

First, it is apparent on the face of EO No. 1 that in general "it is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption [of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people], involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration."[8] I agree with the Chief Justice's proposition that there is no law authorizing the President to create a body to investigate persons outside the executive department in relation to graft and corruption cases, concurrently with the Office of the Ombudsman which has such express legal authority. Indeed, even in jurisprudence, the instances when the power of the President to investigate and create *ad hoc* committees for that purpose were upheld have been usually related to his power of control and discipline over his subordinates or his power of supervision over local government units.

In Ganzon v. Kayanan,[9] a case involving the investigation of a mayor, we held that the power of the President to remove any official in the government service under the Revised Administrative Code and his constitutional power of supervision over local governments were the bases for the power of the President to order an investigation of any action or the conduct of any person in the government service, and to designate the official committee, or person by whom such investigation shall be conducted.

In Larin v. Executive Secretary,[10] where the petitioner subject of the investigation was an Assistant Commissioner in the Bureau of Internal Revenue, we held that:

Being a presidential appointee, he comes under the direct disciplining authority of the President. This is in line with the well settled principle that the "power to remove is inherent in the power to appoint" conferred to the President by Section 16, Article VII of the Constitution. Thus, it is ineluctably clear that Memorandum Order No. 164, which created a committee to investigate the administrative charge against petitioner, was issued pursuant to the power of removal of the President. xx x.[11] (Emphases supplied.)

In a similar vein, it was ruled in Joson v. Executive Secretary,[12] that:

The power of the President over administrative disciplinary cases against elective local officials is derived from his power of general supervision over local governments. Section 4, Article X of the 1987 Constitution provides:

Sec. 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions."

The power of supervision means "overseeing or the authority of an officer to see that the subordinate officers perform their duties. If the subordinate officers fail or neglect to fulfill their duties, the official may take such action or step as prescribed by law to make them perform their duties. The President's power of general supervision means no more than the power of ensuring that laws are faithfully executed, or that subordinate officers act within the law. Supervision is not incompatible with discipline. And the power to discipline and ensure that the laws be faithfully executed must be construed to authorize the President to order an investigation of the act or conduct of local officials when in his opinion the good of the public service so requires.[13] (Emphases ours.)

Still on the same point, Department of Health v. Camposano[14] likewise discussed that:

The Chief Executive's power to create the Ad Hoc Investigating Committee cannot be doubted. Having been constitutionally granted full control of the Executive Department, to which respondents belong, the President has the obligation to ensure that all executive officials and

employees faithfully comply with the law. With AO 298 as mandate, the legality of the investigation is sustained. Such validity is not affected by the fact that the investigating team and the PCAGC had the same composition, or that the former used the offices and facilities of the latter in conducting the inquiry.[15] (Emphases supplied.)

Second, the functions of the Commission, although ostensibly only recommendatory, are basically prosecutorial in nature and not confined to objective fact finding. EO No. 1 empowers the Commission to, among others:

SECTION 2. xxx.

xxxx

(b) Collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate, and to this end require any agency, official or employee of the Executive Branch, including government-owned or controlled corporations, to produce documents, books, records and other papers;

xxxx

(g) Turn over from time to time, for expeditious prosecution to the appropriate prosecutorial authorities, by means of a special or *interim* report and recommendation, all evidence on corruption of public officers and employees and their private sector co-principals, accomplices or accessories, if any, when in the course of its investigation the Commission finds that there is reasonable ground to believe that they are liable for graft and corruption under pertinent applicable laws. (Emphasis ours.)

I agree with Justice Perez that the aforementioned functions run counter to the very purpose for the creation of the Office of the Ombudsman, to constitutionalize a politically independent office responsible for public accountability as a response to the negative experience with presidential commissions. His discussion on the constitutional history of the Office of the

Ombudsman and the jurisprudential bases for its primary jurisdiction over cases cognizable by the Sandiganbayan (i.e., specific offenses, including graft and corruption, committed by public officials as provided for in Presidential Decree No. 1606, as amended) is apropos indeed.

I likewise find compelling Justice Brion's presentation regarding the Commission's "truth-telling" function's potential implications on due process rights and the right to a fair trial and the likelihood of duplication of, or interference with, the investigatory or adjudicatory functions of the Ombudsman and the courts. I need not repeat Justice Brion's comprehensive and lucid discussion here. However, I do find it fitting to echo here former Chief Justice Claudio Teehankee, Sr.'s dissenting opinion in Evangelista v. Jarencio,[16] the oft-cited authority for the President's power to investigate, where he stated that:

The thrust of all this is that the State with its overwhelming and vast powers and resources can and must ferret out and investigate wrongdoing, graft and corruption and at the same time respect the constitutional guarantees of the individual's right to privacy, silence and due process **and against self-incrimination** and unreasonable search and seizure. xx x. [17] (Emphases ours.)

The constitutional mandate for public accountability and the present administration's noble purpose to curb graft and corruption simply cannot justify trivializing individual rights equally protected under the Constitution. This Court cannot place its stamp of approval on executive action that is constitutionally abhorrent even if for a laudable objective, and even if done by a President who has the support of popular opinion on his side. For the decisions of the Court to have value as precedent, we cannot decide cases on the basis of personalities nor on something as fickle and fleeting as public sentiment. It is worth repeating that our duty as a Court is to uphold the rule of law and not the rule of men.

Concluding Statement

Section 1, Article VIII of the 1987 Constitution provides:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Undeniably, from the foregoing, judicial review is not only a power but a constitutional duty of the courts. The framers of our Constitution found an imperative need to provide for an expanded scope of review in favor of the "non-political" courts as a vital check against possible abuses by the political branches of government. For this reason, I cannot subscribe to Justice Maria Lourdes Sereno's view that the Court's exercise of its review power in this instance is tantamount to supplanting the will of the electorate. A philosophical view that the exercise of such power by the Judiciary may from a certain perspective be "undemocratic" is not legal authority for this Court to abdicate its role and duty under the Constitution. It also ignores the fact that it is the people by the ratification of the Constitution who has given this power and duty of review to the Judiciary.

The insinuations that the members of the majority are impelled by improper motives, being countermajoritarian and allowing graft and corruption to proliferate with impunity are utterly baseless. Not only are these sort of ad hominem attacks and populist appeals to emotion fallacious, they are essentially non-legal arguments that have no place in a debate regarding constitutionality. At the end of the day, Justices of this Court must vote according to their conscience and their honest belief of what the law is in a particular case. That is what gives us courage to stand by our actions even in the face of the harshest criticism. Those who read our opinions, if they are truly discerning, will be able to determine if we voted on points of law and if any one of us was merely pandering to the appointing power.

Needless to say, this Court will fully support the present administration's initiatives on transparency and accountability if implemented within the bounds of the Constitution and the laws that the President professes he wishes to faithfully execute. Unfortunately, in this instance, EO No. 1 fails this ultimate legal litmus test.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Notes:

[1] From the website of the International Center for Transitional Justice, http://ictj.org/en/tj/138.html (http://ictj.org/en/tj/138.html), accessed on December 6, 2010.

[2] Rule-of-Law Tools for Post-Conflict States: Truth Commissions, Office of the United Nations High Commissioner for Human Rights, United Nations, New York and Geneva (2006) at p. 6.

[3] Section 1, EO No. 1.

[4] TSN, September 28, 2010, pp. 209-215, cited in the Separate Opinion of Justice Brion.

[5] To cite a few examples: The South African "Truth and Reconciliation Commission" was established under the Promotion of National Unity and Reconciliation Act 34 of 1995 passed by that country's parliament. The "National Unity and Reconciliation Commission" in Rwanda was officially set up in 1999 by an act of the Transitional National Assembly.

[6] Section 11 of EO No. 1.

[7] Section 15 of EO No. 1.

[8] Section 2, EO No. 1 with phrase in brackets supplied from Section 1.

[9] 104 Phil. 483 (1958).

[10] 345 Phil. 962 (1997).

[11] Id. at 974.

[12] 352 Phil. 888 (1998).

[13] Id. at 913-914.

[14] 496 Phil. 886 (2005).

[15] Id. at 896-897.

[16] 160-A Phil. 753 (1975).

[17] Id. at 776.

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CONCURRING AND DISSENTING OPINION

NACHURA, *J.:*

Before us are two (2) consolidated petitions:

1. G.R. No. 192935 is a petition for prohibition filed by petitioner Louis Biraogo (Biraogo), in his capacity as a citizen and taxpayer, assailing Executive Order (E.O.) No. 1, entitled "Creating the Philippine Truth Commission of 2010" for violating Section 1, Article VI of the 1987 Constitution; and

2. G.R. No. 193036 is a petition for certiorari and prohibition filed by petitioners Edcel C. Lagman, Rodolfo B. Albano, Jr., Simeon A. Datumanong, and Orlando B. Fua, Sr., in their capacity as members of the House of Representatives, similarly bewailing the unconstitutionality of E.O. No. 1.

First, the all too familiar facts leading to this cause celebre.

On May 10, 2010, Benigno Simeon C. Aquino III was elected President of the Philippines. Oft repeated during his campaign for the presidency was the uncompromising slogan, "Kung walang corrupt, walangmahirap."

Barely a month after his assumption to office, and intended as fulfillment of his campaign promise, President Aquino, on July 30, 2010, issued Executive Order No. 1, to wit:

EXECUTIVE ORDER NO. 1

CREATING THE PHILIPPINE TRUTH COMMISSION OF 2010

WHEREAS, Article XI, Section 1 of the 1987 Constitution of the Philippines solemnly enshrines the principle that a public office is a public trust and mandates that public officers and employees, who are servants of the people, must at all times be accountable to the latter, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives;

WHEREAS, corruption is among the most despicable acts of defiance of this principle and notorious violation of this mandate;

WHEREAS, corruption is an evil and scourge which seriously affects the political, economic, and social life of a nation; in a very special way it inflicts untold misfortune and misery on the poor, the marginalized and underprivileged sector of society;

WHEREAS, corruption in the Philippines has reached very alarming levels, and undermined the people's trust and confidence in the Government and its institutions;

WHEREAS, there is an urgent call for the determination of the truth regarding certain reports of large scale graft and corruption in the government and to put a closure to them by the filing of the appropriate cases against those involved, if warranted, and to deter others from committing the evil, restore the people's faith and confidence in the Government and in their public servants;

WHEREAS, the President's battlecry during his campaign for the Presidency in the last elections "kung walang corrupt, walangmahirap" expresses a solemn pledge that if elected, he would end corruption and the evil it breeds;

WHEREAS, there is a need for a separate body dedicated solely to investigating and finding out the truth concerning the reported cases of graft and corruption during the previous administration, and which will recommend the prosecution of the offenders and secure justice for all;

WHEREAS, Book III, Chapter 10, Section 31 of Executive Order No. 292, otherwise known as the Revised Administrative Code of the Philippines, gives the President the continuing authority to reorganize the Office of the President.

NOW, THEREFORE, I, BENIGNO SIMEON AQUINO III, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Creation of a Commission. – There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION," which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by the public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration; and thereafter recommend the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.

The Commission shall be composed of a Chairman and four (4) members who will act as an independent collegial body.

SECTION 2. Powers and Functions. – The Commission, which shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption referred to in Section 1, involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration and thereafter submit its finding and recommendation to the President, Congress and the Ombudsman. In particular, it shall:

a) Identify and determine the reported cases of such graft and corruption which it will investigate;

b) Collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate, and to this end require any agency, official or employee of the Executive Branch, including government-owned or controlled

corporation, to produce documents, books, records and other papers;

c) Upon proper request and representation, obtain information and documents from the Senate and the House of Representatives records of investigations conducted by committees thereof relating to matters or subjects being investigated by the Commission;

d) Upon proper request and representation, obtain information from the courts, including the Sandiganbayan and the Office of the Court Administrator, information or documents in respect to corruption cases filed with the Sandiganbayan or the regular courts, as the case may be;

e) Invite or subpoena witnesses and take their testimonies and for that purpose, administer oaths or affirmations as the case may be;

f) Recommend, in cases where there is a need to utilize any person as a state witness to ensure that the ends of justice be fully served, that such person who qualifies as a state witness under the Revised Rules of Court of the Philippines be admitted for that purpose;

g) Turn over from time to time, for expeditious prosecution, to the appropriate prosecutorial authorities, by means of a special or interim report and recommendation, all evidence on corruption of public officers and employees and their private sector co-principals, accomplices or accessories, if any, when in the course of its investigation the Commission finds that there is reasonable ground to believe that they are liable for graft and corruption under pertinent applicable laws;

h) Call upon any government investigative or prosecutorial agency such as the Department of Justice or any of the agencies under it, and the Presidential Anti-Graft Commission, for such assistance and cooperation as it may require in the discharge of its functions and duties;

i) Engage or contract the services of resource person, professional and other personnel determined by it as necessary to carry out its mandate;

j) Promulgate its rules and regulations or rules of procedure it deems necessary to effectively and efficiently carry out the objectives of this Executive Order and to ensure the orderly conduct of its investigations, proceedings and hearings, including the presentation of evidence;

k) Exercise such other acts incident to or are appropriate and necessary in connection with the objectives and purposes of this Order.

SECTION 3. Staffing Requirements. – The Commission shall be assisted by such assistants and personnel as may be necessary to enable it to perform its functions, and shall formulate and establish its organization structure and staffing pattern composed of such administrative and technical personnel as it may deem necessary to efficiently and effectively carry out its functions and duties prescribed herein, subject to the approval of the Department of Budget and Management. The officials of the Commission shall in particular include, but not limited to, the following:

a. General Counsel

b. Deputy General Counsel

c. Special Counsel

d. Clerk of the Commission

SECTION 4. Detail of Employees. – The President, upon recommendation of the Commission, shall detail such public officers or personnel from other department or agencies which may be required by the Commission. The detailed officers and personnel may be paid honoraria and/or allowances as may be authorized by law, subject to pertinent accounting and auditing rules and procedures.

SECTION 5. Engagement of Experts. – The Truth Commission shall have the power to engage the services of experts as consultants or advisers as it may deem necessary to accomplish its mission.

SECTION 6. Conduct of Proceedings. – The proceedings of the Commission shall be in accordance with the rules promulgated by the Commission. Hearings or proceedings of the Commission shall be open to the public. However, the Commission, motupropio, or upon the request of the person testifying, hold an executive or closed-door hearing where matters of national security or public safety are involved or when the personal safety of the witness warrants the holding of such executive or closed-door hearing. The Commission shall provide the rules for such hearing.

SECTION 7. Right to Counsel of Witnesses/Resources Persons. – Any person called to testify before the Commission shall have the right to counsel at any stage of the proceedings.

SECTION 8. Protection of Witnesses/Resource Persons. – The Commission shall always seek to assure the safety of the persons called to testify and, if necessary make arrangements to secure the assistance and cooperation of the Philippine National Police and other appropriate government agencies.

SECTION 9. Refusal to Obey Subpoena, Take Oath or Give Testimony. – Any government official or personnel who, without lawful excuse, fails to appear upon subpoena issued by the Commission or who, appearing before the Commission refuses to take oath or affirmation, give testimony or produce documents for inspection, when required, shall be subject to administrative disciplinary action. Any private person who does the same may be dealt with in accordance with law.

SECTION 10. Duty to Extend Assistance to the Commission. – The departments, bureaus, offices, agencies or instrumentalities of the Government, including government-owned and controlled corporations, are hereby directed to extend such assistance and cooperation as the Commission may need in the exercise of its powers, execution of its functions and discharge of its duties and responsibilities with the end in vies of accomplishing its mandate. Refusal to extend such assistance or cooperation for no valid or justifiable reason or adequate cause shall constitute a ground for disciplinary action against the refusing official or personnel.

SECTION 11. Budget for the Commission. – The Office of the President shall provide the necessary funds for the Commission to ensure that it can exercise its powers, execute its functions, and perform its duties and responsibilities as effectively, efficiently, and expeditiously as possible.

SECTION 12. Office. – The Commission may avail itself of such office space which may be available in government buildings accessible to the public space after coordination with the department or agencies in control of said building or, if not available, lease such space as it may require from private owners.

SECTION 13. Furniture/Equipment. – The Commission shall also be entitled to use such equipment or furniture from the Office of the President which are available. In the absence thereof, it may request for the purchase of such furniture or equipment by the Office of the President.

SECTION. 14. Term of the Commission. – The Commission shall accomplish its mission on or before December 31, 2012.

SECTION 15. Publication of Final Report. – On or before December 31, 2012, the Commission shall render a comprehensive final report which shall be published upon the directive of the president. Prior thereto, also upon directive of the President, the Commission may publish such special interim reports it may issue from time to time.

SECTION 16. Transfer of Records and Facilities of the Commission. – Upon the completion of its work, the records of the Commission as well as its equipment, furniture and other properties it may have acquired shall be returned to the Office of the President.

SECTION 17. Special Provision Concerning Mandate. – If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be so extended accordingly by way of a supplemental Executive Order.

SECTION 18. Separability Clause. – If any provision of this Order is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

Section 19. Effectivity. – This Executive Order shall take effect immediately.

DONE in the City of Manila, Philippines, this 30th day of July 2010.

(SGD.) BENIGNO S. AQUINO III

By the President:

(SGD.) PAQUITO N. OCHOA, JR.
Executive Secretary

Without delay, petitioners Biraogo and Congressmen Lagman, Albano, Datumanong, and Fua filed their respective petitions decrying the constitutionality of the Truth Commission, primarily, for being a usurpation by the President of the legislative power to create a public office.

In compliance with our Resolution, the Office of the Solicitor General (OSG) filed its Consolidated Comment to the petitions. Motuproprio, the Court heard oral arguments on September 7 and 28, 2010, where we required the parties, thereafter, to file their respective memoranda.

In his Memorandum, petitioner Biraogo, in the main, contends that E.O. No. 1 violates Section 1, Article VI of the 1987 Constitution because it creates a public office which only Congress is empowered to do. Additionally, "considering certain admissions made by the OSG during the oral arguments," the petitioner questions the alleged intrusion of E.O. No. 1 into the independence of the Office of the Ombudsman mandated in, and protected under, Section 5, Article XI of the 1987 Constitution.

Holding parallel views on the invalidity of the E.O., petitioner Members of the House of Representatives raise the following issues:

I.

EXECUTIVE ORDER NO. 1 CREATING THE PHILIPPINE TRUTH COMMISSION OF 2010 VIOLATES THE PRINCIPLE OF SEPARATION OF POWERS BY USURPING THE POWERS OF THE CONGRESS (1) TO CREATE PUBLIC OFFICES, AGENCIES AND COMMISSIONS; AND (2) TO APPROPRIATE PUBLIC FUNDS.

II.

EXECUTIVE ORDER NO. 1 VIOLATES THE EQUAL PROTECTION CLAUSE OF THE 1987 CONSTITUTION BECAUSE IT LIMITS THE JURISDICTION OF THE PHILIPPINE TRUTH COMMISSION TO OFFICIALS AND EMPLOYEES OF THE "PREVIOUS ADMINISTRATION" (THE ADMINISTRATION OF OFRMER PRESIDENT GLORIA MACAPAGAL-ARROYO).

III.

EXECUTIVE ORDER NO. 1 SUPPLANTS THE CONSTITUTIONALLY MANDATED POWERS OF THE OFFICE OF THE OMBUDSMAN AS PROVIDED IN THE 1987 CONSTITUTION AND SUPPLEMENTED BY REPUBLIC ACT NO. 6770 OR THE "OMBUDSMAN ACT OF 1989."

Expectedly, in its Memorandum, the OSG traverses the contention of petitioners and upholds the constitutionality of E.O. No. 1 on the strength of the following arguments:

I.

PETITIONERS HAVE NOT AND WILL NOT SUFFER DIRECT PERSONAL INJURY WITH THE ISSUANCE OF EXECUTIVE ORDER NO. 1. PETITIONERS DO NOT HAVE LEGAL STANDING TO ASSAIL THE CONSTITUTIONALITY OF EXECUTIVE ORDER NO. 1.

II.

EXECUTIVE ORDER NO. 1 IS CONSTITUTIONAL AND VALID. EXECUTIVE ORDER NO. 1 DOES NOT ARROGATE THE POWERS OF CONGRESS TO CREATE A PUBLIC OFFICE AND TO APPROPRIATE FUNDS FOR ITS OPERATIONS.

III.

THE EXECUTIVE CREATED THE TRUTH COMMISSION PRIMARILY AS A TOOL FOR NATION-BUILDING TO INDEPENDENTLY DETERMINE THE PRINCIPAL CAUSES AND CONSEQUENCES OF CORRUPTION AND TO MAKE POLICY RECOMMENDATIONS FOR THEIR REDRESS AND FUTURE PREVENTION. ALTHOUGH ITS INVESTIGATION MAY CONTRIBUTE TO SUBSEQUENT PROSECUTORIAL EFFORTS, THE COMMISSION WILL NOT ENCROACH BUT COMPLEMENT THE POWERS OF THE OMBUDSMAN AND THE DOJ IN INVESTIGATING CORRUPTION.

IV.

EXECUTIVE ORDER NO. 1 IS VALID AND CONSTITUTIONAL. IT DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE. THE TRUTH COMMISSION HAS LEGITIMATE AND LAUDABLE PURPOSES.

In resolving these issues, the ponencia, penned by the learned Justice Jose Catral Mendoza, concludes that:

1. Petitioners have legal standing to file the instant petitions; petitioner Biraogo only because of the transcendental importance of the issues involved, while petitioner Members of the House of Representatives have standing to question the validity of any official action which allegedly infringes on their prerogatives as legislators;

2. The creation of the Truth Commission by E. O. No. 1 is not a valid exercise of the President's power to reorganize under the Administrative Code of 1987;

3. However, the President's power to create the herein assailed Truth Commission is justified under Section 17,[1] Article VII of the Constitution, albeit what may be created is merely an ad hoc Commission;

4. The Truth Commission does not supplant the Ombudsman or the Department of Justice (DOJ) nor erode their respective powers; and

5. Nonetheless, E.O. No. 1 is unconstitutional because it transgresses the equal protection clause enshrined in Section 1, Article III of the Constitution.

I agree with the ponencia that, given our liberal approach in David v. Arroyo[2] and subsequent cases, petitioners have locus standi to raise the question of constitutionality of the Truth Commission's creation. I also concur with Justice Mendoza's conclusion that the Truth Commission will not supplant the Office of the Ombudsman or the DOJ, nor impermissibly encroach upon the latter's exercise of constitutional and statutory powers.

I agree with the ponencia that the President of the Philippines can create an ad hoc investigative body. But more than that, I believe that, necessarily implied from his power of control over all executive departments and his constitutional duty to faithfully execute the laws, as well as his statutory authority under the Administrative Code of 1987, the President may create a public office.

However, I find myself unable to concur with Justice Mendoza's considered opinion that E.O. No. 1 breaches the constitutional guarantee of equal protection of the laws.

Let me elucidate.

The Truth Commission is a Public Office

The first of two core questions that confront the Court in this controversy is whether the President of the Philippines can create a public office. A corollary, as a consequence of statements made by the Solicitor General during the oral argument, is whether the Truth Commission is a public office.

A public office is defined as the right, authority, or duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some sovereign power of government to be exercised by him for the benefit of the public.[3] Public offices are created either by the Constitution, by valid statutory enactments, or by authority of law. A person who holds a public office is a public officer.

Given the powers conferred upon it, as spelled out in E.O. No. 1, there can be no doubt that the Truth Commission is a public office, and the Chairman and the Commissioners appointed thereto, public officers.

As will be discussed hereunder, it is my respectful submission that the President of the Philippines has ample legal authority to create a public office, in this case, the Truth Commission. This authority flows from the President's constitutional power of control in conjunction with his constitutional duty to ensure that laws be faithfully executed, coupled with provisions of a valid statutory enactment, E.O. No. 292, otherwise known as the Administrative Code of 1987.

E. O. No. 1 and the Executive Power

Central to the resolution of these consolidated petitions is an understanding of the "lines of demarcation" of the powers of government, i.e., the doctrine of separation of powers. The landmark case of Government of the Philippine Islands v. Springer[4] has mapped out this legal doctrine:

The Government of the Philippines Islands is an agency of the Congress of the United States. The powers which the Congress, the principal, has seen fit to entrust to the Philippine Government, the agent, are distributed among three coordinate departments, the executive, the legislative, and the judicial. It is true that the Organic Act contains no general distributing clause. But the principle is clearly deducible from the grant of powers. It is expressly incorporated in our Administrative Code. It has time and again been approvingly enforced by this court.

No department of the government of the Philippine Islands may legally exercise any of the powers conferred by the Organic Law upon any of the others. Again it is true that the Organic Law contains no such explicit prohibitions. But it is fairly implied by the division of the government into three departments. The effect is the same whether the prohibition is expressed or not. It has repeatedly been announced by this court that each of the branches of the Government is in the main independent of the others. The doctrine is too firmly imbedded in Philippine institutions to be debatable.

It is beyond the power of any branch of the Government of the Philippine islands to exercise its functions in any other way than that prescribed by the Organic Law or by local laws which conform to the Organic Law. The Governor-General must find his powers and duties in the

fundamental law. An Act of the Philippine Legislature must comply with the grant from Congress. The jurisdiction of this court and other courts is derived from the constitutional provisions.

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The Organic Act vests "the supreme executive power" in the Governor-General of the Philippine Islands. In addition to specified functions, he is given "general supervisions and control of all the departments and bureaus of the government of the Philippine Islands as far is not inconsistent with the provisions of this Act." He is also made "responsible for the faithful execution of the laws of the Philippine islands and of the United States operative within the Philippine Islands." The authority of the Governor-General is made secure by the important proviso "that all executive functions of Government must be directly under the governor-General or within one of the executive departments under the supervision and control of the governor-general." By the Administrative Code, "the governor-general, as Chief executive of the islands, is charged with the executive control of the Philippine Government, to be exercised in person or through the Secretaries of Departments, or other proper agency, according to law."

These "lines of demarcation" have been consistently recognized and upheld in all subsequent Organic Acts applied to the Philippines, including the present fundamental law, the 1987 Constitution.

Section 1, Article VII of the 1987 Constitution[5] vests executive power in the President of the Philippines. On the nature of the executive power, Justice Isagani A. Cruz writes:

Executive power is briefly described as the power to enforce and administer the laws, but it is actually more than this. In the exercise of this power, the President of the Philippines assumes a plenitude of authority, and the corresponding awesome responsibility, that makes him, indeed, the most influential person in the land.[6]

In National Electrification Administration v. Court of Appeals,[7] this Court said that, as the administrative head of the government, the President is vested with the power to execute, administer and carry out laws into practical operation. Impressed upon us, then, is the fact that

executive power is the power of carrying out the laws into practical operation and enforcing their due observance.

Relevant to this disquisition are two specific powers that flow from this "plenitude of authority." Both are found in Section 17, Article VII of the Constitution.[8] They are commonly referred to as the power of control and the take care clause.

Section 17 is a self-executing provision. The President's power of control is derived directly from the Constitution and not from any implementing legislation.[9] On the other hand, the power to take care that the laws be faithfully executed makes the President a dominant figure in the administration of the government. The law he is supposed to enforce includes the Constitution itself, statutes, judicial decisions, administrative rules and regulations and municipal ordinances, as well as the treaties entered into by our government.[10] At almost every cusp of executive power is the President's power of control and his constitutional obligation to ensure the faithful execution of the laws.

Demonstrating the mirabiledictu of presidential power and obligation, we declared in Ople v. Torres:[11]

As head of the Executive Department, the President is the Chief Executive. He represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his department. He has control over the executive department, bureaus and offices. This means that he has the authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of its officials. Corollary to the power of control, the President also has the duty of supervising the enforcement of laws for the maintenance of general peace and public order. Thus, he is granted administrative power over bureaus and offices under his control to enable him to discharge his duties effectively.

Mondano v. Silvosa,[12] defines the power of control as "the power of an officer to alter, modify, or set aside what a subordinate officer had done in the performance of his duties, and to substitute the judgment of the former for that of the latter." It includes the authority to order the

doing of an act by a subordinate, or to undo such act or to assume a power directly vested in him by law.[13]

In this regard, Araneta v. Gatmaitan[14] is instructive:

If under the law the Secretary of Agriculture and Natural Resources has authority to regulate or ban fishing by trawl, then the President of the Philippines may exercise the same power and authority because of the following: (a) The President shall have control of all the executive departments, bureaus or offices pursuant to Section 10(1), Article VII, of the Constitution; (b) Executive Orders may be issued by the President under Section 63 of the Revised Administrative Code :governing the general performance of duties by public employees or disposing of issues of general concern;" and (c) Under Section 74 of the Revised Administrative Code, "All executive functions of the Government of the Republic of the Philippines shall be directly under the Executive Department, subject to the supervision and control of the President of the Philippines in matters of general policy."

Our ruling in City of Iligan v. Director of Lands[15] echoes the same principle in this wise:

Since it is the Director of Lands who has direct executive control among others in the lease, sale or any form of concession or disposition of the land of the public domain subject to the immediate control of the Secretary of Agriculture and Natural Resources, and considering that under the Constitution the President of the Philippines has control over all executive departments, bureaus and offices, etc., the President of the Philippines has therefore the same authority to dispose of the portions of the public domain as his subordinates, the Director of Lands, and his alter-ego the Secretary of Agriculture and Natural Resources.

From these cited decisions, it is abundantly clear that the overarching framework in the President's power of control enables him to assume directly the powers of any executive department, bureau or office. Otherwise stated, whatever powers conferred by law upon subordinate officials within his control are powers also vested in the President of the Philippines. In contemplation of law, he may directly exercise the powers of the Secretary of Foreign Affairs, the Secretary of National Defense, the Commissioner of Customs, or of any subordinate official in the executive department. Thus, he could, for example, take upon

himself the investigatory functions of the Department of Justice, and personally conduct an investigation. If he decides to do so, he would be at liberty to delegate a portion of this investigatory function to a public officer, or a panel of public officers, within his Office and under his control. There is no principle of law that proscribes his doing so. In this context, the President may, therefore, create an agency within his Office to exercise the functions, or part of the functions, that he has assumed for himself. Even the ponencia admits that this can be done.

When this power of control is juxtaposed with the constitutional duty to ensure that laws be faithfully executed, it is obvious that, for the effective exercise of the take care clause, it may become necessary for the President to create an office, agency or commission, and charge it with the authority and the power that he has chosen to assume for himself. It will not simply be an exercise of the power of control, but also a measure intended to ensure that laws are faithfully executed.

To reiterate, the take care clause is the constitutional mandate for the President to ensure that laws be faithfully executed. Dean Vicente G. Sinco observed that the President's constitutional obligation of ensuring the faithful execution of the laws "is a fundamental function of the executive head [involving] a two-fold task, [i.e.,] the enforcement of laws by him and the enforcement of laws by other officers under his direction." [16]

As adverted to above, the laws that the President is mandated to execute include the Constitution, statutes, judicial decisions, administrative rules and regulations and municipal ordinances. Among the constitutional provisions that the President is obliged to enforce are the following General Principles and State Policies of the 1987 Philippine Constitution:

Section 4, Article II: The prime duty of government is to serve and protect the people x xx

Section 5, Article II: The maintenance of peace and order, the protection of life, liberty and property, and promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

Section 9, Article II: The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

Section 13, Article II: The State values the dignity of every human person and guarantees full respect for human rights.

Section 27, Article II: The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

Section 28, Article II: Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

Closer to home, as head of the biggest bureaucracy in the country, the President must also see to the faithful execution of Section 1, Article XI of the Constitution, which reads: "Public office is a public trust. Public officers and employees must at all times be accountable to the people; serve them with utmost responsibility, integrity, loyalty and efficiency; act with patriotism and justice; and lead modest lives."

These are constitutional provisions the enforcement of which is inextricably linked to the spirit and objective of E.O. No. 1.

Although only Section 1, Article XI, is cited in the Whereas clauses of E. O. No. 1, the President is obliged to execute the other constitutional principles as well. Absent any law that provides a specific manner in which these constitutional provisions are to be enforced, or prohibits any particular mode of enforcement, the President could invoke the doctrine of necessary implication, i.e., that the express grant of the power in Section 17, Article VII, for the President to faithfully execute the laws, carries with it the grant of all other powers necessary, proper, or incidental to the effective and efficient exercise of the expressly granted power. [17] Thus, if a Truth Commission is deemed the necessary vehicle for the faithful execution of the constitutional mandate on public accountability, then the power to create the same would necessarily be implied, and reasonably derived, from the basic power granted in the

Constitution. Accordingly, the take care clause, in harmony with the President's power of control, along with the pertinent provisions of the Administrative Code of 1987, would justify the issuance of E. O. No. 1 and the creation of the Truth Commission.

Further to this discussion, it is cogent to examine the administrative framework of Executive Power, as outlined in the Administrative Code.

Quite logically, the power of control and the take care clause precede all others in the enumeration of the Powers of the President. Section 1, Book III, Title I simply restates the constitutional provision, to wit:

SECTION 1. Power of Control.—The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

Next in the enumeration is the ordinance power of the President which defines executive orders, thus:

SEC. 2. Executive Orders. – Acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in executive orders.

At the bottom of the list are the other powers (Chapter 7, Book III of the Code) of the President, which include the residual power, viz:

SEC. 19. Powers Under the Constitution.—The President shall exercise such other powers as are provided for in the Constitution.

SEC. 20. Residual Powers.—Unless Congress provides otherwise, the president shall exercise such other powers and functions vested in the President which are provided for under the laws and which are not specifically enumerated above, or which are not delegated by the President in accordance with law.

In addition, pursuant to the organizational structure of the Executive Department,[18] one of the powers granted to the President is his continuing authority to reorganize his Office:[19]

SEC. 31. Continuing Authority of the President to Reorganize his Office. – The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:

(1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another;

(2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and

(3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies.

Consistent therewith, the Administrative Code provides in Section 1, Chapter 1, Book IV (The Executive Branch) that "[t]he Executive Branch shall have such Departments as are necessary for the functional distribution of the work of the President and for the performance of their functions." Hence, the primary articulated policy in the Executive Branch is the organization and maintenance of the Departments to insure their capacity to plan and implement programs in accordance with established national policies.[20]

With these Administrative Code provisions in mind, we note the triptych function of the Truth Commission, namely: (1) gather facts; (2) investigate; and (3) recommend, as set forth in Section 1 of E.O. No. 1:

SECTION 1. Creation of a Commission. – There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION," which shall [1] primarily seek and find the truth on, and toward this end, [2] investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people,

committed by the public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration; and thereafter [3] recommend the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor. (emphasis and numbering supplied)

It is plain to see that the Truth Commission's fact-finding and investigation into "reports of large scale corruption by the previous administration" involve policy-making on issues of fundamental concern to the President, primarily, corruption and its linkage to the country's social and economic development.

On this point, I differ from the ponencia, as it reads the President's power to reorganize in a different light, viz:

The question, therefore, before the Court is this: Does the creation of the Truth Commission fall within the ambit of the power to reorganize as expressed in Section 31 of the Revised Administrative Code? Section 31 contemplates "reorganization" as limited by the following functional and structural lines: (1) restructuring the internal organization of the Office of the President Proper by abolishing, consolidating or merging units thereof or transferring functions from one unit to another; (2) transferring any function under the Office of the President to any other Department/Agency or vice versa; or (3) transferring any agency under the Office of the President to any other Department/Agency or vice versa. Clearly, the provision refers to reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. These point to situations where a body or an office is already existent by a modification or alteration thereof has to be effected. The creation of an office is nowhere mentioned, much less envisioned in said provision. Accordingly, the answer is in the negative.

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xxx [T]he creation of the Truth Commission is not justified by the president's power of control. Control is essentially the power to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former

with that of the latter. Clearly, the power of control is entirely different from the power to create public offices. The former is inherent in the Executive, while the latter finds basis from either a valid delegation from Congress, or his inherent duty to faithfully execute the laws.

I am constrained to disagree because, contrary to the ponencia's holding, the President's power to reorganize is not limited by the enumeration in Section 31 of the Administrative Code.

As previously discussed, the President's power of control, in conjunction with his constitutional obligation to faithfully execute the laws, allows his direct assumption of the powers and functions of executive departments, bureaus and offices.[21] To repeat, the overarching framework in the President's power of control enables him to assume directly the functions of an executive department. On the macro level, the President exercises his power of control by directly assuming all the functions of executive departments, bureaus or offices. On the micro level, the President may directly assume certain or specific, not all, functions of a Department. In the milieu under which the Truth Commission is supposed to operate, pursuant to E. O. No. 1, only the investigatory function of the DOJ for certain crimes is directly assumed by the President, then delegated to the Truth Commission. After all, it is axiomatic that the grant of broad powers includes the grant of a lesser power; in this case, to be exercised—and delegated—at the President's option.

My conclusion that the transfer of functions of a Department to the Office of the President falls within the President's power of reorganization is reinforced by jurisprudence.

In Larin v. Executive Secretary,[22] the Court sustained the President's power to reorganize under Section 20, Book III of E.O. 292, in relation to PD No. 1416, as amended by PD No. 1772:

Another legal basis of E.O. No. 132 is Section 20, Book III of E.O. No. 292 which states:

"Sec. 20. Residual Powers.—Unless Congress provides otherwise, the President shall exercise such other powers and functions vested in the President which are provided for under the laws and which are not specifically enumerated above or which are not delegated by the President in accordance with law.

This provision speaks of such other powers vested in the president under the law. What law then gives him the power to reorganize? It is Presidential decree No. 1772 which amended Presidential Decree no. 1416. These decrees expressly grant the President of the Philippines the continuing authority to reorganize the national government, which includes the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities and to standardize salaries and materials. The validity of these two decrees are unquestionable. The 1987 Constitution clearly provides that "all laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked." So far, there is yet not law amending or repealing said decrees.

Subsequently, BuklodngKawaning EIIB v. Zamora,[23] affirmed the holding in Larin and explicitly recognized the President's authority to transfer functions of other Departments or Agencies to the Office of the President, consistent with his powers of reorganization, to wit:

But of course, the list of legal basis authorizing the President to reorganize any department or agency in the executive branch does not have to end here. We must not lose sight of the very sources of the power—that which constitutes an express grant of power. Under Section 31, Book III of Executive Order No. 292 (otherwise known as the Administrative Code of 1987), "the President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have the continuing authority to reorganize the administrative structure of the Office of the president." For this purpose, he may transfer the functions of other Departments or Agencies to the Office of the President. In Canonizado v. Aguirre, we ruled that reorganization "involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions." It takes place when there is an alteration of the existing structure of government or units therein, including the lines of control, authority and responsibility between them. xxx (emphasis supplied)

Then, and quite significantly, in Bagaoisan v. National Tobacco Administration,[24] this Court clarified the nature of the grant to the President of the power to reorganize the administrative structure of the Office of the President, thus:

In the recent case of Rosa Ligaya C. Domingo, et. al. v. Hon. Ronaldo d. Zamora, in his capacity as the Executive Secretary, et. al., this Court has had occasion to also delve on the President's power to reorganize the Office of the President under Section 31 (2) and (3) of Executive Order No. 292 and the power to reorganize the Office of the President Proper. The Court has there observed:

"xxx. Under Section 31(1) of E.O. 292, the President can reorganize the Office of the President Proper by abolishing, consolidating or merging units, or by transferring functions from one unit to another. In contrast, under Section 31(2) and (3) of EO 292, the President's power to reorganize offices outside the Office of the President Proper but still within the Office of the President is limited to merely transferring functions or agencies from the Office of the President to Departments or Agencies, and vice versa."

The provisions of Section 31, Book III, Chapter 10, of Executive Order No. 292 (Administrative code of 1987), above-referred to, reads thusly:

Sec. 31. Continuing Authority of the President to Reorganize his Office. – The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:

(1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another;

(2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and

(3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies.

The first sentence of the law is an express grant to the President of a continuing authority to reorganize the administrative structure of the Office of the President. The succeeding numbered paragraphs are not in the nature of provisos that unduly limit the aim and scope of the grant to the President of the power to reorganize but are to be viewed in consonance therewith. Section 31(1) of Executive order No. 292 specifically refers to the President's power to restructure the internal organization of the Office of the President Proper, by abolishing, consolidating or merging units hereof or transferring functions from unit to another, while Section 31(2) and (3) concern executive offices outside the Office of the President Proper allowing the President to transfer any function under the Office of the President to any other Department or Agency and vice versa, and the transfer of any agency under the Office of the President to any other department or agency and vice versa. (Emphasis supplied)

Notably, based on our ruling in Bagaoisan, even if we do not consider P.D. No. 1416, as amended by P.D. No. 1772, the abstraction of the Truth Commission, as fortified by the President's power to reorganize found in paragraph 2, Section 31 of the Administrative Code, is demonstrably permitted.

That the Truth Commission is a derivative of the reorganization of the Office of the President should brook no dissent. The President is not precluded from transferring and re-aligning the fact-finding functions of the different Departments regarding certain and specific issues, because ultimately, the President's authority to reorganize is derived from the power-and-duty nexus fleshed out in the two powers granted to him in Section 17, Article VII of the Constitution.[25]

I earnestly believe that, even with this Court's expanded power of judicial review, we still cannot refashion, and dictate on, the policy determination made by the President concerning what function, of whichever Department, regarding specific issues, he may choose to directly assume and take cognizance of. To do so would exceed the boundaries of judicial authority and encroach on an executive prerogative. It would violate the principle of separation of powers, the constitutional guarantee that no branch of government should arrogate unto itself those functions and powers vested by the Constitution in the other branches.[26]

In fine, it is my submission that the Truth Commission is a public office validly created by the President of the Philippines under authority of law, as an adjunct of the Office of the President —to which the President has validly delegated the fact-finding and investigatory powers [of the Department of Justice] which he had chosen to personally assume. Further, it is the product of the President's exercise of the power to reorganize the Office of the President granted under the Administrative Code.

This conclusion inevitably brings to the threshold of our discussion the matter of the "independence" of the Truth Commission, subject of an amusing exchange we had with the Solicitor General during the oral argument, and to which the erudite Justice Arturo D. Brion devoted several pages in his Separate Concurring Opinion. The word "independent," as used in E. O. No. 1, cannot be understood to mean total separateness or full autonomy from the Office of the President. Being a creation of the President of the Philippines, it cannot be totally dissociated from its creator. By the nature of its creation, the Truth Commission is intimately linked to the Office of the President, and the Executive Order, as it were, is the umbilical cord that binds the Truth Commission to the Office of the President.

The word "independent," used to describe the Commission, should be interpreted as an expression of the intent of the President: that the Truth Commission shall be accorded the fullest measure of freedom and objectivity in the pursuit of its mandate, unbound and uninhibited in the performance of its duties by interference or undue pressure coming from the President. Our exchange during the oral argument ended on this note: that while the Truth Commission is, technically, subject to the power of control of the President, the latter has manifested his intention, as indicated in the Executive Order, not to exercise the power over the acts of the Commission.

E. O. No. 1 and the Equal Protection Clause

Enshrined in Section 1, Article III of the Philippine Constitution is the assurance that all persons shall enjoy the equal protection of the laws, expressed as follows:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (emphasis supplied)

The equality guaranteed under this clause is equality under the same conditions and among persons similarly situated; it is equality among equals, not similarity of treatment of persons who are classified based on substantial differences in relation to the object to be accomplished.[27] When things or persons are different in fact or circumstances, they may be treated in law differently. On this score, this Court has previously intoned that:

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.[28]

Thus, when a statute or executive action is challenged on the ground that it violates the equal protection clause, the standards of judicial review are clear and unequivocal:

It is an established principle in constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on a reasonable classification. Classification, to be valid, must: (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) not be limited to existing conditions only; and (4) apply equally to all members of the same class.[29]

Further, in a more recent decision, we also declared:

In consonance thereto, we have held that “in our jurisdiction, the standard and analysis of equal protection challenges in the main have followed the ‘rational basis’ test, coupled with a deferential attitude to legislative classifications and a reluctance to invalidate a law unless there is a showing of a clear and unequivocal breach of the Constitution.” x xx.

Under this test, a legislative classification, to survive an equal protection challenge, must be shown to rationally further a legitimate state interest. The classifications must be reasonable and rest upon some ground of difference having a fair and substantial relation to the object of the legislation. Since every law has in its favor the presumption of constitutionality, the burden of proof is on the one attacking the constitutionality of the law to prove beyond reasonable doubt that the legislative classification is without rational basis. The presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes, and that there is no conceivable basis which might support it.[30]

The "rational basis" test is one of three "levels of scrutiny" analyses developed by courts in reviewing challenges of unconstitutionality against statutes and executive action. Carl Cheng, in his dissertation, "Important Right and the Private Attorney General Doctrine,"[31] enlightens us, thus:

[I]n the area of equal protection analysis, the judiciary has developed a 'level of scrutiny' analysis for resolving the tensions inherent in judicial review. When engaging in this analysis, a court subjects the legislative or executive action to one of three levels of scrutiny, depending on the class of persons and the rights affected by the action. The three levels are rational basis scrutiny, intermediate scrutiny, and strict scrutiny. If a particular legislative or executive act does not survive the appropriate level of scrutiny, the act is held to be unconstitutional. If it does survive, it is deemed constitutional. The three tensions discussed above and, in turn, the three judicial responses to each, run parallel to these three levels of scrutiny. In response to each tension, the court applies a specific level of scrutiny.

He goes on to explain these "levels of scrutiny", as follows:

The first level of scrutiny, rational basis scrutiny, requires only that the purpose of the legislative or executive act not be invidious or arbitrary, and that the act's classification be reasonably related to the purpose. Rational basis scrutiny is applied to legislative or executive acts that have the general nature of economic or social welfare legislation. While purporting to

set limits, rational basis scrutiny in practice results in complete judicial deference to the legislature or executive. Thus, a legislative or executive act which is subject to rational basis scrutiny is for all practical purposes assured of being upheld as constitutional.

The second level of scrutiny, intermediate scrutiny, requires that the purpose of the legislative or executive act be an important governmental interest and that the act's classification be significantly related to the purpose. Intermediate scrutiny has been applied to classifications based on gender and illegitimacy. The rationale for this higher level of scrutiny is that gender and illegitimacy classifications historically have resulted from invidious discrimination. However, compared to strict scrutiny, intermediate scrutiny's presumption of invidious discrimination is more readily rebutted, since benign motives are more likely to underlie classifications triggering intermediate scrutiny.

The third level of scrutiny is strict scrutiny. Strict scrutiny requires that the legislative or executive act's purpose be a compelling state interest and that the act's classification be narrowly tailored to the purpose. Strict scrutiny is triggered in two situations: (1) where the act infringes on a fundamental right; and (2) where the act's classification is based on race or national origin. While strict scrutiny purports to be only a very close judicial examination of legislative or executive acts, for all practical purposes, an act subject to strict scrutiny is assured of being held unconstitutional. (Citations omitted.)

that, in a host of cases, this Court has recognized the applicability of the foregoing tests. Among them are City of Manila v. Laguio, Jr.,[32] Central Bank Employees Association v. BangkoSentralng Pilipinas,[33] and British American Tobacco v. Camacho, et al.,[34] in all of which the Court applied the minimum level of scrutiny, or the rational basis test.

It is important to remember that when this Court resolves an equal protection challenge against a legislative or executive act, "[w]e do not inquire whether the [challenged act] is wise or desirable xxx. Misguided laws may nevertheless be constitutional. Our task is merely to determine whether there is 'some rationality in the nature of the class singled out.'"[35]

Laws classify in order to achieve objectives, but the classification may not perfectly achieve the objective.[36] Thus, in Michael M. v. Supreme Court of Sonoma County,[37] the U.S. Supreme Court said that the relevant inquiry is not whether the statute is drawn as precisely as it might have been, but whether the line chosen [by the legislature] is within constitutional limitations. The equal protection clause does not require the legislature to enact a statute so broad that it may well be incapable of enforcement.[38]

It is equally significant to bear in mind that when a governmental act draws up a classification, it actually creates two classes: one consists of the people in the "statutory class" and the other consists precisely of those people necessary to achieve the objective of the governmental action (the "objective class").[39] It could happen that –

The "statutory class" may include "more" than is necessary in the classification to achieve the objective. If so, the law is "over-inclusive." The classification may also include "less" than is necessary to achieve the objective. If so, the statute is "under-inclusive."

A curfew law, requiring all persons under age eighteen to be off the streets between the hours of midnight and 6 a.m., presumably has as its objective the prevention of street crime by minors; this is "over-inclusive" since the class of criminal minors (the objective class) is completely included in the class of people under age eighteen (the statutory class), but many people under age eighteen are not part of the class of criminal minors.

A city ordinance that bans streetcar vendors in a heavily visited "tourist quarter" of the city in order to alleviate sidewalk and street congestion is "under-inclusive". All streetcar vendors (the statutory class) contribute toward sidewalk and street congestion, but the class of people causing sidewalk and street congestion (the objective class) surely includes many others as well.

It is rare if not virtually impossible for a statutory class and an objective class to coincide perfectly.[40]

And, as the ponencia itself admits, “under-inclusion” or “over-inclusion, per se, is not enough reason to invalidate a law for violation of the equal protection clause, precisely because perfection in classification is not required.[41]

Thus, in the determination of whether the classification is invidious or arbitrary, its relation to the purpose must be examined. Under the rational basis test, the presence of any plausible legitimate objective for the classification, where the classification serves to accomplish that objective to

any degree, no matter how tiny, would validate the classification. To be invalidated on constitutional grounds, the test requires that the classification must have one of the following traits: (1) it has absolutely no conceivable legitimate purpose; or (2) it is so unconnected to any conceivable objective, that it is absurd, utterly arbitrary, whimsical, or even perverse.[42]

Given the foregoing discussion on this constitutional guarantee of equal protection, we now confront the question: Does the mandate of Executive Order No. 1, for the Truth Commission to investigate “graft and corruption during the previous administration,” violate the equal protection clause?

I answer in the negative.

First, because Executive Order No. 1 passes the rational basis test.

To repeat, the first level of scrutiny known as the rational basis test, requires only that the purpose of the legislative or executive act not be invidious or arbitrary, and that the act’s classification be reasonably related to the purpose. The classification must be shown to rationally further a legitimate state interest.[43] In its recent equal protection jurisprudence, the Court has focused primarily upon (1) the “rationality” of the government’s distinction, and (2) the “purpose” of that distinction.

To the point, we look at the definition of an executive order and the articulated purpose of E.O. No. 1.

An executive order is an act of the President providing for rules in implementation or execution of constitutional or statutory powers.[44] From this definition, it can easily be gleaned that E. O. No. 1 is intended to implement a number of constitutional provisions, among others, Article XI, Section 1. In fact, E.O. No. 1 is prefaced with the principle that "public office is a public trust" and "public officers and employees, who are servants of the people, must at all time be accountable to the latter, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives."

What likewise comes to mind, albeit not articulated therein, is Article II, Section 27, of the 1987 Constitution, which declares that "[t]he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption." In addition, the immediately following section provides: "[s]ubject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest."[45] There is also Article XI, Section 1, which sets the standard of conduct of public officers, mandating that "[p]ublic officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives." There is, therefore, no gainsaying that the enforcement of these provisions, i.e., the fight against corruption, is a compelling state interest.

Not only does the Constitution oblige the President to ensure that all laws be faithfully executed,[46] but he has also taken an oath to preserve and defend the Constitution.[47] In this regard, the President's current approach to restore public accountability in government service may be said to involve a process, starting with the creation of the Truth Commission.

It is also no secret that various commissions had been established by previous Presidents, each specifically tasked to investigate certain reports and issues in furtherance of state interest. Among the latest of such commissions is the Zeñarosa Commission, empowered to investigate the existence of private armies, as well as the Maguindanao Massacre.[48]

Under E.O. No. 1, the President initially classified the investigation of reports of graft and corruption during the previous administration because of his avowed purpose to maintain the public trust that is characteristic of a public office. The first recital (paragraph) of E.O. No. 1 does not depart therefrom. The succeeding recitals (paragraphs) enumerate the causality of maintaining public office as a public trust with corruption as "among the most despicable acts of defiance of this principle and notorious violation of this mandate." Moreover, the President views corruption as "an evil and scourge which seriously affects the political, economic, and social life of a nation." Thus, the incumbent President has determined that the first phase of his fight against graft and corruption is to have reports thereof during the previous administration investigated. There is then a palpable relation between the supposed classification and the articulated purpose of the challenged executive order.

The initial categorization of the issues and reports which are to be the subject of the Truth Commission's investigation is the President's call. Pursuing a system of priorities does not translate to suspect classification resulting in violation of the equal protection guarantee. In his assignment of priorities to address various government concerns, the President, as the

Chief Executive, may initially limit the focus of his inquiry and investigate issues and reports one at a time. As such, there is actually no differential treatment that can be equated to an invalid classification.

E.O. No. 1 cannot be subjected to the strict level of scrutiny simply because there is a claimed inequality on its face or in the manner it is to be applied. On its face, there is actually no class created. The ponencia harps on three provisions in the executive order directing the conduct of an investigation into cases of large scale graft and corruption "during the previous administration." On that basis, the ponencia concludes that there is invidious discrimination, because the executive order is focused only on the immediate past administration.

I disagree. While the phrase "previous administration" alludes to persons, which may, indeed, be a class within the equal protection paradigm, it is important to note that the entire phrase is "during the previous administration," which connotes a time frame that limits the scope of the Commission's inquiry. The phrase does not really create a separate class; it merely lays down the pertinent period of inquiry. The limited period of inquiry, ostensibly (but only initially)

excluding administrations prior to the immediate past administration, is not, per se, an intentional and invidious discrimination anathema to a valid classification. Even granting that the phrase creates a class, E.O. No. 1 has not, as yet, been given any room for application, since barely a few days from its issuance, it was subjected to a constitutional challenge. We cannot allow the furor generated by this controversy over the creation of the Truth Commission to be an excuse to apply the strict scrutiny test, there being no basis for a facial challenge, nor for an "as-applied" challenge.

To reiterate for emphasis, the determination of the perceived instances of graft and corruption that ought to claim priority of investigation is addressed to the executive, as it involves a policy decision. This determination must not to be overthrown simply because there are other instances of graft and corruption which the Truth Commission should also investigate.[49] In any event, Section 17 of E.O. No. 1 responds to this objection, when it provides:

SECTION 17. Special Provision Concerning Mandate. – If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be so extended accordingly by way of a supplemental Executive Order.

It may also be pointed out that E.O. No. 1 does not confer a right nor deprive anyone of the exercise of his right. There is no right conferred nor liability imposed that would constitute a burden on fundamental rights so as to justify the application of the strict scrutiny test. A fact-finding investigation of certain acts of public officers committed during a specific period hardly merits this Court's distraction from its regular functions. If we must exercise the power of judicial review, then we should use the minimum level of scrutiny, the rational basis test.

On more than one occasion, this Court denied equal protection challenges to statutes without evidence of a clear and intentional discrimination.[50] The pervasive theme in these rulings is a claim of discriminatory prosecution, not simply a claim of discriminatory investigation. In People v. Piedra,[51] we explained:

The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws. The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design over another not to be inferred from the action itself. **But a discriminatory purpose is not presumed, there must be a showing of "clear and intentional discrimination."** Appellant has failed to show that, in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials.

The discretion of who to prosecute depends on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense. **The presumption is that the prosecuting officers regularly performed their duties, and this presumption can be overcome only by proof to the contrary, not by mere speculation.** Indeed, appellant has not presented any evidence to overcome this presumption. The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboangueña, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws. There is also common sense practicality in sustaining appellant's prosecution.

While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense ofsociety x xx. Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime.

Likewise, [i]f the failure of prosecutors to enforce the criminal laws as to some persons should be converted into a defense for others charged with crime, the result would be that the trial of the district attorney for nonfeasance would become an issue in the trial of many persons charged with heinous crimes and the enforcement of law would suffer a complete breakdown. (emphasis supplied.)

Evidently, the abstraction of the President's power to directly prosecute crimes, hand in hand with his duty to faithfully execute the laws, carries with it the lesser power of investigation. To what extent, then, should this Court exercise its review powers over an act of the President directing the conduct of a fact-finding investigation that has not even commenced? These are clearly issues of wisdom and policy. Beyond what is presented before this Court, on its face, the rest remains within the realm of speculation.

It bears stressing that by tradition, any administration's blueprint for governance covers a wide range of priorities. Contrary to the ponencia's conclusion, such a roadmap for governance obviously entails a "step by step" process in the President's system of priorities.

Viewed in this context, the fact that the "previous administration" was mentioned thrice in E.O. No. 1, as pointed out by the ponencia, is not "purposeful and intentional discrimination" which violates the equal protection clause. Such a circumstance does not demonstrate a "history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process."[52] It simply has to be taken in the light of the President's discretion to determine his government's priorities.

It, therefore, remains unclear how the equal protection clause is violated merely because the E. O. does not specify that reports of large scale graft and corruption in other prior administrations should likewise be investigated. Notably, the investigation of these reports will not automatically lead to prosecution, as E.O No. 1 only authorizes the investigation of certain reports with an accompanying recommended action.

The following provisions of the executive order are too clear to brook objection:

1. 5th Whereas Clause

WHEREAS, there is an urgent call for the determination of the truth regarding certain reports of large scale graft and corruption in the government and to put a closure to them by the filing of the appropriate cases against those involved, if warranted, and to deter others from committing the evil, restore the people's faith and confidence in the Government and in their public servants;

2. Section 1

SECTION 1. Creation of a Commission. – There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION," which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by the public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration; and thereafter recommend the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.

3. Section 2

SECTION 2. Powers and Functions. – The Commission, which shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption referred to in Section 1, involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration and thereafter submit its finding and recommendation to the President, Congress and the Ombudsman.

Second, petitioners do not even attempt to overthrow the presumption of constitutionality of executive acts. They simply hurl pastiche arguments hoping that at least one will stick.

In any imputed violations of the equal protection clause, the standard of judicial review is always prefaced by a presumption of constitutionality:

As this Court enters upon the task of passing on the validity of an act of a co-equal and coordinate branch of the Government, it bears emphasis that deeply ingrained in our jurisprudence is the time-honored principle that statute is presumed to be valid. This presumption is rooted in the doctrine of separation of powers which enjoins upon the three coordinate departments of the Government a becoming courtesy for each other's acts. Hence, to doubt is to sustain. The theory is that before the act was done or the law was enacted, earnest studies were made by Congress, or the President, or both, to insure that the Constitution would not be breached. This Court, however, may declare a law, or portions thereof, unconstitutional where a petitioner has shown a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative one. In other words, before a statute or a portion thereof may be declared unconstitutional, it must be shown that the statute or issuance violates the Constitution clearly, palpably and plainly, and in such a manner as to leave no doubt or hesitation in the mind of the Court.[53]

Clearly, the acts of the President, in the exercise of his or her power, is preliminarily presumed constitutional such that the party challenging the constitutionality thereof (the executive act) on equal protection grounds bears the heavy burden of showing that the official act is arbitrary and capricious.[54]

Indeed, laws or executive orders, must comply with the basic requirements of the Constitution, and as challenged herein, the equal protection of the laws. Nonetheless, only in clear cases of invalid classification violative of the equal protection clause will this Court strike down such laws or official actions.

Third, petitioner Members of the House of Representatives are not proper parties to challenge the constitutionality of E.O. No. 1 on equal protection grounds. Petitioner Members of the House of Representatives cannot take up the lance for the previous administration. Under all three levels of scrutiny earlier discussed, they are precluded from raising the equal protection of the laws challenge. The perceptive notation by my esteemed colleague, Justice Carpio Morales, in her dissent, comes to life when she observes that petitioner Members of the House of Representatives cannot vicariously invoke violation of equal protection of the laws. Even

assuming E.O. No. 1 does draw a classification, much less an unreasonable one, petitioner Members of the House of Representatives, as well as petitioner Biraogo, are not covered by the supposed arbitrary and unreasonable classification.

If we applied both intermediate and strict scrutiny, the nakedness of petitioners' arguments are revealed because they do not claim violation of any of their fundamental rights, nor do they cry discrimination based on race, gender and illegitimacy. Petitioners' equal protection clause challenge likewise dissolves when calibrated against the purpose of E.O. No. 1 and its supposed classification of the administration which the Truth Commission is tasked to investigate. Nowhere in the pleadings of petitioners and their claim of violation of separation of powers and usurpation of legislative power by the executive is it established how such violation or usurpation translates to violation by E.O. No. 1 of the equal protection of the laws. Thus, no reason exists for the majority to sustain the challenge of equal protection if none of the petitioners belong to the class, claimed by the majority to be, discriminated against.

Finally, I wish to address the proposition contained in Justice Brion's concurrence—the creation of the Truth Commission has a reasonable objective, albeit accomplished through unreasonable means. According to him, E.O. No. 1 is objectionable on due process grounds as well. He propounds that the "truth-telling" function of the Truth Commission violates due process because it primes the public to accept the findings of the Commission as actual and gospel truth.

Considering all the foregoing discussion, I must, regrettably, disagree with the suggestion. Peculiar to our nation is a verbose Constitution. Herein enshrined are motherhood statements —exhortations for public officers to follow. A quick perusal of E.O. No. 1 bears out a similar intonation. Although the Solicitor General may have made certain declarations, read as admissions by the other Members of this Court, these cannot bind the Supreme Court in interpreting the constitutional grant of executive power. The matter is simply a failure of articulation which cannot be used to diminish the power of the executive. On the whole, the erroneous declarations of the Solicitor General, preempting and interpreting the President's exercise of executive power beyond the articulated purpose of E.O. No. 1, are not equivalent to the wrongful exercise by the President of executive power.

Let me then close this dissertation with Marcos v. Manglapus[55] which trailblazed and redefined the extent of judicial review on the powers of the co-equal branches of government, in particular, executive power:

Under the Constitution, judicial power includes the duty to "determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the party of any branch or instrumentality of the Government." xxx

The present Constitution limits resort to the political question doctrine and broadens the scope of judicial inquiry into areas which the Court, under previous constitutions, would have normally left to the political departments to decide. But nonetheless there remain issues beyond the Court's jurisdiction the determination which is exclusively for the President, for Congress or for the people themselves through a plebiscite or referendum. We cannot, for example, question the President's recognition of a foreign government, no matter how premature or improvident such action may appear. We cannot set aside a presidential pardon though it may appear to us that the beneficiary is totally undeserving of the grant. Nor can we amend the Constitution under the guise of resolving a dispute brought before us because the power is reserved to the people.

There is nothing in the case before us that precludes our determination thereof on the political question doctrine. The deliberation of the Constitutional Commission cited by petitioners show that the framers intended to widen the scope of judicial review but they did not intend courts of justice to settle all actual controversies before them. When political questions are involved, the Constitution limits the determination to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned. If grave abuse is not established, the Court will not substitute its judgment for that of the official concerned and decide a matter which by its nature or by law is for the latter alone to decide. In this light, it would appear clear that the second paragraph of Article VIII, Section 1 of the Constitution, defining "judicial power," which specifically empowers the courts to determine whether or not there has been a grave abuse of discretion on the part of any branch or instrumentality of the government, incorporates in the fundamental law the ruling in Lansang v. Garcia that:

Article VII of the [1935] Constitution vests in the Executive the power to suspend the privilege of the writ of habeas corpus under specified conditions. Pursuant to the principle of separation of powers underlying our system of government, the Executive is supreme within his own sphere. However, the separation of powers, under the Constitution, is not absolute. What is more, it goes hand in hand with the system of checks and balances, under which the Executive is supreme, as regards the suspension of the privilege, but only if and when he acts within the sphere allotted to him by the Basic Law, and the authority to determine whether or not he has so acted is vested in the Judicial Department, which, in this respect, is, in turn, constitutionally supreme.

In the exercise of such authority, the function of the Court is merely to check—not to supplant—the Executive, or to ascertain merely whether he has gone beyond the constitutional limits of his jurisdiction, not to exercise the power vested in him or to determine the wisdom of his act.

It is for the foregoing reasons that I vote to DISMISS the petitions.

ANTONIO EDUARDO B. NACHURA
Associate Justice

Notes:

[1] SEC. 17. The President shall have control of all the executive departments, bureau and offices. He shall ensure that the laws be faithfully executed.

[2] G.R. No. 171396, May 3, 2006, 489 SCRA 160.

[3] Fernandez v. Sto. Tomas, 312 Phil. 235, 247 (1995).

[4] 50 Phil. 259 (1927).

[5] Section 1. The executive power shall be vested in the President of the Philippines.

[6] Cruz, Philippine Political Law (2005 ed.), p. 182.

[7] G.R. No. 143481, February 15, 2002.

[8] Sec. 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

[9] Cruz, Philippine Political Law (2005 ed.), p. 213.

[10] Id. at 216.

[11] 354 Phil. 948 (1998).

[12] 97 Phil. 143 (1955).

[13] Cruz, Philippine Political Law (2005 ed.), pp. 211-212.

[14] 101 Phil. 328 (1957).

[15] G.R. No.L-30852, February 26, 1988, 158 SCRA 158.

[16]Sinco, Philippine Political Law (10th ed.), p. 260.

[17] See Marcos v. Manglapus, G.R. No. 88211, September 15, 1989, 178 SCRA 760.

[18] See Chapter 8, Title II, Book III of the Administrative Code.

[19] Section 31, Chapter 10, Title III, Book III of the Administrative Code.

[20] Section 2, Chapter 1, Book IV of the 1987 Administrative Code.

[21]Ople v. Torres, 354 Phil 949 (1998).

[22] G.R. No. 112745, October 16, 1997, 280 SCRA 713.

[23] G.R Nos. 142801-142802, July 10, 2001, 360 SCRA 718.

[24] G.R. No. 152845, August 5, 2003, 408 SCRA 337.

[25]Sinco, Philippine Political Law, p. 261,

[26] See Tañada v. Angara, 338 Phil. 546 (1997), where the Court did not "review the wisdom of the President and the Senate in enlisting the country into the WTO, or pass upon the merits of trade liberalization as a policy espoused by the said international body." The issue passed upon by the Court was limited to determining whether there had been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Senate in ratifying the WTO Agreement and its three annexes.

[27] British American Tobacco v. Camacho, G.R. No. 163583, August 20, 2008, 562 SCRA 511.

[28]Victoriano v. Elizalde Rope Workers' Union, 158 Phil. 60 (1974).

[29] Coconut Oil Refiners Association v. Torres, 503 Phil. 42, 53-54 (2005).

[30] British American Tobacco, v. Camacho, et al., supra note 27.

[31] California Law Review 1929, December 1985.

[32] G.R. No. 118127, April 12, 2005, 455 SCRA 308.

[33] 487 Phil. 531 (2004).

[34] Supra note 27.

[35] Prince Eric Fuller v. State of Oregon, 417 U.S., 40, 94 S.Ct.2116, 40 L.Ed.2d 577.

[36] Calvin Massey, Roadmap of Constitutional Law, Aspen Law & Business, 1997, p. 301.

[37] 450 U.S. 464, 101 S.Ct. 1200, U.S. Cal., 1981, March 23, 1981.

[38] Id.

[39] Massey, Roadmap of Constitutional Law, Aspen Law & Business, 1997, p. 301.

[40] Id. at 302-302.

[41] Id. at 303.

[42] Id.

[43] Id. at 299.

[44] Section 2, Book III, Title I, Administrative Code.

[45] CONSTITUTION, Section 28, Article II.

[46] CONSTITUTION, Section 17, Article VII.

[47] CONSTITUTION, Section, 5, Article VII.

[48] See Annex "A" of the Respondent's Memorandum.

[49] See: Miller v. Wilson, 236 U.S. 373, 384, 35 S. Ct. 342, 59 L. Ed. 628 (1915).

[50] See People v. Dumlao, G.R. No. 168198, March 2, 2009, 580 SCRA 409 citing Santos v. People and People v. DelaPiedra.

[51] G.R. No. 121777, January 24, 2001, 350 SCRA 163.

[52] State v. Hatori, 92 Hawaii 217, 225 [1999] citing State v. Sturch, 82 Hawaii 269, 276 [1996].

[53] Coconut Oil Refiners Association, Inc., et al. v. Hon. Ruben Torres, et. al., 503 Phil. 42, 53-54 (2005).

[54] People v. DelaPiedra, 403 Phil. 31 (2001).

[55] G.R. No. 88211, September 15, 1989, 177 SCRA 668, 695-697.

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SEPARATE CONCURRING OPINION

PERALTA, *J.:*

On July 30, 2010, President Benigno Simeon C. Aquino III issued Executive Order (E.O.) No. 1 creating the Philippine Truth Commission of 2010 (Truth Commission), which is "primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption x xx involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration and thereafter submit its findings and recommendations to the President, Congress and the Ombudsman."

Petitioners filed their respective petitions questioning the constitutionality of E.O. No. 1. In G.R. No. 193036, petitioners, as members of the House of Representatives, have legal standing to impugn the validity of E.O. No. 1, since they claim that E.O. No. 1 infringes upon their prerogatives as legislators.[1] In G.R. No. 192935, petitioner, who filed his petition as a taxpayer, may also be accorded standing to sue, considering that the issues raised are of transcendental importance to the public.[2] The people await the outcome of the President's effort to implement his pledge to find out the truth and provide closure to the reported cases of graft and corruption during the previous administration. The constitutional issues raised by petitioners seek the determination of whether or not the creation of the Truth Commission is a valid exercise by the President of his executive power.

Petitioners contend that E.O. No. 1 is unconstitutional, because only Congress may create a public office, pursuant to Section 1, Article VI of the Constitution.[3]

Respondents, through the Office of the Solicitor General (OSG), counter that the issuance of E.O. No. 1 is mainly supported by Section 17, Article VII of the Constitution,[4] Section 31, Title III, Book III of E.O. No. 292, and Presidential Decree (P.D.) No. 1416, as amended by P.D. No. 1772.

Quoted in E.O. No. 1 as the legal basis for its creation is Section 31, Title III, Book III of E.O. No. 292, otherwise known as the *Revised Administrative Code of 1987*, which provides:

SEC. 31. Continuing Authority of the President to Reorganize his Office. – The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:

(1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another;

(2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and

(3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments and agencies.

In*Bagaoisan v. National Tobacco Administration*,[5] the Court held that the first sentence of the law is an express grant to the President of a continuing authority to reorganize the administrative structure of the Office of the President. Section 31(1) of Executive Order No. 292 specifically refers to the President's power to restructure the internal organization of the Office of the President Proper, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another.[6]Section 31(2) and (3) concern executive offices outside the Office of the President Proper allowing the President to transfer any function under the Office of the President to any other department or agency and vice-versa, and the transfer of any agency under the Office of the President to any other department or agency and vice-versa.[7]

Thus, the reorganization in Section 31 involves abolishing, consolidating or merging units in the Office of the President Proper or transferring functions from one unit to another in the Office of the President Proper, and the transfer of any function or any agency under the Office of the President to any other department or agency and vice-versa. Nowhere is it stated that the President can create an office like the Truth Commission, which does not result from any reorganization under Section 31. Hence, the said section cannot be used to justify the creation of the Truth Commission.

Moreover, in its Comment, the OSG stated that one of the bases for the creation of E.O. No. 1 is P.D. No. 1416, as amended by P.D. No. 1772, which amendment was enacted by President Ferdinand E. Marcos on January 15, 1981.

P.D. No. 1416, as amended, is inapplicable as basis in the creation of the Truth Commission, since it was intended by President Ferdinand E. Marcos to promote efficiency and flexibility in the organization of the national government to strengthen the government bureaucracy when the government was in the transition from presidential to the parliamentary form of government. This is evident in the preamble of P.D. No. 1416,[8] which states:

WHEREAS, the transition toward the parliamentary form of government will necessitate flexibility in the organization of the national government; x x x[9]

The OSG admitted during the oral argument[10] that the 1987 Constitution ended the power of the President to reorganize the national government. It is noted that President Ferdinand E. Marcos exercised legislative power concurrently with the interim BatasangPambansa (1976) and, subsequently, with the regular BatasangPambansa (1984).[11] After the February 1986 revolution, President Corazon C. Aquino assumed revolutionary legislative power, and issued Proclamation No. 3, the Provisional Freedom Constitution. Section 3, Article I of Proclamation No. 3 abolished the BatasangPambansa, while Section 1, Article II of the said Proclamation vested legislative power in the President until a legislature would be elected and convened under a new Constitution. Thus, Section 6, Article XVIII (Transitory Provisions) of the 1987 Constitution provides that "[t]he incumbent President (President Corazon Aquino) shall continue to exercise legislative powers until the first Congress is convened."[12]

In view of the foregoing, the decision in Larin v. Executive Secretary[13] insofar as P.D. No. 1416, as amended by P.D. No. 1772, is cited as a law granting the President the power to reorganize, needs to be re-examined.

Assuming that P.D. No. 1416, as amended, is still a valid law, it cannot be the basis of the creation of the Truth Commission, because all the cases, from Larin v. Executive Secretary; [14]BuklodngKawaning EIIB v. Zamora;[15] Secretary of the Department of Transportation and Communications v. Mabalot;[16]Bagaoisan v. National Tobacco Administration;[17] Department of Environment and Natural Resources v. DENR Region 12 Employees;[18]Tondo Medical Center Employees Association v. Court of Appeals;[19] Malaria Employees and Workers Association of the Philippines, Inc. (MEWAP) v. Romulo[20] to Banda v. Ermita,[21] which cited P.D. No. 1416, as amended, as a basis to reorganize, involved reorganization or streamlining of an agency of the Executive Department. However, the Truth Commission was not created for streamlining purposes.

The purpose of reorganization under P.D. No. 1416, as amended by P.D. No. 1772, is to "promote simplicity, economy and efficiency in the government to enable it to pursue programs consistent with national goals for accelerated social and economic development, and to improve upon the services of the government in the transaction of the public business."

The creation of the Truth Commission, however, is not to promote simplicity, economy and efficiency in the government. The Truth Commission is primarily tasked to conduct fact-finding investigation of reported cases of graft and corruption involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration of President Gloria Macapagal-Arroyo, which separate investigative body, as stated in the preamble, "will recommend the prosecution of the offenders and secure justice for all." It is, in part, the implementation of the pledge of President Benigno Aquino, Jr. during the last election that if elected, he would end corruption and the evil it breeds.

In its Memorandum, the OSG justifies the power of the President to create the Truth Commission based on his authority to create ad hoc fact-finding committees or offices within the Office of the President, which authority is described as an adjunct of his plenary executive

power under Section 1 and his power of control under Section 17, both of Article VII of the Constitution.[22] It cited the case of Department of Health v. Camposano,[23] which held:

The Chief Executive's power to create the Ad Hoc Investigating Committee cannot be doubted. Having been constitutionally granted full control of the Executive Department, to which respondents belong, the President has the obligation to ensure that all executive officials and employees faithfully comply with the law. With AO 298 as mandate, the legality of the investigation is sustained. Such validity is not affected by the fact that the investigating team and the PCAGC had the same composition, or that the former used the offices and facilities of the latter in conducting the inquiry.

To clarify, the power of control is "the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter;"[24] hence, it cannot be the basis of creating the Truth Commission.

The ponencia justifies the creation of the Truth Commission based on the President's duty to ensure that the laws be faithfully executed under Section 17, Article VII of the Constitution, thus:

Sec. 17. The President shall have control of all executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.[25]

According to the ponencia, to ascertain if laws are faithfully executed, the President has the power to create ad hoc investigating committees, which power has been upheld in Department of Health v. Camposano.[26] In the said case, some concerned employees of the Department of Health (DOH)-National Capital Region (NCR) filed a complaint before the DOH Resident against certain officers of the DOH arising from alleged anomalous purchase of medicines. The Resident Ombudsman submitted an investigation report to the Secretary of Health recommending the filing of a formal administrative charge of Dishonesty and Grave Misconduct against the respondents. Subsequently, the Secretary of Health filed a formal charge against the respondents for Grave Misconduct, Dishonesty, and Violation of Republic

Act No. 3019. Thereafter, the Executive Secretary issued Administrative Order No. 298, creating an ad hoc committee to investigate the administrative case filed against the DOH-NCR employees. The said Administrative Order was indorsed to the Presidential Commission Against Graft and Corruption (PCAGC), which found the respondents guilty as charged and recommended their dismissal from the government. However, the Court overturned the dismissal of respondents by the Secretary of DOH, because respondents were denied due process, but it declared valid the creation of the ad hoc committee, thus:

xxx The investigation was authorized under Administrative Order No. 298 dated October 25, 1996, which had created an Ad Hoc Committee to look into the administrative charges filed against Director Rosalinda U. Majarais, Priscilla G. Camposano, Horacio D. Cabrera, Imelda Q. Agustin and Enrique L. Perez.

The Investigating Committee was composed of all the members of the PCAGC: Chairman Eufemio C. Domingo, Commissioner Dario C. Rama and Commissioner Jaime L. Guerrero. The Committee was directed by AO 298 to "follow the procedure prescribed under Section 38 to 40 of the Civil Service Law (PD 807), as amended." It was tasked to "forward to the Disciplining Authority the entire records of the case, together with its findings and recommendations, as well as the draft decision for the approval of the President."

The Chief Executive's power to create the Ad Hoc Investigating Committee cannot be doubted. Having been constitutionally granted full control of the Executive Department, to which respondents belong, the President has the obligation to ensure that all executive officials and employees faithfully comply with the law. With AO 298 as mandate, the legality of the investigation is sustained. Such validity is not affected by the fact that the investigating team and the PCAGC had the same composition, or that the former used the offices and facilities of the latter in conducting the inquiry.[27]

The ponencia stressed that the purpose of allowing ad hoc investigating bodies to exist is to allow inquiry into matters which the President is entitled to know so that he can be properly advised and guided in the performance of his duties relative to the execution and enforcement of the laws of the land. The ponencia stated that this was also the objective of investigative

bodies created in the past like the PCAC, PCAPE, PARGO, the Feliciano Commission, the Melo Commission and the Zenarosa Commission. Hence, the ponencia held that the President's power to create investigative bodies cannot be denied.

Albeit the President has the power to create ad hoc committees to investigate or inquire into matters for the guidance of the President to ensure that the laws be faithfully executed, I am of the view that the Truth Commission was not created in the nature of the aforementioned ad hoc investigating/fact-finding bodies. The Truth Commission was created more in the nature of a public office.

Based on the creation of ad hoc investigating bodies in Department of Health v. Camposano and Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,[28] the members of an ad hoc investigative body are heads and representatives of existing government offices, depending on the nature of the subject matter of the investigation. The ad hoc investigating body's functions are primarily fact-finding/investigative and recommendatory in nature.[29]

In this case, the members of the Truth Commission are not officials from existing government offices. Moreover, the Truth Commission has been granted powers of an independent office as follows:

1. Engage or contract the services of resource persons, professionals and other personnel determined by it as necessary to carry out its mandate;[30]

2. Promulgate its rules and regulations or rules of procedure it deems necessary to effectively and efficiently carry out the objectives of this Executive Order and to ensure the orderly conduct of its investigations, proceedings and hearings, including the presentation of evidence.[31]

3. The Truth Commission shall have the power to engage the services of experts as consultants or advisers as it may deem necessary to accomplish its mission.[32]

In addition, the Truth Commission has coercive powers such as the power to subpoena witnesses.[33] Any government official or personnel who, without lawful excuse, fails to appear upon subpoena issued by the Commission or who, appearing before the Commission refuses to take oath or affirmation, give testimony or produce documents for inspection, when required, shall be subject to administrative disciplinary action.[34] Any private person who does the same may be dealt with in accordance with law.[35] Apparently, the grant of such powers to the Truth Commission is no longer part of the executive power of the President, as it is part of law-making, which legislative power is vested in Congress.[36] There are only two instances in the Constitution wherein Congress may delegate its law-making authority to the President:[37]

Article VI, Section 23. (1) The Congress, by a vote of two-thirds of both houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.

(2) In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.

Article VI, Sec. 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

(2) The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the government.[38]

Although the President may create investigating bodies to help him in his duty to ensure that the laws are faithfully executed, he cannot be allowed to encroach on or usurp the law-making power of the Legislature in the creation of such investigative bodies.

Moreover, the Truth Commission's function is questioned on the ground that it duplicates, if not supersedes, the function of the Office of the Ombudsman. The OSG avers that the Ombudsman's power to investigate is not exclusive, but is shared with other similarly authorized agencies, citing Ombudsman v. Galicia.[39]

Based on Section 2 of E.O. No. 1, the powers and functions of the Truth Commission do not supplant the powers and functions of the Ombudsman.[40] Nevertheless, what is the use of the Truth Commission if its power is merely recommendatory? Any finding of graft and corruption by the Truth Commission is still subject to evaluation by the Office of the Ombudsman, as it is only the Office of the Ombudsman that is empowered to conduct preliminary investigation, determine the existence of probable cause and prosecute the case. Hence, the creation of the Truth Commission will merely be a waste of money, since it duplicates the function of the Office of the Ombudsman to investigate reported cases of graft and corruption.

Further, E.O. No. 1 violates that equal protection clause enshrined in the Constitution. The guarantee of equal protection of the laws means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other classes in like circumstances.[41]

In this case, investigation by the Truth Commission covers only third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration of former President Gloria Macapagal-Arroyo.[42]

The OSG, however, counters in its Memorandum that the equal protection clause of the Constitution is not violated, because although E.O. No. 1 names the previous administration as the initial subject of the investigation of cases of graft and corruption, it is not confined to the said administration, since E.O. No. 1 clearly speaks of the President's power to expand its coverage to prior administrations as follows:

SECTION 17. Special Provision Concerning Mandate. If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the

prior administrations, such mandate may be so extended accordingly by way of a supplemental Executive Order.[43]

As provided above, the mandate of the Truth Commission may be expanded to include the investigation of cases of graft and corruption during prior administrations, but it is subject to the "judgment" or discretion of the President and it may be so extended by way of a supplemental Executive Order. In the absence of the exercise of judgment by the President that the Truth Commission shall also conduct investigation of reported cases of graft and corruption during prior administrations, and in the absence of the issuance of a supplemental executive order to that effect, E.O. No. 1 covers only third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration of former President Gloria Macapagal-Arroyo. This is admitted by the OSG in its Memorandum[44] as it explains that "to include the past administrations, at this point, may unnecessarily overburden the Commission and lead it to lose its effectiveness." The OSG's position shows more consideration for the burden that the investigation may cause to the Commission, while losing sight of the equal protection clause of the Constitution.

The OSG further states that even if the Truth Commission would solely concern itself with graft and corruption, if there be any, of the previous administration, there is still no violation of the equal protection clause. It submits that the segregation of the transactions of public officers during the previous administration as possible subjects of investigation is a valid classification based on substantial distinctions and is germane to the evils which the E.O. seeks to correct. The distinctions cited are:

1) E.O No. 1 was issued in view of widespread reports of large scale graft and corruption in the previous administration which have eroded public confidence in public institutions.

2) The segregation of the preceding administration as the object of fact-finding investigations is warranted by the reality that the current administration will most likely bear the immediate consequences of the policies of the previous administration, unlike those of the administrations long gone.

3) The classification of the previous administration as a separate class for investigation lies in the reality that the evidence of possible criminal activity, the evidence that could lead to recovery of public monies illegally dissipated, the policy lessons to be learned to ensure that anti-corruption laws are faithfully executed, are more easily established in the regime that immediately precedes the current administration.

4) Many administrations subject the transactions of their predecessors to investigations to provide closure to issues that are pivotal to national life or even as a routine measure of due diligence and good housekeeping by a nascent administration.

Indeed, the equal protection clause of the Constitution allows classification.[45] If the classification is reasonable, the law may operate only on some and not all of the people without violating the equal protection clause.[46] To be valid, it must conform to the following requirements: (1) It must be based on substantial distinctions; (2) it must be germane to the purposes of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the class.[47]

Peralta v. Commission on Elections [48]held:

The equal protection clause does not forbid all legal classifications. What [it] proscribes is a classification which is arbitrary and unreasonable. It is not violated by a reasonable classification based upon substantial distinctions, where the classification is germane to the purpose of the law and applies equally to all those belonging to the same class. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within the class and those who do not. There is, of course, no concise or easy answer as to what an arbitrary classification is. No definite rule has been or can be laid down on the basis of which such question may be resolved. The determination must be made in accordance with the facts presented by the particular case. The general rule, which is well-settled by the authorities, is that a classification, to be valid, must rest upon material differences between the persons, activities or things included and those excluded. There must, in other words, be a basis for distinction.

Furthermore, such classification must be germane and pertinent to the purpose of the law. And, finally, the basis of classification must, in general, be so drawn that those who stand in substantially the same position with respect to the law are treated alike.

The distinctions cited by the OSG are not substantial to separate the previous administration as a distinct class from prior administrations as subject matter for investigation for the purpose of ending graft and corruption. As stated by the ponencia, the reports of widespread corruption in the previous administration cannot be taken as a substantial distinction, since similar reports have been made in earlier administrations.

Moreover, a valid classification must rest upon material differences between the persons, or activities or thing included and excluded.[49] Reasonable grounds must exist for making a distinction between those who fall within the class and those who do not.[50] There is no substantial distinction cited between public officers who may be involved in reported cases of graft and corruption during the previous administration and public officers who may be involved in reported cases of graft and corruption during prior administrations in relation to the purpose of ending graft and corruption. To limit the investigation to public officers of the previous administration is violative of the equal protection clause.

I vote, therefore, to GRANT the petitions as Executive Order No. 1 is unconstitutional since it violates the equal protection clause of the Constitution and encroaches on the law-making power of Congress under Section 1, Article VI of the Constitution.

DIOSDADO M. PERALTA
Associate Justice

Notes:

[1] See David v. Macapagal-Arroyo, G.R. No. 171396, May 3, 2006, 489 SCRA 160.

[2]Kilosbayan, Incorporated v. Guingona, Jr., G.R. No. 113375, May 5, 1994, 232 SCRA 110.

[3] Sec. 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

[4] Sec. 17. The President shall have control of all executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

[5] G.R. No. 152845, August 5, 2003, 408 SCRA 337.

[6] Id. (Emphasis supplied.)

[7] Id. (Emphasis supplied.)

[8] Enacted on June 9, 1978.

[9] Emphasis supplied.

[10] Conducted on September 28, 2010.

[11] Joaquin G. Bernas, S.J., The Constitution of the Republic of the Philippines, A Commentary, Vol. II, First edition, pp. 70-73, citing Legaspi v. Minister of Finance, 115 SCRA 418. (1982).

[12] Id. at 73.

[13] G.R. No. 112745, October 16, 1997, 280 SCRA 713.

[14]Id.

[15]G.R. Nos. 142801-802, July 10, 2001, 360 SCRA 718.

[16] G.R. No. 138200, February 27, 2002, 378 SCRA 128.

[17] Supra note 5.

[18] G.R. No. 149724, August 19, 2003, 409 SCRA 359.

[19] G.R. No. 167324, July 17, 2007, 527 SCRA 746.

[20] G.R. No. 160093, July 31, 2007, 528 SCRA 673.

[21] G.R. No. 166620, April 20, 2010.

[22] OSG Memorandum, p. 43.

[23] 496 Phil. 886, 896-897 (2005).

[24] Secretary of the Department of Transportation and Communications v. Mabalot, supra note 16.

[25] Emphasis supplied.

[26] Supra note 23.

[27] Department of Health v. Camposano, supra note 23.

[28] G.R. No. 145184, March 14, 2008, 548 SCRA 295. In this case, President Fidel V. Ramos issued on October 8, 1992, Administrative Order No. 13 creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (Committee), which reads:

> WHEREAS, Sec. 28, Article II of the 1987 Constitution provides that "Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all transactions involving public interest";
>
> WHEREAS, Sec. 15, Article XI of the 1987 Constitution provides that "The right of the state to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel";

WHEREAS, there have been allegations of loans, guarantees, or other forms of financial accommodation granted, directly or indirectly, by government owned and controlled bank or financial institutions, at the behest, command or urging by previous government officials to the disadvantage and detriment of the Philippine government and the Filipino people;

ACCORDINGLY, an "Ad-Hoc FACT FINDING COMMITTEE ON BEHEST LOANS" is hereby created to be composed of the following:

Chairman of the Presidential

Commission on Good Government – Chairman

The Solicitor General – Vice-Chairman

Representative from the Office of the Executive Secretary – Member

Representative from the Department of Finance – Member

Representative from the Department of Justice – Member

Representative from the Development Bank of the Philippines – Member

Representative from the Philippine National Bank – Member

Representative from the Asset Privatization Trust – Member

Government Corporate Counsel – Member

Representative from the Philippine Export and Foreign

Loan Guarantee Corporation – Member

The Ad Hoc Committee shall perform the following functions:

1. Inventory all behest loans; identify the lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for granting the loans or who influenced the grant thereof;

2. Identify the borrowers who were granted “friendly waivers”, as well as the government officials who granted these waivers; determine the validity of these waivers;

3. Determine the courses of action that the government should take to recover those loans, and to recommend appropriate actions to the Office of the President within sixty (60) days from the date hereof.

The Committee is hereby empowered to call upon any department, bureau, office, agency, instrumentality or corporation of the government, or any officer or employee thereof, for such assistance as it may need in the discharge of its function.

[29] See Footnote 28.

[30] E.O. No. 1, Section 2 (i).

[31] E.O. No. 1, Section 2 (j).

[32] E.O. No. 1, Section 5.

[33] E.O. No. 1, Section 2 (e).

[34] E.O. No. 1. Section 9.

[35] Id.

[36] The Constitution, Article VI, Section 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

[37] Joaquin G. Bernas, S.J., The Constitution of the Republic of the Philippines, A Commentary, Vol. II, supra note 11, at 70, 140-141, 161.

[38] Emphasis supplied.

[39] G.R. No. 167711, October 10, 2008, 568 SCRA 327, 339.

[40] Republic Act No. 6770, Section 15. Powers, Functions and Duties. – The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases x xx.

[41] *City of Manila* v. *Laguio, Jr.*, G.R. No. 118127, April 12, 2005, 455 SCRA 308.

[42] E.O. No. 1, Section 2. Powers and functions.– The Commission, which shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption referred to in Section 1, involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the previous administration x xx. (Emphasis supplied.)

[43] Emphasis supplied.

[44] Memorandum, p. 89.

[45] Central Bank Employees Association, Inc. v. BangkoSentralngPilipinas, G.R. No. 148208, December 15, 2004, 446 SCRA 299, citing Victoriano v. Elizalde Rope Workers' Union, 59 SCRA 54. (1974).

[46] City of Manila v. Laguio, Jr., G.R. No. 118127, April 12, 2005, 455 SCRA 308, 348.

[47] Id. at 348-349.

[48] No. L-47771, March 11, 1978, 82 SCRA 30.

[49] Peralta v. Commission on Elections, supra.

[50] Id.

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SEPARATE OPINION

PEREZ, *J.:*

Executive Order No. 1 of President Benigno S. Aquino III Creating the Philippine Truth Commission of 2010 violates Article XI, Section 5 and Section 7 together with Section 13(1) and (7) and related provisions in Paragraphs (2), (3), (4), (5) and (6) of the same Section 7, all of the Philippine Constitution.

Particularized, the presidential issuance offends against the independence of the Office of the Ombudsman; defies the protection against legislation of the mandates of the Ombudsman; and defiles the bestowal of these mandates by their reappointment to the lesser body. The presidential creation, if unchecked, would, under the layer of good intentions, sully the integrity of the organic act which, for law to rule, can be touched by no one except the sovereign people and only by the way and manner they have ordained. This is a democratic original. The sovereign people can, of course, choose to cut the essential ties, scatter the existing entirety and slay the standing system. That did not happen. The sovereign elected to stay put; to stay in the present ordinance. Everyone must honor the election. And there can be no permissible disregard, even in part, of the free and deliberate choice.

The proposition is truly significant in this study of the questioned executive order. The country has had a historic revolution that gave the people the chance to right the wrong that shoved the nation on the verge. A new charter was written. But the topic of Executive Order No. 1, accountability of public officers, was rewritten and as the same constitutional heading. The injunction that public office is a public trust, including its meaning and import, was copied from the otherwise discarded document. And having adopted the objective of the old, the new law assumed likewise the means for the end which are the anti-graft institutions of 1973,to wit, the special graft court named Sandiganbayan and the Ombudsman, the corruption investigator and prosecutor then known as the Tanodbayan both of which were, in the 1973 Charter, ordered created by legislation.

The transplant of idea and mechanism, the adoption of the ends and the assumption of the means of 1973 leads to the definite conclusion that the present Constitution is an affirmance that, driven by the breadth of corruption in public office needing enduring solutions, there must be no less than a constitutionally secured institution with impregnable authority to combat corruption. This is the Ombudsman.

Uy vs. Sandiganbayan,[1] chronicled the origins of the Ombudsman. It was there recounted that:

In the advent of the 1973 Constitution, the members of the Constitutional Convention saw the need to constitutionalize the office of the Ombudsman, to give it political independence and adequate powers to enforce its recommendations. The 1973 Constitution mandated the legislature to create an office of the Ombudsman to be known as Tanodbayan. Its powers shall not be limited to receiving complaints and making recommendations, but shall also include the filing and prosecution of criminal, civil or administrative case before the appropriate body in case of failure of justice. Section 6, Article XIII of the 1973 Constitution read:

Section 6. The BatasangPambansa shall create an office of the Ombudsman, to be known as Tanodbayan, which shall receive and investigate complaints relative to public office, including those in government-owned or controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil or administrative case before the proper court of body.

Uy went on to enumerate the implementing presidential decrees, issued as legislation, namely Presidential Decree No. 1487 creating the Office of the Ombudsman known as the Tanodbayan; Presidential Decree No. 1607 broadening the authority of the Tanodbayan to investigate administrative acts of administrative agencies; Presidential Decree 1630 reorganizing the Office of the Tanodbayan and vesting the powers of the Special Prosecutor in the Tanodbayan himself.

The events at and following the ratification of the 1987 Constitution, as likewise historified in Uy, must be made part of this writer's position:

With the ratification of the 1987 Constitution, a new Office of the Ombudsman was created. The present Ombudsman, as protector of the people, is mandated to act promptly on complaints filed in any form or manner against public officials or employees of the government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and to notify the complainants of the action taken and the result thereof. He possesses the following powers, functions and duties:

1. Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient;

2. Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent and correct any abuse or impropriety in the performance of duties.

3. Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

4. Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursements or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

5. Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

6. Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

7. Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

8. Promulgate its rules or procedure and exercise such other powers or perform such functions or duties as may be provided by law.

As a new Office of the Ombudsman was established, the then existing Tanodbayan became the Office of the Special Prosecutor which continued to function and exercise its powers as provided by law, except those conferred on the Office of the Ombudsman created under the 1987 Constitution.

The frameworks for the Office of the Ombudsman and the Office of the Special Prosecutor were laid down by President Corazon Aquino in Executive Order (EO) 243 and EO 244, both passed on July 24, 1987.

In September 1989, Congress passed RA 6770 providing for the functional and structural organization of the Office of the Ombudsman. As in the previous laws on the Ombudsman, RA 6770 gave the present Ombudsman not only the duty to receive and relay the people's

grievances, but also the duty to investigate and prosecute for and in their behalf, civil, criminal and administrative offenses committed by government officers and employees as embodied in Sections 15 and 11 of the law.[2]

Clear then from the chronicle, that, as it was at the time of its constitutionalization in 1973, the power of the Ombudsman "shall not be limited to receiving complaints and making recommendations, but shall also include the filing and prosecution of criminal xxx cases before the appropriate body xxx." More importantly, the grant of political independence to the Ombudsman which was the spirit behind the 1973 provisions was specifically stated in the 1987 Constitution. Thus:

Section 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy, and at least one Deputy each for Luzon, Visayas and Mindanao. A separate Deputy for the Military establishment may likewise be appointed. (Underscoring supplied.)

Of direct relevance and application to the case at bar is the reason behind the constitutionalization of the Ombudsman. Again, we refer to Uy[3] citing Cortez, Redress of Grievance and the Philippine Ombudsman (Tanodbayan):

In this jurisdiction, several Ombudsman-like agencies were established by past Presidents to serve as the people's medium for airing grievances and seeking redress against abuses and misconduct in the government. These offices were conceived with the view of raising the standard in public service and ensuring integrity and efficiency in the government. In May 1950, President ElpidioQuirino created the Integrity Board charged with receiving complaints against public officials for acts of corruption, dereliction of duty and irregularity in office, and conducting a thorough investigation of these complaints. The Integrity Board was succeeded by several other agencies which performed basically the same functions of complaints-handling and investigation. These were the Presidential Complaints and Action Commission under President Ramon Magsaysay, the Presidential Committee on Administration Performance Efficiency under President Carlos Garcia, the Presidential Anti-Graft Committee under President DiosdadoMacapagal, and the Presidential Agency on Reform and Government

Operations and the Office of the Citizens counselor, both under President Ferdinand Marcos. It was observed, however, that these agencies failed to realize their objective for they did not enjoy the political independence necessary for the effective performance of their function as government critic. Furthermore, their powers extended to no more than fact-finding and recommending.

The lack of political independence of these presidential commissions, to which was attributed their failure to realize their objectives, was clarified during the deliberations of the Constitutional Commission on what is now Article XI of the Constitution with, as already observed, the same heading used in 1973, "Accountability of Public Officials." The Commissioners also alluded to the unsuccessful presidential attempts.

In his sponsorship speech, Commissioner Colayco, Vice-Chairman of the Committee on Accountability of Public Officers, articulated:

In 1950, for instance, President Quirino created the Integrity Board in an attempt to formalize the procedure for executive direction and control of the bureaucracy. This Board lasted for six months. When President Magsaysay took over the reins of government in 1953, he created the Presidential Complaints and Action Committee. The primary purpose of this Committee was to expedite action on complaints received by the Office of the President against the manner in which the officials of the executive departments and offices were performing the duties entrusted to them by law, or against their acts, conduct or behavior. xxx. But again politics came in—this office did not last long. Two months after President Magsaysay's death, the office was abolished.

Next, President Garcia created his own Presidential Committee on Administration, Performance and Efficiency [PCAPE]. Again this office did not last long and was replaced by the Presidential Agency on Reforms and Government Operations or PARGO under the regime of President Marcos.[4]

As Commissioner Colayco pointed out in the continuation of his sponsorship speech: although these programs were "good per se," the succeeding Presidents discarded them—as the incoming Presidents generally tend to abandon the policies and programs of their

predecessors—a political barrier to the eventual success of these bodies. He concluded by saying that "[t]he intention, therefore, of our proposal is to constitutionalize the office so that it cannot be touched by the Presidents as they come and go."

It may thus be said that the 1987 Constitution completed the Ombudsman's constitutionalization which was started in 1973. The past Constitution mandated the creation by the legislature, the National Security Assembly, later the BatasangPambansa, of an office of the Ombudsman, which mandate, incidentally, was given also for the creation of a special court, the Sandiganbayan. The present Constitution, while allowing the continuation of the Sandiganbayan and leaving its functions and jurisdiction to provisions "by law," itself created "the independent Office of the Ombudsman" and itself determined its powers, functions and duties. The independence of the Ombudsman is further underscored by the constitutional orders that the Ombudsman and his Deputies shall be appointed by the President from a list prepared by the Judicial and Bar Council which appointments shall require no confirmation; that the Ombudsman and his Deputies shall have the rank of Chairman and Members, respectively, of the Constitutional Commissions, and they shall receive the same salary, which shall not be decreased during their term of office; that the Office of the Ombudsman shall enjoy fiscal autonomy and its approved annual appropriations shall be automatically and regularly released; and that the Ombudsman may only be removed from office by impeachment.[5]

It is with the ground and setting just described that Executive Order No. 1 created the Philippine Truth Commission. Naturally, the Order had to state that the Philippine Truth Commission was created by the President of the Republic of the Philippines further describing the act as the exercise of his "continuing authority to reorganize the Office of the President." The Order specified that the budget of the Commission shall be provided by the Office of the President and even its furniture and equipment will come from the Office of the President. More significantly, a basic premise of the creation is the President's battlecry during his campaign for the Presidency in the last elections "kung walang corrupt, walangmahirap," which is considered a "solemn pledge that if elected, he would end corruption and the evil it breeds." So much so that the issuance states that "a comprehensive final report shall be published upon directive of the President" upon whose directive likewise, interim reports may issue from time to time.

The Philippine Truth Commission anchored itself on the already constitutionalized principle that public office is a public trust. It adopted the already defined goal to circle and contain corruption, an enemy of the good state already identified way back in 1973. What Executive Order No. 1 did was to shorten the sight and set it from the incumbent's standpoint. Therefrom, it fixed its target at "reported cases of graft and corruption involving third level public officers and higher, their co-principals, accomplice and accessories from the private sector" and further pinpointed the subjects as "third level public officers during the previous administration." For this commission, the Philippine Truth Commission was presidentially empowered as an "investigative body" for a thorough fact finding investigation, thereafter to:

g) Turn over from time to time, for expeditious prosecution, to the appropriate prosecutional authorities, by means of a special or interim report and recommendation, all evidence on corruption of public officers and employees and their private sector co-principals, accomplice or accessories, if any, when in the course of its investigation the Commission finds that there is reasonable ground to believe that they are liable for graft and corruption under pertinent applicable laws.

Having thus taken account of the foregoing, this writer takes the following position:

1. In light of the constitutionally declared and amply underscored independence of the Office of the Ombudsman, which declaration is winnowed wisdom from the experienced inherent defects of presidential creations, so real and true that the Ombudsman's constitutionalization was adopted to completion even if from the charter of an overthrown regime, Executive Order No. 1 cannot pass the present constitutional test. Executive Order No. 1 is unconstitutional precisely because it was issued by the President. As articulated by Commissioner Colayco of the Commission that resurrected the Ombudsman, "our proposal is to constitutionalize the office so that it cannot be touched by the Presidents as they come and go." And as this Court stated, repeating the observation regarding the erstwhile presidential anti-graft commissions, such commissions failed to realize their objective because they did not enjoy the political independence necessary for the effective performance of a government critic.

Relevant too are the words of Commissioner Regalado:

It is said here that the Tanodbayan or the Ombudsman would be a toothless or a paper tiger. That is not necessarily so. If he is toothless, then let us give him a little more teeth by making him independent of the Office of the President because it is now a constitutional creation, so that the insidious tentacles of politics, as has always been our problem, even with PARGO, PCAPE and so forth, will not deprive him of the opportunity to render service to Juan dela Cruz.[6]

Verily, the Philippine Truth Commission is a defiance of the constitutional wisdom that established the politically independent Ombudsman for one of its reasons for being is the very campaign battlecry of the President "kung walang corrupt, walangmahirap." Not that there is anything wrong with the political slogan. What is wrong is the pursuit of the pledge outside the limits of the Constitution. What is wrong is the creation by the President himself of an Ombudsman-like body while there stands established an Ombudsman, constitutionally created especially because of unsuccessful presidential antecedents, and thus made independent from presidential prerogative.

2. A simple comparison will show that likeness of the Philippine Truth Commission with the Ombudsman. No such likeness is permitted by the Constitution.

It can easily be seen that the powers of the Truth Commission to: 1) identify and determine the reported cases of graft and corruption which it will investigate; and 2) collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate,[7] are the same as the power of the Ombudsman to investigate any illegal, unjust, improper, or inefficient act or omission of any public official, employee, office or agency.[8]

The authority of the Truth Commission to require any agency, official or employee of the Executive Branch to produce documents, books, records and other papers[9] mirrors the authority of the Ombudsman to direct concerned government officials to furnish it with copies of documents relating to contracts or transactions entered into by the latter's office involving the disbursement or use of public funds or properties.[10]

Likewise, the right to obtain information and documents from the Senate, the House of Representatives and the courts,[11] granted by Executive Order No. 1 to the Truth Commission, is analogous to the license of the Ombudsman to request any government agency for assistance and information and to examine pertinent records and documents.[12]

And, the powers of the Truth Commission to invite or subpoena witnesses, take their testimonies, administer oaths[13] and impose administrative disciplinary action for refusal to obey subpoena, take oath or give testimony[14] are parallel to the powers to administer oaths, issue subpoena, take testimony and punish for contempt or subject to administrative disciplinary action any officer or employee who delays or refuses to comply with a referral or directive granted by Republic Act (RA) 6770[15] to the Ombudsman.

If Executive Order No. 1 is allowed, there will be a violation of Section 7 of Article XI, the essence of which is that the function and powers (enumerated in Section 13 of Article XI) conferred on the Ombudsman created under the 1987 Constitution cannot be removed or transferred by law. Section 7 states:

Section 7. The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.

There is a self-evident reason for the shield against legislation provided by Section 7 in protection of the functions conferred on the Office of the Ombudsman in Section 13. The Ombudsman is a constitutional office; its enumerated functions are constitutional powers.

So zealously guarded are the constitutional functions of the Ombudsman that the prohibited assignment of the conferred powers was mentioned in Section 7 in relation to the authority of the Tanodbayan which, while renamed as Office of the Special Prosecutor, remained constitutionally recognized and allowed to “continue to function and exercise its powers as now or hereafter may be provided by law.”

The position of the Office of the Special Prosecutor, as a continuing office with powers "as may be provided by law" vis-à-vis the Ombudsman created by the 1987 Constitution would be unraveled by subsequent law and jurisprudence. Most apt is Zaldivar vs. Sandiganbayan,[16]which said:

Under the 1987 Constitution, the Ombudsman (as distinguished from the incumbent Tanodbayan) is charged with the duty to:

Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

The Constitution likewise provides that:

The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.

Now then, inasmuch as the aforementioned duty is given to the Ombudsman, the incumbent Tanodbayan (called Special Prosecutor under the 1987 Constitution and who is supposed to retain powers and duties NOT GIVEN to the Ombudsman) is clearly without authority to conduct preliminary investigations and to direct the filing of criminal cases with the Sandiganbayan, except upon orders of the Ombudsman. This right to do so was lost effective February 2, 1987. From that time, he has been divested of such authority.

Under the present Constitution, the Special Prosecutor (Raul Gonzalez) is a mere subordinate of the Tanodbayan (Ombudsman) and can investigate and prosecute cases only upon the latter's authority or orders. The Special Prosecutor cannot initiate the prosecution of cases but can only conduct the same if instructed to do so by the Ombudsman. Even his original power to issue subpoena, which he still claims under Section 10(d) of PD 1630, is now deemed transferred to the Ombudsman, who may, however, retain it in the Special Prosecutor in connection with the cases he is ordered to investigate. (Underscoring supplied.)

The ruling was clear: the duty to investigate contained in Section 13(1) having been conferred on the Office of the Ombudsman, left the then Tanodbayan without authority to conduct preliminary investigation except upon orders of the Ombudsman. The message was definite. The conferment of plenary power upon the Ombudsman to investigate "any act or omission of any public official xxx when such act or omission appears to be illegal, unjust, improper or inefficient" cannot, after 1987 and while the present Constitution remains, be shared even by the body previously constitutionalized as vested with such authority, even if there is such assignment "by law."

Indeed, the subsequent law obeyed Section 7 as correctly read in Zaldivar. Thus, in Republic Act No. 6770, an Act Providing For the Functional And Structural Organization of the Office of the Ombudsman and For Other Purposes, it was made clear in Section 11(3) second sentence that "the Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under the supervision and control of the Ombudsman."

Constitutional history, specific constitutional provisions, jurisprudence and current statute combine to say that after the ratification of the Constitution in 1987, no body can be given "by law" any of the powers, functions and duties already conferred on the Ombudsman by Section 13, Article XI of the Constitution. As already shown, the Truth Commission insofar as concerns the mentioned third level officers or higher of the previous administration appropriates, not just one but virtually, all of the powers constitutionally enumerated for the Ombudsman. The violation of Section 7 in relation to Section 13 of Article XI of the Constitution is evident.

3. No comfort is given to the respondents by the fact that, as mentioned in Honasan II vs. Panel of Investigating Prosecutors of the Department of Justice,[17] there are "jurisprudential declarations" that the Ombudsman and the Department of Justice (DOJ) have concurrent jurisdiction. Concurrence of jurisdiction does not allow concurrent exercise of such jurisdiction. Such is so that the Ombudsman Act specifically states in Section 15 that the Ombudsman has primary jurisdiction over cases cognizable by the Sandiganbayan—precisely the kind of cases covered by the Philippine Truth Commission—and proceeds to define "primary jurisdiction" by again, specifically, stating that the Ombudsman "may take over, at any stage, from any investigation of such cases." This primary jurisdiction was the premise when a

majority of the Court in Honasan discussed the relevance of OMB-DOJ Joint Circular No. 95-001 (which provides that the preliminary investigation and prosecution of offenses committed by public officers in relation to office filed with the Office of the Prosecutor shall be "under the control and supervision of the Office of the Ombudsman") in relation to Sections 2 and 4, Rule 112 of the Revised Rules on Criminal Procedure on Preliminary Investigation, which concerns the review of the resolution of the investigating prosecutor in such cases. Honasan would conclude that the authority of the DOJ prosecutors to conduct preliminary investigation of offenses within the original jurisdiction of the Sandiganbayan is subject to the qualification:

xxx that in offenses falling within the original jurisdiction of the Sandiganbayan, the prosecutor shall, after their investigation, transmit the records and their resolutions to the Ombudsman or his deputy for appropriate action. Also, the prosecutor cannot dismiss the complaint without prior written authority of the Ombudsman or his deputy, nor can the prosecutor file an Information with the Sandiganbayan without being deputized by, and without prior written authority of the Ombudsman, or his deputy.[18] (Underscoring in the original)

Three separate opinions, two of which were dissents were submitted in Honasan. Justice Vitug said that the investigating fiscal must be particularly deputized by the Ombudsman and the investigation must be conducted under the supervision and control of the Ombudsman;[19] Justice Ynares-Santiago discussed at length the concept of primary jurisdiction and took the position that:[20]

Where the concurrent authority is vested in both the Department of Justice and the Office of the Ombudsman, the doctrine of primary jurisdiction should operate to restrain the Department of Justice from exercising its investigative authority if the case will likely be cognizable by the Sandiganbayan. In such cases, the Office of the Ombudsman should be the proper agency to conduct the preliminary investigation over such an offense, it being vested with the specialized competence and undoubted probity to conduct the investigation.

Justice Sandoval-Gutierrez was more straightforward:[21]

While the DOJ has a broad general jurisdiction over crimes found in the Revised Penal Code and special laws, however, this jurisdiction is not plenary or total. Whenever the Constitution or statute vests jurisdiction over the investigation and prosecution of certain crimes in an office, the DOJ has no jurisdiction over those crimes. In election offenses, the Constitution vests the power to investigate and prosecute in the Commission on Elections. In crimes committed by public officers in relation to their office, the Ombudsman is given by both the Constitution and the statute the same power of investigation and prosecution. These powers may not be exercised by the DOJ. xxx

At the very least, therefore, the prosecutor, in Sandiganbayan cases must, after investigation transmit the records and their resolution to the Ombudsman whose prior written authority is needed before the prosecutor can dismiss a complaint or file an information in which latter instance, a deputization of the fiscal is additionally needed. Even as this writer submits that the position of the minority in Honasan hews far better to the Constitution since, as already observed, the Ombudsman's authority excludes even the Tanodbayan which used to be the constitutionally recognized holder of the power, the further submission is that the majority ruling to the effect that the Ombudsman is the supervisor of the prosecutor who investigates graft in high places, nonetheless illegalizes the Philippine Truth Commission.

Respondent's main reliance is that—

Unlike that of the OMB or DOJ which conducts formal investigation as a result of criminal complaints filed before them, or upon reports, the Truth Commission conducts fact-finding investigation preliminary to the filing of a complaint that could lead to a criminal investigation.[22]

If the Philippine Truth Commission would, indeed, conduct only fact-finding investigations preliminary to a criminal investigation, then the foregoing discussion would truly be irrelevant. The fact, however, is that the Philippine Truth Commission is, to use the Solicitor General's phrase a "criminal investigator" or one who conducts a preliminary investigation for the prosecution of a criminal case.

Detailing the powers and functions of the Philippine Truth Commission, Section 2 of Executive Order No. 1 says that the Commission shall identify and determine the reported cases of such graft and corruption which it will investigate (Section 2[a]) and collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate (Sec. 2[b]). As aforenoted, the Philippine Truth Commission's power to investigate graft and corruption is no different from the constitutional power of the Ombudsman to investigate any act of any public official when such act appears to be illegal, unjust, improper, or inefficient. The Philippine Truth Commission cannot avoid the comparison by differentiating "formal investigation" or "criminal investigation" which it says is conducted by the Ombudsman or the DOJ, from the "fact-finding investigation" of the Philippine Truth Commission. Let us go back to Zaldivar. There it was as much as stated that the power to investigate mentioned in Section 13(1) of the 1987 Constitution is the authority to conduct preliminary investigation which authority was removed from the Tandobayan called Special Prosecutor when it was given to the Ombudsman. This equivalence was affirmed in Acop vs. Office of the Ombudsman,[23] where it was stated:

In view of the foregoing, it is evident that the petitioners have not borne out any distinction between "the duty to investigate" and "the power to conduct preliminary investigations;" neither have the petitioners established that the latter remains with the Tanodbayan, now the Special Prosecutor. Thus, this Court can only reject the petitioners' first proposition.

Such established definition of "investigation" of graft and corruption cases, especially for the purpose of determining the authority of one body in relation to another, which is exactly one of the issues in this case, must be read into Executive Order No. 1. No source citation is needed for the generally accepted rule that the words used in a legal document, indeed one which is intended to be a law, has the meaning that is established at the time of the law's promulgation. "Investigation" in Section 1(a) of Executive Order No. 1 is the same as preliminary investigation and its conduct by the Truth Commission cannot be independent of the Ombudsman. The Truth Commission cannot exist outside the Ombudsman. Executive Order No. 1 so places the Truth Commission and, is, therefore unconstitutional.

Indeed, Executive Order No. 1 itself pronounces that what it empowers the Philippine Truth Commission with is the authority of preliminary investigation. Section 2(g) of the executive order states:

Turn over from time to time, for expeditious prosecution, to the appropriate prosecutionalauthorities, by means of a special or interim report and recommendation, all evidence on corruption of public officers and employees and their private sector co-principals, accomplice or accessories, if any, when in the course of its investigation the Commission finds that there is reasonable ground to believe that they are liable for graft and corruption under pertinent applicable laws. (Underscoring supplied.)

Investigation to find reasonable ground to believe "that they are liable for graft and corruption under applicable laws" is preliminary investigation as defined in Rule 112, Section 1 of the Rules of Criminal Procedure, which states:

Section 1. Preliminary investigation defined; when required. – Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

Moreover, as clearly stated in Section 2(g) of Executive Order No. 1, the Philippine Truth Commission will be more powerful than the DOJ prosecutors who are required, after their investigation, to transmit the records and their resolution for appropriate action by the Ombudsman or his deputy, which action is taken only after a review by the Ombudsman. Section 4 of Rule 112 states that:

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No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe or motuproprio, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same Rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman.

In other words, under existing Rule which follows the statutorily defined primary jurisdiction of the Ombudsman in obeisance to the constitutional conferment of authority, the Ombudsman reviews and may reverse or modify the resolution of the investigating prosecutor. In the case of the Philippine Truth Commission, the Ombudsman not only shares its constitutional power but, over and above this, it is divested of any and all investigatory power because the Philippine Truth Commission's finding of "reasonable ground" is final and unreviewable and is turned over to the Ombudsman solely for "expeditious prosecution."

4. There is an attempt by the Solicitor General to read around the explicitness of Section 2(g) of Executive Order No. 1. Thus, skirting the words "for expeditious prosecution" and their obvious meanings as just discussed, the respondents argue that:

The Truth Commission will submit its recommendation to, among others, the OMB and to the "appropriate prosecutorial authorities" which then shall exercise their constitutional and statutory powers and jurisdiction to evaluate the recommendation or endorsements of the Truth Commission. While findings of the Truth Commission are recommendatory, the facts gathered by the Commission will decisively aid prosecutorial bodies in supporting possible

indictments for violations of anti-graft laws. Moreover, the policy recommendations to address corruption in government will be invaluable to the Executive's goal to realize its anti-corruption policies.[24]

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The Reports of the Truth Commission will serve as bases for possible prosecutions and as sources of policy options xxx.

Fact gathering as basis for preliminary investigation and not as preliminary investigation itself and basis for prosecution, is, seemingly, the function respondents want to attribute to the Philippine Truth Commission to escape the obvious unconstitutional conferment of Ombudsman power. That is no route out of the bind. Fact gathering, fact finding, indeed truth finding is, as much as investigation as preliminary investigation, also constitutionally conferred on the Ombudsman. Section 12 of Article XI states:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

The Ombudsman on its own investigates any act or omission of any public official when such act or omission appears to be illegal (Section 13(1), Article XI of the Constitution). The power is broad enough, if not specially intended, to cover fact-finding of the tenor that was given to the Philippine Truth Commission by Executive Order No. 1 which is:

b) Collect, receive, review and evaluate evidence related to or regarding the cases of large scale corruption which it has chosen to investigate xxx.

And, the objective of the Philippine Truth Commission pointed to by the Solicitor General which is to make findings for "policy recommendations to address corruption in government" and to serve as "sources of policy options" is exactly the function described for and ascribed to the

Ombudsman in Section 13(7), Art. XI of the Constitution:

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

Moreover, as at the outset already pointed out, the power of the Philippine Truth Commission to obtain information and documents from the Congress and the Judiciary [Section 2(c) and (d) of Executive Order No. 1] is a reproduction of the Ombudsman powers provided for in Section 13 (4) and (5), Article XI of the Constitution.

Virtually, another Ombudsman is created by Executive Order No. 1. That cannot be permitted as long as the 1987 Constitution remains as the fundamental law.

5. To excuse the existence of the presidentially created, manned, funded and equipped Truth Commission side-by-side with the Constitutionally created and empowered Ombudsman, the Solicitor General provides the very argument against the proposition. In page 75 of his memorandum, the Solicitor General says that:

The concerned agencies need not wait until the completion of the investigation of the Truth Commission before they can proceed with their own investigative and prosecutorial functions. Moreover, the Truth Commission will, from time to time, publish special interim reports and recommendations, over and above the comprehensive final report. If any, the preliminary reports may aid the concerned agencies in their investigations and eventually, in the filing of a complaint or information. (Underscoring supplied)

Apparently, the statement proceeds from the position that "the power of the OMB to investigate offenses involving public officers or employees is not exclusive but is concurrent with other similarly authorized agencies of the government."[25] Without cutting off from the discussions that the concurrence of jurisdiction of the Ombudsman with any other body should be read to mean that at the very least any finding by any other body is reviewable by the Ombudsman and that in full obedience to the Constitution, graft cases against high officials should be investigated alone by or under the aegis of the Ombudsman, it need only be repeated

that concurrence of jurisdiction does not allow concurrent exercise of jurisdiction. This is the reason why we have the rule that excludes any other concurrently authorized body from the body first exercising jurisdiction. This is the reason why forum shopping is malpractice of law.

The truth is, in the intensely political if not partisan matter of "reports of graft and corruption xxx committed by public officers xxx, if any, during the previous administration," there can only be one finding of truth. Any addition to that one finding would result in din and confusion, a babel not needed by a nation trying to be one. And this is why all that fall under the topic accountability of public officers have been particularized and gathered under one authority—The Ombudsman. This was done by the Constitution. It cannot be undone as the nation now stands and remains.

WHEREFORE, I vote for the grant of the petition and the declaration of Executive Order No. 1 as unconstitutional.

JOSE PORTUGAL PEREZ
Associate Justice

Notes:

[1] G.R. No. 105965-70, 354 SCRA 651, 661.

[2] Id. at 664-665.

[3] Id. at 660-661.

[4] Records of the Constitutional Commission Vol. II, 26 July 1986, p. 267.

[5] Sec. 9, Sec. 10, Sec. 14 and Sec. 2 of Article XI, 1987 Constitution.

[6] Records of the Constitutional Commission, Vol. II, 26 July 1986, p. 296.

[7] Section 2(a) and (b), respectively, E.O. No. 1, dated 30 July 2010.

[8] Article XI, Section 13(1), 1987 Constitution.

[9] Section 2(b), E.O. No. 1, supra note 7.

[10] Article XI, Section 13(4), 1987 Constitution.

[11] Section 2(c) and (d), E.O. No. 1, supra.

[12] Article XI, Section 13(5), 1987 Constitution.

[13] Section 2(e), E.O. No. 1, supra.

[14] Id., Section 9.

[15] The Ombudsman Act of 1989, Section 15(8) and (9) and Section 26(4).

[16] G.R. Nos. L-79660-707, 27 April 1988, 160 SCRA 843, 846-847.

[17] G.R. No. 159747, 13 April 2004, 427 SCRA 46.

[18] Id. at 74.

[19] Id. at 77-78.

[20] Id. at 86.

[21] Id. at 92.

[22] Memorandum for Respondent, p. 79.

[23] G.R. No. 120422, 248 SCRA 566, 579.

[24] Memorandum for Respondents, pp. 73-74.

[25] Memorandum for Respondents, p. 82.

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DISSENTING OPINION

CARPIO, *J.:*

The two petitions before this Court seek to declare void Executive Order No. 1, *Creating the Philippine Truth Commission of 2010* (EO 1), for being unconstitutional.

In G.R. No. 192935, petitioner Louis C. Biraogo (Biraogo), as a Filipino citizen and as a taxpayer, filed a petition under Rule 65 for prohibition and injunction. Biraogo prays for the issuance of a writ of preliminary injunction and temporary restraining order to declare EO 1 unconstitutional, and to direct the Philippine Truth Commission (Truth Commission) to desist from proceeding under the authority of EO 1.

In G.R. No. 193036, petitioners Edcel C. Lagman, Rodolfo B. Albano, Jr., Simeon A. Datumanong, and Orlando B. Fua, Sr. (Lagman, *et al.*), as Members of the House of Representatives, filed a petition under Rule 65 for certiorari and prohibition. Petitioners Lagman, *et al.* pray for the issuance of a temporary restraining order or writ of preliminary injunction to declare void EO 1 for being unconstitutional.

The Powers of the President

Petitioners Biraogo and Lagman, *et al.* (collectively petitioners) assail the creation of the Truth Commission. They claim that President Benigno S. Aquino III (President Aquino) has no power to create the Commission. Petitioners' objections are mere sound bites, devoid of sound legal reasoning.

On 30 July 2010, President Aquino issued EO 1 pursuant to Section 31, Chapter 10, Title III, Book III of Executive Order No. 292 (EO 292).[1] Section 31 reads:

Section 31. *Continuing Authority of the President to Reorganize his Office.* The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the

Office of the President. For this purpose, he may take any of the following actions:

(1) **Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another**;

(2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and

(3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies. (Emphasis supplied)

The law expressly grants the President the "continuing authority to reorganize the administrative structure of the Office of the President," which necessarily includes the power to create offices within the Office of the President Proper. The power of the President to reorganize the Office of the President Proper cannot be disputed as this power is expressly granted to the President by law. Pursuant to this power to reorganize, all Presidents under the 1987 Constitution have created, abolished or merged offices or units within the Office of the President Proper, EO 1 being the most recent instance. This Court explained the rationale behind the President's continuing authority to reorganize the Office of the President Proper in this way:

xxx The law grants the President this power in recognition of the recurring need of every President to reorganize his office "to achieve simplicity, economy and efficiency." The Office of the President is the nerve center of the Executive Branch. To remain effective and efficient, the Office of the President must be capable of being shaped and reshaped by the President in the manner he deems fit to carry out his directives and policies. After all, the Office of the President is the command post of the President. This is the rationale behind the President's continuing authority to reorganize the administrative structure of the Office of the President.[1] (Emphasis supplied)

The Power To Execute Faithfully the Laws

Section 1, Article VI of the 1987 Constitution states that "[t]he executive power is vested in the President of the Philippines." Section 17, Article VII of the 1987 Constitution states that "[t]he President shall have control of all the executive departments, bureaus and offices. **He shall ensure that the laws be faithfully executed.**"[3] Before he enters office, the President takes the following oath prescribed in Section 5, Article VII of the 1987 Constitution: "I do solemnly swear that I will faithfully and conscientiously fulfill my duties as President of the Philippines, preserve and defend its Constitution, **execute its laws**, do justice to every man, and consecrate myself to the service of the Nation. So help me God."[4]

Executive power is vested exclusively in the President. Neither the Judiciary nor the Legislature can execute the law. As the Executive, the President is mandated not only to execute the law, but also to execute faithfully the law.

To execute ***faithfully*** the law, the President must first know the facts that justify or require the execution of the law. To know the facts, the President may have to conduct fact-finding investigations. Otherwise, without knowing the facts, the President may be blindly or negligently, and not faithfully and intelligently, executing the law.

Due to time and physical constraints, the President cannot obviously conduct by himself the fact-finding investigations. The President will have to delegate the fact-finding function to one or more subordinates. Thus, the President may appoint a single fact-finding investigator, or a collegial body or committee. In recognizing that the President has the power to appoint an investigator to inquire into facts, this Court held:

Moreover, petitioner cannot claim that his investigation as acting general manager is for the purpose of removing him as such for having already been relieved, the obvious purpose of the investigation is merely to gather facts that may aid the President in finding out why the NARIC failed to attain its objectives, particularly in the stabilization of the prices of rice and corn. His investigation is, therefore, not punitive, but merely an inquiry into matters which the President is entitled to know so that he can be properly guided in the performance of his duties relative to the execution and enforcement of the laws of the land. In this sense, the President may

authorize the appointment of an investigator of petitioner Rodriguez in his capacity as acting general manager even if under the law the authority to appoint him and discipline him belongs to the NARIC Board of Directors. The petition for prohibition, therefore, has no merit.[5] (Boldfacing and italicization supplied)

The Power To Find Facts

The power to find facts, or to conduct fact-finding investigations, is necessary and proper, and thus ***inherent*** in the President's power to execute faithfully the law. Indeed, the power to find facts is inherent not only in Executive power, but also in Legislative as well as Judicial power. The Legislature cannot sensibly enact a law without knowing the factual milieu upon which the law is to operate. Likewise, the courts cannot render justice without knowing the facts of the case if the issue is not purely legal. Petitioner Lagman admitted this during the oral arguments:

ASSOCIATE JUSTICE CARPIO:
xxx The power to fact-find is inherent in the legislature, correct? I mean, before you can pass a law, you must determine the facts. So, it's essential that you have to determine the facts to pass a law, and therefore, the power to fact-find is inherent in legislative power, correct?

CONGRESSMAN LAGMAN:
Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:
And it is also inherent in judicial power, we must know the facts to render a decision, correct?

CONGRESSMAN LAGMAN:
Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:
And it is also inherent in executive power that [the] President has to know the facts so that he can faithfully execute the laws, correct?

CONGRESSMAN LAGMAN:
Yes, Your Honor, in that context (interrupted).

ASSOCIATE JUSTICE CARPIO:
So (interrupted)

CONGRESSMAN LAGMAN:
Your Honor, in that context, the legislature has the inherent power to make factual inquiries in aid of legislation. In the case of the Supreme Court and the other courts, the power to inquire into facts [is] in aid of adjudication. And in the case of the Office of the President, or the President himself [has the power] to inquire into the facts in order to execute the laws.[6]

Being an inherent power, there is no need to confer explicitly on the President, in the Constitution or in the statutes, the power to find facts. *Evangelista v. Jarencio*[7]underscored the importance of the power to find facts or to investigate:

It has been essayed that the lifeblood of the administrative process is the flow of fact[s], the gathering, the organization and the analysis of evidence. **Investigations are useful for all administrative functions, not only for rule making, adjudication, and licensing, but also for prosecuting, for supervising and directing, for determining general policy, for recommending legislation, and for purposes no more specific than illuminating obscure areas to find out what if anything should be done.** An administrative agency may be authorized to make investigations, not only in proceedings of a legislative or judicial nature, but also in proceedings whose sole purpose is to obtain information upon which future action of a legislative or judicial nature may be taken and may require the attendance of witnesses in proceedings of a purely investigatory nature. It may conduct general inquiries into evils calling for correction, and to report findings to appropriate bodies and make recommendations for actions. (Emphasis supplied)

The Power To Create A Public Office

The creation of a public office must be distinguished from the creation of an *ad hoc* fact-finding public body.

The power to create a public office is undeniably a legislative power. There are two ways by which a public office is created: (1) by law, or (2) by delegation of law, as found in the President's authority to reorganize his Office. The President as the Executive does not inherently possess the power to reorganize the Executive branch. However, the Legislature has delegated to the President the power to create public offices within the Office of the President Proper, as provided in Section 31(1), Chapter 10, Title III, Book III of EO 292.

Thus, the President can create the Truth Commission as a public office in his Office pursuant to his power to reorganize the Office of the President Proper. [8] In such a case, the President is exercising his delegated power to create a public office within the Office of the President Proper. There is no dispute that the President possesses this delegated power.

In the alternative, the President can also create the Truth Commission as an *ad hoc* body to conduct a fact-finding investigation pursuant to the President's inherent power to find facts as basis to execute faithfully the law. The creation of such *ad hoc* fact-finding body is indisputably **necessary and proper** for the President to execute faithfully the law. In such a case, members of the Truth Commission may be appointed as Special Assistants or Advisers of the President,[9] and then assigned to conduct a fact-finding investigation. The President can appoint as many Special Assistants or Advisers as he may need.[10] There is no public office created and members of the Truth Commission are incumbents already holding public office in government. These incumbents are given an assignment by the President to be members of the Truth Commission. Thus, the Truth Commission is merely an *ad hoc* body assigned to conduct a fact-finding investigation.

The creation of *ad hoc* fact-finding bodies is a routine occurrence in the Executive and even in the Judicial branches of government. Whenever there is a complaint against a government official or employee, the Department Secretary, head of agency or head of a local government unit usually creates a fact-finding body whose members are incumbent officials in the same department, agency or local government unit.[11] This is also true in the Judiciary, where this Court routinely appoints a fact-finding investigator, drawn from incumbent Judges or Justices

(or even retired Judges or Justices who are appointed consultants in the Office of the Court Administrator), to investigate complaints against incumbent officials or employees in the Judiciary.

The creation of such *ad hoc* investigating bodies, as well as the appointment of *ad hoc* investigators, does not result in the creation of a public office. In creating *ad hoc* investigatory bodies or appointing *ad hoc* investigators, executive and judicial officials do not create public offices but merely exercise a power inherent in their primary constitutional or statutory functions, which may be to execute the law, to exercise disciplinary authority, or both. These fact-finding bodies and investigators are not permanent bodies or functionaries, unlike public offices or their occupants. There is no separate compensation, other than *per diems* or allowances, for those designated as members of *ad hoc* investigating bodies or as ad hoc investigators.

Presidential Decree No. 1416 (PD 1416) cannot be used as basis of the President's power to reorganize his Office or create the Truth Commission. PD 1416, as amended, delegates to the President "continuing authority to reorganize the National Government,"[12] which means the Executive, Legislative and Judicial branches of government, in addition to the independent constitutional bodies. Such delegation can exist only in a dictatorial regime, not under a democratic government founded on the separation of powers. The other powers granted to the President under PD 1416, as amended, like the power to transfer appropriations without conditions and the power to standardize salaries, are also contrary to the provisions of the 1987 Constitution.[13] PD 1416, which was promulgated during the Martial Law regime to facilitate the transition from the presidential to a parliamentary form of government under the 1973 Constitution,[14] is now functus officio and deemed repealed upon the ratification of the 1987 Constitution.

The President's power to create *ad hoc* fact-finding bodies does not emanate from the President's power of control over the Executive branch. The President's power of control is the power to reverse, revise or modify the decisions of subordinate executive officials, or substitute his own decision for that of his subordinate, or even make the decision himself without waiting for the action of his subordinate.[15] This power of control does not involve the power to create

a public office. Neither does the President's power to find facts or his broader power to execute the laws give the President the power to create a public office. The President can exercise the power to find facts or to execute the laws without creating a public office.

Objections to EO 1

There Is No Usurpation of Congress'
Power To Appropriate Funds

Petitioners Lagman, *et al.* argue that EO 1 usurps the exclusive power of Congress to appropriate funds because it gives the President the power to appropriate funds for the operations of the Truth Commission. Petitioners Lagman, *etal.*add that no particular source of funding is identified and that the amount of funds to be used is not specified.

Congress is exclusively vested with the "power of the purse," recognized in the constitutional provision that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law."[16] The specific purpose of an appropriation law is to authorize the release of unappropriated public funds from the National Treasury.[17]

Section 11 of EO 1 merely states that "the Office of the President shall provide the necessary funds for the Commission to ensure that it can exercise its powers, execute its functions, and perform its duties and responsibilities as effectively, efficiently, and expeditiously as possible." Section 11 does not direct the National Treasurer to release unappropriated funds in the National Treasury to finance the operations of the Truth Commission. Section 11 does not also say that the President is appropriating, or is empowered to appropriate, funds from the unappropriated funds in the National Treasury. Clearly, there is absolutely no language in EO 1 appropriating, or empowering the President to appropriate, unappropriated funds in the National Treasury.

Section 11 of EO 1 merely states that the Office of the President shall fund the operations of the Truth Commission. Under EO 1, the funds to be spent for the operations of the Truth Commission have already been appropriated by Congress to the Office of the President under the current General Appropriations Act. The budget for the Office of the President under the

annual General Appropriations Act always contains a Contingent Fund[18] that can fund the operations of ad hoc investigating bodies like the Truth Commission. In this case, there is no appropriation but merely a disbursement by the President of funds that Congress had already appropriated for the Office of the President.

The Truth Commission Is Not
A Quasi-Judicial Body

While petitioners Lagman, *et al.* insist that the Truth Commission is a quasi-judicial body, they admit that there is no specific provision in EO 1 that states that the Truth Commission has quasi-judicial powers.[19]

ASSOCIATE JUSTICE CARPIO:
Okay. Now. Let's tackle that issue. Where in the Executive Order is it stated that [the Truth Commission] has a quasi-judicial power? Show me the provision.

CONGRESSMAN LAGMAN:
There is no exact provision.

There is no language in EO 1 granting the Truth Commission quasi-judicial power, **whether expressly or impliedly**, because the Truth Commission is not, and was never intended to be, a quasi-judicial body. The power of the President to create offices within the Office of the President Proper is a power to create only executive or administrative offices, not quasi-judicial offices or bodies. Undeniably, a quasi-judicial office or body can only be created by the Legislature. The Truth Commission, as created under EO 1, is not a quasi-judicial body and is not vested with any quasi-judicial power or function.

The exercise of quasi-judicial functions involves the determination, with respect to the matter in controversy, of what the law is, what the legal rights and obligations of the contending parties are, and based thereon and the facts obtaining, the adjudication of the respective rights and obligations of the parties.[20] The tribunal, board or officer exercising quasi-judicial functions must be clothed with the power to pass judgment on the controversy.[21]***In short,***

quasi-judicial power is the power of an administrative body to adjudicate the rights and obligations of parties under its jurisdiction in a manner that is final and binding, unless there is a proper appeal. In the recent case of *Bedol v. Commission on Elections*,[22] this Court declared:

Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency *to adjudicate the rights of persons before it*. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.[23] (Emphasis supplied)

Under EO 1, the Truth Commission primarily investigates reports of graft and corruption and recommends the appropriate actions to be taken. Thus, Section 2 of EO 1 states that the Truth Commission is "primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption and thereafter submit its findings and recommendations to the President, Congress and the Ombudsman." The President, Congress and the Ombudsman are not bound by the findings and recommendations of the Truth Commission. Neither are the parties subject of the fact-finding investigation bound by the findings and recommendations of the Truth Commission.

Clearly, the function of the Truth Commission is merely **investigative** and **recommendatory** in nature. The Truth Commission has no power to adjudicate the rights and obligations of the persons who come before it. Nothing whatsoever in EO 1 gives the Truth Commission quasi-judicial power, expressly or impliedly. In short, the Truth Commission is not a quasi-judicial body because it does not exercise the quasi-judicial power to bind parties before it with its actions or decisions.

The creation of the Truth Commission has three distinct purposes since it is tasked to submit its findings to the President, Congress and the Ombudsman. The Truth Commission will submit its findings to the President so that the President can faithfully execute the law. For example, the Truth Commission may recommend to the President that Department Secretaries should personally approve disbursements of funds in certain contracts or projects above a certain amount and not delegate such function to their Undersecretaries.[24] The Truth Commission will also submit its findings to Congress for the possible enactment by Congress of remedial legislation. For example, Congress may pass a law penalizing Department Secretaries who delegate to their Undersecretaries the approval of disbursement of funds contrary to the directive of the President. Lastly, the Truth Commission will submit its findings to the Ombudsman for possible further investigation of those who may have violated the law. The Ombudsman may either conduct a further investigation or simply ignore the findings of the Truth Commission. Incidentally, the Ombudsman has publicly stated that she supports the creation of the Truth Commission and that she will cooperate with its investigation.[25]

That EO 1 declares that the Truth Commission "will act as an independent collegial body" cannot invalidate EO 1. This provision merely means that the President will not dictate on the members of the Truth Commission on what their findings and recommendations should be. The Truth Commission is free to come out with its own findings and recommendations, free from any interference or pressure from the President. Of course, as EO 1 expressly provides, the President, Congress and the Ombudsman are not bound by such findings and recommendations.

There Is No Usurpation of the
Powers of the Ombudsman

Petitioners Lagman, *et al*. argue that since the Ombudsman has the exclusive jurisdiction to investigate graft and corruption cases, the Truth Commission encroaches on this exclusive power of the Ombudsman.

There are three types of fact-finding investigations in the Executive branch. *First*, there is the purely fact-finding investigation the purpose of which is to establish the facts as basis for future executive action, excluding the determination of administrative culpability or the determination of probable cause. *Second*, there is the administrative investigation to determine administrative culpabilities of public officials and employees. *Third*, there is the preliminary investigation whose sole purpose is to determine probable cause as to the existence and perpetrator of a crime. These three types of fact-finding investigations are separate and distinct investigations.

A purely fact-finding investigation under the Office of the President is the first type of fact-finding investigation. Such fact-finding investigation has three distinct objectives. The first is to improve administrative procedures and efficiency, institute administrative measures to prevent corruption, and recommend policy options—all with the objective of enabling the President to execute faithfully the law. The second is to recommend to Congress possible legislation in response to new conditions brought to light in the fact-finding investigation. The third is to recommend to the head of office the filing of a formal administrative charge, or the filing of a criminal complaint before the prosecutor.

Under the third objective, the fact-finding investigation is merely a gathering and evaluation of facts to determine whether there is sufficient basis to proceed with a formal administrative charge, or the filing of a criminal complaint before the prosecutor who will conduct a preliminary investigation. This purely fact-finding investigation does not determine administrative culpability or the existence of probable cause. The fact-finding investigation comes before an administrative investigation or preliminary investigation, where administrative culpability or probable cause, respectively, is determined.

On the other hand, an administrative investigation follows, and takes up, the recommendation of a purely fact-finding investigation to charge formally a public official or employee for possible misconduct in office. Similarly, a preliminary investigation is an inquiry to determine whether there is sufficient ground to believe that a crime has been committed and that the

respondent is probably guilty of such crime, and should be held for trial.[26] A preliminary investigation's sole purpose is to determine whether there is probable cause to charge a person for a crime.

Section 15 of Republic Act No. 6770[27] provides:

SEC. 15. *Powers, Functions and Duties*. – The Office of the Ombudsman shall have the following powers, functions and duties: x xx

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency when such act or omission appears to be illegal, unjust, improper or inefficient. **It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of his primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases**; x xx (Emphasis supplied)

The Ombudsman has "primary jurisdiction over cases cognizable by the Sandiganbayan." The cases cognizable by the Sandiganbayan are criminal cases as well as quasi-criminal cases like the forfeiture of unexplained wealth.[28] "[I]n the exercise of this primary jurisdiction" over cases cognizable by the Sandiganbayan, the Ombudsman "may take over x xx the investigation of such cases" from any investigatory agency of the Government. The cases covered by the "*primary jurisdiction*" of the Ombudsman are criminal or quasi-criminal cases but not administrative cases. Administrative cases, such as administrative disciplinary cases, are not cognizable by the Sandiganbayan. With more reason, purely fact-finding investigations conducted by the Executive branch are not cognizable by the Sandiganbayan.

Purely fact-finding investigations to improve administrative procedures and efficiency, to institute administrative measures to prevent corruption, to provide the President with policy options, to recommend to Congress remedial legislation, and even to determine whether there is basis to file a formal administrative charge against a government official or employee, do not fall under the "primary jurisdiction" of the Ombudsman. These fact-finding investigations do not involve criminal or quasi-criminal cases cognizable by the Sandiganbayan.

If the Ombudsman has the power to take-over purely fact-finding investigations from the President or his subordinates, then the President will become inutile. The President will be wholly dependent on the Ombudsman, waiting for the Ombudsman to establish the facts before the President can act to execute faithfully the law. The Constitution does not vest such power in the Ombudsman. No statute grants the Ombudsman such power, and if there were, such law would be unconstitutional for usurping the power of the President to find facts necessary and proper to his faithful execution of the law.

Besides, if the Ombudsman has the ***exclusive*** power to conduct fact-finding investigations, then even the Judiciary and the Legislature cannot perform their fundamental functions without the action or approval of the Ombudsman. While the Constitution grants the Office of the Ombudsman the power to "[i]nvestigate on its own x xx any act or omission of any public official, employee, office or agency,"[29] such power is **not exclusive**. To hold that such investigatory power is exclusive to the Ombudsman is to make the Executive, Legislative and Judiciary wholly dependent on the Ombudsman for the performance of their Executive, Legislative and Judicial functions.

Even in investigations involving criminal and quasi-criminal cases cognizable by the Sandiganbayan, the Ombudsman does not have exclusive jurisdiction to conduct preliminary investigations. In *Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice*,[30] this Court held:

In summation, the Constitution, Section 15 of the Ombudsman Act of 1989 and Section 4 of the Sandiganbayan Law, as amended, **do not give to the Ombudsman exclusive jurisdiction to investigate offenses committed by public officers or employees**. The authority of the Ombudsman to investigate offenses involving public officers or employees is concurrent with other government investigating agencies such as provincial, city and state prosecutors. However, the Ombudsman, in the exercise of its primary jurisdiction over cases cognizable by the Sandiganbayan, may take over, at any stage, from any investigating agency of the government, the investigation of such cases.[31] (Emphasis supplied)

To repeat, *Honasan II* categorically ruled that **"the Constitution, Section 15 of the Ombudsman Act of 1989 and Section 4 of the Sandiganbayan Law, as amended, do not give the Ombudsman exclusive jurisdiction to investigate offenses committed by public officials and employees."**

The *concurrent jurisdiction* of the Ombudsman refers to the conduct of a *preliminary investigation* to determine if there is probable cause to charge a public officer or employee with an offense, not to the conduct of a purely administrative fact-finding investigation that does not involve the determination of probable cause.[32] The Truth Commission is a purely fact-finding body that does not determine the existence of probable cause. There is no accused or even a suspect before the Truth Commission, which merely conducts a general inquiry on reported cases of graft and corruption. No one will even be under custodial investigation before the Truth Commission.[33] Thus, the claim that the Truth Commission is usurping the investigatory power of the Ombudsman, or of any other government official, has no basis whatsoever.

In ***criminal fact-finding investigations***, the law expressly vests in the Philippine National Police (PNP) and the National Bureau of Investigation (NBI) investigatory powers. Section 24 of Republic Act No. 6975[34] provides:

Section 24. Powers and Functions – The PNP shall have the following powers and duties:

(a) xxx

xxx

(c) **Investigate** and prevent **crimes**, effect the arrest of criminal offenders, bring offenders to justice, and assist in their prosecution;

xxx. (Emphasis supplied)

Section 1 of Republic Act No. 157 also provides:

Section 1. There is hereby created a Bureau of Investigation under the Department of Justice which shall have the following functions:

(a) **To undertake investigation of crimes and other offenses** against the laws of the Philippines, upon its own initiative and as public interest may require;

xxx. (Emphasis supplied)

The PNP and the NBI are under the **control** of the President. Indisputably, the President can at any time direct the PNP and NBI, whether singly, jointly or in coordination with other government bodies, to investigate possible violations of penal laws, whether committed by public officials or private individuals. To say that the Ombudsman has the exclusivepower to conduct fact-finding investigations of crimes involving public officials and employees is to immobilize our law-enforcement agencies and allow graft and corruption to run riot. The fact-finding arm of the Department of Justice (DOJ) to investigate crimes, whether committed by public or private parties, is the NBI.[35] The DOJ Proper does not conduct fact-finding investigations of crimes, but only preliminary investigations.

The Truth Commission
Has Subpoena Powers

Section 2 of EO 1 provides that the Truth Commission shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of EO 292, which reads:

Sec. 37. *Powers Incidental to Taking of Testimony*. – When authority to take testimony or receive evidence is conferred upon any administrative officer or any non-judicial person, committee, or other body, such authority shall include the power to administer oaths, summon witnesses, and require the production of documents by a *subpoena ducestecum*. (Emphasis supplied)

Section 2(e) of EO 1 confers on the Truth Commission the power to "[i]nvite or subpoena witnesses and take their testimonies and for that purpose, administer oaths or affirmation as the case may be." Thus, the Truth Commission, a body authorized to take testimony, can

administer oaths and issue subpoena and *subpoena ducestecum* pursuant to Section 37, Chapter 9, Book I of EO 292. In fact, this power to administer oaths and to issue subpoena and subpoena ducestecum is a power of every administrative fact-finding investigative body created in the Executive, Legislative or Judicial branch. Section 37, Chapter 9, Book I of EO 292 grants such power to every fact-finding body so created.

The Truth Commission
Has No Contempt Powers

Section 9 of EO 1 provides:

Section 9. *Refusal to Obey Subpoena, Take Oath or Give Testimony.* Any government official or personnel who, without lawful excuse, fails to appear upon subpoena issued by the Commission or who, appearing before the Commission refuses to take oath or affirmation, give testimony or produce documents for inspection, when required, shall be subject to administrative disciplinary action. Any private person who does the same may be dealt with in accordance with law.

There is no provision in EO 1 that gives the Truth Commission the power to cite persons for contempt. As explained by Solicitor General Jose Anselmo I. Cadiz, if the person who refuses to obey the subpoena, take oath or give testimony is a public officer, he can be charged with "defiance of a lawful order,"[36] which should mean insubordination[37] if his superior had ordered him to obey the subpoena of the Truth Commission. If the person is not a public officer or employee, he can only be dealt with in accordance with law, which should mean that the Truth Commission could file a petition with the proper court to cite such private person in contempt pursuant to Sections 1[38] and 9[39] of Rule 21 of the Rules of Court.

However, the mere fact that the Truth Commission, by itself, has no coercive power to compel any one, whether a government employee or a private individual, to testify before the Commission does not invalidate the creation by the President, or by the Judiciary or Legislature, of a purely administrative fact-finding investigative body. There are witnesses who may voluntarily testify, and bring relevant documents, before such fact-finding body. The fact-finding body may even rely only on official records of the government. To require every

administrative fact-finding body to have coercive or contempt powers is to invalidate all administrative fact-finding bodies created by the Executive, Legislative and Judicial branches of government.

The Name "Truth Commission"
Cannot Invalidate EO 1

There is much ado about the words "Truth Commission" as the name of the fact-finding body created under EO 1. **There is no law or rule prescribing how a fact-finding body should be named.** In fact, there is no law or rule prescribing how permanent government commissions, offices, or entities should be named.[40] **There is also no law or rule prohibiting the use of the words "Truth Commission" as the name of a fact-finding body.** Most fact-finding bodies are named, either officially or unofficially, after the chairperson of such body, which by itself, will not give any clue as to the nature, powers or functions of the body. Thus, the name Feliciano Commission or Melo Commission, by itself, does not indicate what the commission is all about. Naming the present fact-finding body as the "Truth Commission" is more descriptive than naming it the Davide Commission after the name of its chairperson.

The name of a government commission, office or entity does not determine its nature, powers or functions. The specific provisions of the charter creating the commission, office or entity determine its nature, powers or functions. The name of the commission, office or entity is not important and may even be misleading. For example, the term Ombudsman connotes a male official but no one in his right mind will argue that a female cannot be an Ombudsman. In fact, the present Ombudsman is not a man but a woman. In the private sector, the name of a corporation may not even indicate what the corporation is all about. Thus, Apple Corporation is not in the business of selling apples or even oranges. An individual may be named Honesto but he may be anything but honest. **All this tells us that in determining the nature, powers or functions of a commission, office or entity, courts should not be fixated by its name but should examine what it is tasked or empowered to do.**

In any event, there is nothing inherently wrong in the words "Truth Commission" as the name of a fact-finding body. The primary purpose of every fact-finding body is to establish the facts. The facts lead to, or even constitute, the truth. In essence, to establish the facts is to establish

the truth. Thus, the name "Truth Commission" is as appropriate as the name "Fact-Finding Commission." If the name of the commission created in EO 1 is changed to "Fact-Finding Commission," the nature, powers and functions of the commission will remain exactly the same. This simply shows that the name of the commission created under EO 1 is not important, and any esoteric discourse on the ramifications of the name "Truth Commission" is merely an academic exercise. Of course, the name "Truth Commission" is more appealing than the worn-out name "Fact-Finding Commission." Courts, however, cannot invalidate a law or executive issuance just because its draftsman has a flair for catchy words and a disdain for trite ones. Under the law, a fact-finding commission by any other name is a fact-finding commission.[41]

The Public Will Not Be Deceived that
Findings of Truth Commission Are Final

The fear that the public will automatically perceive the findings of the Truth Commission as the "truth," and any subsequent contrary findings by the Ombudsman or Sandiganbayan as the "untruth," is misplaced. First, EO 1 is unequivocally clear that the findings of the Truth Commission are neither final nor binding on the Ombudsman, more so on the Sandiganbayan which is not even mentioned in EO 1. No one reading EO 1 can possibly be deceived or misled that the Ombudsman or the Sandiganbayan are bound by the findings of the Truth Commission.

Second, even if the Truth Commission is renamed the "Fact-Finding Commission," the same argument can also be raised—that the public may automatically perceive the findings of the Fact-Finding Commission as the unquestionable "facts," and any subsequent contrary findings by the Ombudsman or Sandiganbayan as "non-factual." This argument is bereft of merit because the public can easily read and understand what EO 1 expressly says—that the findings of the Truth Commission are not final or binding but merely recommendatory.

Third, the Filipino people are familiar with the Agrava Board,[42] a fact-finding body that investigated the assassination of former Senator Benigno S. Aquino, Jr. The people know that the findings of the Agrava Board were not binding on the then Tanodbayan or the

Sandiganbayan. The Agrava Board recommended for prosecution 26 named individuals[43] but the Tanodbayan charged 40 named individuals[44] before the Sandiganbayan. On the other hand, the Sandiganbayan convicted only 16 of those charged by the Tanodbayan and acquitted 20 of the accused.[45]

Fourth, as most Filipinos know, many persons who undergo preliminary investigation and are charged for commission of crimes are eventually acquitted by the trial courts, and even by the appellate courts. In short, the fear that the public will be misled that the findings of the Truth Commission is the unerring gospel truth is more imagined than real.

EO 1 Does Not Violate
The Equal Protection Clause

Petitioners Lagman, et al. argue that EO 1 violates the equal protection clause because the investigation of the Truth Commission is limited to alleged acts of graft and corruption during the Arroyo administration.

A reading of Section 17 of EO 1 readily shows that the Truth Commission's investigation is not limited to the Arroyo administration. Section 17 of EO 1 provides:

Section 17. *Special Provision Concerning Mandate*. If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be extended accordingly by way of a supplemental Executive Order.(Emphasis supplied)

The President can expand the mandate of the Truth Commission to investigate alleged graft and corruption cases of other past administrations even as its primary task is to investigate the Arroyo administration. EO 1 does not confine the mandate of the Truth Commission solely to alleged acts of graft and corruption during the Arroyo Administration.

Section 17 of EO 1 is the same as Section 2(b) of Executive Order No. 1 dated 28 February 1986 issued by President Corazon Aquino creating the Presidential Commission on Good Government (PCGG Charter). Section 2(b) of the PCGG Charter provides:

Section 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:

(a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates xxx.

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

xxxx . (Emphasis supplied)

Thus, under Section 2(b) of the PCGG Charter, the President can expand the investigation of the PCCG even as its primary task is to recover the ill-gotten wealth of the Marcoses and their cronies. Both EO 1 and the PCGG Charter have the same provisions on the scope of their investigations. Both the Truth Commission and the PCGG are primarily tasked to conduct specific investigations, with their mandates subject to expansion by the President from time to time. This Court has consistently upheld the constitutionality of the PCGG Charter.[46]

Like Section 2(b) of the PCGG Charter, Section 17 of EO 1 merely prioritizes the investigation of acts of graft and corruption that may have taken place during the Arroyo administration. If time allows, the President may extend the mandate of the Truth Commission to investigate other administrations prior to the Arroyo administration. The prioritization of such work or assignment does not violate the equal protection clause because the prioritization is based on reasonable grounds.

First, the prescriptive period for the most serious acts of graft and corruption under the Revised Penal Code is 20 years,[47] 15 years for offenses punishable under the Anti-Graft and Corrupt Practices Act,[48] and 12 years for offenses punishable under special penal laws that do

not expressly provide for prescriptive periods.[49] Any investigation will have to focus on alleged acts of graft and corruption within the last 20 years, almost half of which or 9 years is under the Arroyo administration.

While it is true that the prescriptive period is counted from the time of discovery of the offense, the "reported cases"[50] of "large scale corruption"[51] involving "third level public officers and higher,"[52] which the Truth Commission will investigate, have already been **widely reported in media**, and many of these reported cases have even been investigated by the House of Representatives or the Senate. Thus, the prescriptive periods of these "reported cases" of "large scale corruption" may have already began to run since these anomalies are publicly known and may be deemed already discovered.[53] These prescriptive periods refer to the criminal acts of public officials under penal laws, and not to the recovery of ill-gotten wealth which under the Constitution is imprescriptible.[54]

Second, the Marcos, Ramos and Estrada administrations were already investigated by their successor administrations. This alone is incontrovertible proof that the Arroyo administration is not being singled out for investigation or prosecution.

Third, all the past Presidents, with the exception of Presidents Ramos, Estrada and Arroyo, are already dead. The possible witnesses to alleged acts of graft and corruption during the Presidencies of the deceased presidents may also be dead or unavailable. In fact, the only living President whose administration has not been investigated by its successor administration is President Arroyo.

Fourth, the more recent the alleged acts of graft and corruption, the more readily available will be the witnesses, and the more easily the witnesses can recall with accuracy the relevant events. Inaction over time means the loss not only of witnesses but also of material documents, not to mention the loss of public interest.

Fifth, the 29-month time limit given to the Truth Commission prevents it from investigating other past administrations.[55]There is also the constraint on the enormous resources needed to investigate other past administrations. Just identifying the transactions, locating relevant

documents, and looking for witnesses would require a whole bureaucracy.

These are not only reasonable but also compelling grounds for the Truth Commission to prioritize the investigation of the Arroyo administration. ***To prioritize based on reasonable and even compelling grounds is not to discriminate, but to act sensibly and responsibly.***

In any event, there is no violation of the equal protection clause just because the authorities focus their investigation or prosecution on one particular alleged law-breaker, for surely a person accused of robbery cannot raise as a defense that other robbers like him all over the country are not being prosecuted.[56] By the very nature of an investigation or prosecution, there must be a focus on particular act or acts of a person or a group of persons.

Indeed, almost every fact-finding body focuses its investigation on a specific subject matter—whether it be a specific act, incident, event, situation, condition, person or group of persons. This specific focus results from the nature of a fact-finding investigation, which is a necessary and proper response to a specific compelling act, incident, event, situation, or condition involving a person or group of persons. Thus, the fact-finding commissions created under the previous Arroyo administration had specific focus: the Feliciano Commission focused on the Oakwood mutiny, the Melo Commission focused on extra-judicial killings, and the Zeñarosa Commission focused on private armies.

Significantly, the PCGG Charter even specifies the persons to be investigated for the recovery of ill-gotten wealth. Thus, Section 2(a) of the PCGG Charter provides:

Section 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:

> (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) xxx . (Emphasis supplied)

The PCGG Charter has survived all constitutional attacks before this Court, including the claim that its Section 2(a) violates the equal protection clause. In Virata v. Sandiganbayan,[57] this Court categorically ruled that the PCGG Charter "does not violate the equal protection clause and is not a bill of attainder or an ex post facto law."[58]

This specific focus of fact-finding investigations is also true in the United States. Thus, the Roberts Commission[59] focused on the Pearl Harbor attack, the Warren Commission[60] focused on the assassination of President John F. Kennedy, and the 9/11 Commission[61] focused on the 11 September 2001 terrorist attacks on the United States. These fact-finding commissions were created with specific focus to assist the U.S. President and Congress in crafting executive and legislative responses to specific acts or events of grave national importance. Clearly, fact-finding investigations by their very nature must have a specific focus.

Graft and corruption cases before the Arroyo administration have already been investigated by the previous administrations. President Corazon Aquino created the Presidential Commission on Good Government to recover the ill-gotten wealth of the Marcoses and their cronies.[62] President Joseph Estrada created the Saguisag Commission to investigate the Philippine Centennial projects of President Fidel Ramos.[63] The glaring acts of corruption during the Estrada administration have already been investigated resulting in the conviction of President Estrada for plunder. Thus, it stands to reason that the Truth Commission should give priority to the alleged acts of graft and corruption during the Arroyo administration.

The majority opinion claims that EO 1 violates the equal protection clause because the Arroyo administration belongs to a class of past administrations and the other past administrations are not included in the investigation of the Truth Commission. Thus, the majority opinion states:

In this regard, it must be borne in mind that the Arroyo administration is but just a member of a class, that is, a class of past administrations. It is not a class of its own. **Not to include past administrations similarly situated** constitutes arbitrariness which the equal protection clause

cannot sanction. Such discriminating differentiation clearly reverberates to label the commission as a vehicle for vindictiveness and selective retribution.

xxx

xxx**The PTC [Philippine Truth Commission], to be true to its mandate of searching the truth, must not exclude the other past administrations**. **The PTC must, at least, have the authority to investigate all past administrations**. While reasonable prioritization is permitted, it should not be arbitrary lest it be struck down for being unconstitutional.

xxx

xxx**To exclude the earlier administrations in the guise of "substantial distinctions" would only confirm the petitioners' lament that the subject executive order is only an "adventure in partisan hostility**." x xx.

xxx

T**o reiterate, in order for a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class**. "Such a classification must not be based on existing circumstances only, or so constituted as to preclude additions to the number included within a class, but must be of such a nature as to embrace all those who may hereafter be in similar circumstances and conditions. Furthermore, all who are in situations and circumstances which are relative to the discriminatory legislation and which are indistinguishable from those of the members of the class must be brought under the influence of the law and treated by it in the same way as are the members of the class." (Emphasis supplied)

The majority opinion goes on to suggest that EO 1 could be amended "to include the earlier past administrations" to allow it "**to pass the test of reasonableness and not be an affront to the Constitution**."

The majority opinion's reasoning is specious, illogical, impractical, impossible to comply, and contrary to the Constitution and well-settled jurisprudence. To require that "**earlier past administrations**" must also be included in the investigation of the Truth Commission, with the Truth Commission expressly empowered "**to investigate *all* past administrations**," before there can be a valid investigation of the Arroyo administration under the equal protection clause, is to prevent absolutely the investigation of the Arroyo administration under any circumstance.

While the majority opinion admits that there can be "**reasonable prioritization**" of past administrations to be investigated, it not only fails to explain how such reasonable prioritization can be made, it also proceeds to strike down EO 1 for prioritizing the Arroyo administration in the investigation of the Truth Commission. And while admitting that there can be a valid classification based on substantial distinctions, the majority opinion inexplicably makes any substantial distinction immaterial by stating that "**[t]o exclude the earlier administrations in the guise of "substantial distinctions" would only confirm the petitioners' lament that the subject executive order is only an 'adventure in partisan hostility**.'"

The "**earlier** past administrations" prior to the Arroyo administration cover the Presidencies of Emilio Aguinaldo, Manuel Quezon, Jose Laurel, Sergio Osmeña, Manuel Roxas, ElpidioQuirino, Ramon Magsaysay, Carlos Garcia, DiosdadoMacapagal, Ferdinand Marcos, Corazon Aquino, Fidel Ramos, and Joseph Estrada, a period spanning 102 years or more than a century. All these administrations, plus the 9-year Arroyo administration, already constitute the universe of all past administrations, covering a total period of 111 years. All these "**earlier past administrations**" cannot constitute just one class of administrations because if they were to constitute just one class, then there would be no other class of administrations. It is like saying that since all citizens are human beings, then all citizens belong to just one class and you cannot classify them as disabled, impoverished, marginalized, illiterate, peasants, farmers, minors, adults or seniors.

Classifying the "**earlier past administrations**" in the last 111 years as just one class is not germane to the purpose of investigating possible acts of graft and corruption. There are prescriptive periods to prosecute crimes. There are administrations that have already been investigated by their successor administrations. There are also administrations that have been

subjected to several Congressional investigations for alleged large-scale anomalies. There are past Presidents, and the officials in their administrations, who are all dead. There are past Presidents who are dead but some of the officials in their administrations are still alive. Thus, all the "**earlier past administrations**" cannot be classified as just one single class—"**a class of past administrations**"—because they are not all similarly situated.

On the other hand, just because the Presidents and officials of "**earlier past administrations**" are now all dead, or the prescriptive periods under the penal laws have all prescribed, does not mean that there can no longer be any investigation of these officials. The State's right to recover the ill-gotten wealth of these officials is **imprescriptible**.[64] Section 15, Article XI of the 1987 Constitution provides:

Section 15. The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall **not be barred by prescription**, laches or estoppel. (Emphasis supplied)

Legally and morally, any ill-gotten wealth since the Presidency of Gen. Emilio Aguinaldo can still be recovered by the State. **Thus, if the Truth Commission is required to investigate "earlier past administrations" that could still be legally investigated, the Truth Commission may have to start with the Presidency of Gen. Emilio Aguinaldo**.

A fact-finding investigation of "**earlier past administrations**," spanning 111 years punctuated by two world wars, a war for independence, and several rebellions—would obviously be an impossible task to undertake for an ad hoc body like the Truth Commission. To insist that "**earlier past administrations**" must also be investigated by the Truth Commission, together with the Arroyo administration, is utterly bereft of any reasonable basis other than to prevent absolutely the investigation of the Arroyo administration. No nation on this planet has even attempted to assign to one *ad-hoc* fact-finding body the investigation of all its senior public officials in the past 100 years.

The majority opinion's overriding thesis—that "**earlier past administrations**" belong to only one class and they must all be included in the investigation of the Truth Commission, with the Truth Commission expressly empowered "**to investigate *all* past administrations**"—is even the wrong

assertion of discrimination that is violative of the equal protection clause. The logical and correct assertion of a violation of the equal protection clause is that the Arroyo administration is being investigated for possible acts of graft and corruption while other past administrations similarly situated were not.

Thus, in the leading case of United States v. Armstrong,[65] decided in 1996, the U.S. Supreme Court ruled that "to establish a discrimination effect in a race case, the claimant must show that similarly situated individuals of a different race were not prosecuted."[66] Applied to the present petitions, petitioners must establish that similarly situated officials of other past administrations were not investigated. However, the incontrovertible and glaring fact is that the Marcoses and their cronies were investigated and prosecuted by the PCGG, President Fidel Ramos and his officials in the Centennial projects were investigated by the Saguisag Commission, and President Joseph Estrada was investigated, prosecuted and convicted of plunder under the Arroyo administration. Indisputably, the Arroyo administration is not being singled out for investigation or prosecution because other past administrations and their officials were also investigated or prosecuted.

In United States v. Armstrong, the U.S. Supreme Court further stated that "[a] selective-prosecution claim asks a court to exercise judicial power over a "special province" of the Executive,"[67] citing Hecker v. Chaney[68] which held that a decision whether or not to indict "has long been regarded as the special province of the Executive Branch, inasmuch it is the Executive who is charged by the Constitution to 'take Care that the Laws be faithfully executed.'"[69] These U.S. cases already involved the prosecution of cases before the grand jury or the courts, well past the administrative fact-finding investigative phase.

In the present case, no one has been charged before the prosecutor or the courts. What petitioners want this Court to do is invalidate a mere administrative fact-finding investigation by the Executive branch, an investigative phase prior to preliminary investigation. Clearly, if courts cannot exercise the Executive's "special province" to decide whether or not to indict, which is the equivalent of determination of probable cause, with greater reason courts cannot exercise the Executive's "special province" to decide what or what not to investigate for administrative fact-finding purposes.

For this Court to exercise this "special province" of the President is to encroach on the exclusive domain of the Executive to execute the law in blatant violation of the finely crafted constitutional separation of power. Any unwarranted intrusion by this Court into the exclusive domain of the Executive or Legislative branch disrupts the separation of power among the three co-equal branches and ultimately invites re-balancing measures from the Executive or Legislative branch.

A claim of selective prosecution that violates the equal protection clause can be raised only by the party adversely affected by the discriminatory act. In Nunez v. Sandiganbayan,[70] this Court declared:

'x x x Those adversely affected may under the circumstances invoke the equal protection clause only if they can show that the governmental act assailed, far from being inspired by the attainment of the common weal was prompted by the spirit of hostility, or at the very least, discrimination that finds no support in reason.' x xx. (Emphasis supplied)

Here, petitioners do not claim to be adversely affected by the alleged selective prosecution under EO 1. Even in the absence of such a claim by the proper party, the majority opinion strikes down EO 1 as discriminatory and thus violative of the equal protection clause. This is a gratuitous act to those who are not before this Court, a discriminatory exception to the rule that only those "adversely affected" by an alleged selective prosecution can invoke the equal protection clause. Ironically, such discriminatory exception is a violation of the equal protection clause. In short, the ruling of the majority is in itself a violation of the equal protection clause, the very constitutional guarantee that it seeks to enforce.

The majority opinion's requirement that "**earlier past administrations**" in the last 111 years should be included in the investigation of the Truth Commission to comply with the equal protection clause is a recipe for all criminals to escape prosecution. This requirement is like saying that before a person can be charged with estafa, the prosecution must also charge all persons who in the past may have committed estafa in the country. Since it is impossible for the prosecution to charge all those who in the past may have committed estafa in the country, then it becomes impossible to prosecute anyone for estafa.

This Court has categorically rejected this specious reasoning and false invocation of the equal protection clause in People v. dela Piedra,[71] where the Court emphatically ruled:

The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. xxx

xxx The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboangueña, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws.

There is also common sense practicality in sustaining appellant's prosecution.

While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society . . . . Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime. (People v. Montgomery, 117 P.2d 437 [1941])

Likewise,

[i]f the failure of prosecutors to enforce the criminal laws as to some persons should be converted into a defense for others charged with crime, the result would be that the trial of the district attorney for nonfeasance would become an issue in the trial of many persons charged with heinous crimes and the enforcement of law would suffer a complete breakdown (State v. Hicks, 325 P.2d 794 [1958]).[72] (Emphasis supplied)

The Court has reiterated this "common sense" ruling in People v. Dumlao[73] and in Santos v. People,[74] for to hold otherwise is utter nonsense as it means effectively granting immunity to all criminals.

Indeed, it is a basic statutory principle that non-observance of a law by disuse is not a ground to escape prosecution for violation of a law. Article 7 of Civil Code expressly provides:

Article 7. Laws are repealed only by subsequent ones, and their violation or **non-observance shall not be excused by disuse**, or custom or practice to the contrary.

xxx. (Emphasis supplied)

A person investigated or prosecuted for a possible crime cannot raise the defense that he is being singled out because others who may have committed the same crime are not being investigated or prosecuted. **Such person cannot even raise the defense that after several decades he is *the first and only one* being investigated or prosecuted for a specific crime.** The law expressly states that disuse of a law, or custom or practice allowing violation of a law, will never justify the violation of the law or its non-observance.

A fact-finding investigation in the Executive or Judicial branch, even if limited to specific government officials—whether incumbent, resigned or retired—does not violate the equal protection clause. If an anomaly is reported in a government transaction and a fact-finding investigation is conducted, the investigation by necessity must focus on the public officials involved in the transaction. It is ridiculous for anyone to ask this Court to stop the investigation of such public officials on the ground that past public officials of the same rank, who may have been involved in similar anomalous transactions in the past, are not being investigated by the same fact-finding body. To uphold such a laughable claim is to grant immunity to all criminals, throwing out of the window the constitutional principle that "[p]ublic office is a public trust"[75] and that "[p]ublic officials and employees must at all times be accountable to the people."[76]

When the Constitution states that public officials are "at all times" accountable to the people, it means at any time public officials can be held to account by the people. Nonsensical claims, like the selective prosecution invoked in People v. delaPiedra, are unavailing. Impossible conditions, like requiring the investigation of "**earlier past administrations**," are disallowed. All these flimsy and dilatory excuses violate the clear command of the Constitution that public officials are accountable to the people "at all times."

The majority opinion will also mean that the PCGG Charter—which tasked the PCGG to recover the ill-gotten wealth of the Marcoses and their cronies—violates the equal protection clause because the PCCG Charter specifically mentions the Marcoses and their cronies. The majority opinion reverses several decisions[77] of this Court upholding the constitutionality of the PCCG Charter, endangering over two decades of hard work in recovering ill-gotten wealth.

Ominously, the majority opinion provides from hereon every administration a cloak of immunity against any investigation by its successor administration. This will institutionalize impunity in transgressing anti-corruption and other penal laws. Sadly, the majority opinion makes it impossible to bring good governance to our government.

The Truth Commission is only a fact-finding body to provide the President with facts so that he can understand what happened in certain government transactions during the previous administration. There is no preliminary investigation yet and the Truth Commission will never conduct one. No one is even being charged before the prosecutor or the Ombudsman. This Court has consistently refused to interfere in the determination by the prosecutor of the existence of probable cause in a preliminary investigation.[78] With more reason should this Court refuse to interfere in the purely fact-finding work of the Truth Commission, which will not even determine whether there is probable cause to charge any person of a crime.

Before the President executes the law, he has the right, and even the duty, to know the facts to assure himself and the public that he is correctly executing the law. This Court has no power to prevent the President from knowing the facts to understand certain government transactions in the Executive branch, transactions that may need to be reviewed, revived, corrected, terminated or completed. If this Court can do so, then it can also prevent the House of Representatives or the Senate from conducting an investigation, in aid of legislation, on the financial transactions of the Arroyo administration, on the ground of violation of the equal protection clause. Unless, of course, the House or the Senate attempts to do the impossible—conduct an investigation on the financial transactions of "**earlier past administrations**" since the Presidency of General Emilio Aguinaldo. Indeed, under the majority opinion, neither the House nor the Senate can conduct any investigation on any administration, past or present, if "earlier past administrations" are not included in the legislative investigation.

In short, the majority opinion's requirements that EO 1 should also include "**earlier** past administrations," with the Truth Commission empowered "**to investigate *all* past administrations**," to comply with the equal protection clause, is a requirement that is not only illogical and impossible to comply, it also allows the impunity to commit graft and corruption and other crimes under our penal laws. The majority opinion completely ignores the constitutional principle that public office is a public trust and that public officials are at all times accountable to the people.

A Final Word

The incumbent President was overwhelmingly elected by the Filipino people in the 10 May 2010 elections based on his announced program of eliminating graft and corruption in government. As the Solicitor General explains it, the incumbent President has pledged to the electorate that the elimination of graft and corruption will start with the investigation and prosecution of those who may have committed large-scale corruption in the previous administration.[79] During the election campaign, the incumbent President identified graft and corruption as the major cause of poverty in the country as depicted in his campaign theme "kung walang corrupt, walangmahirap." It was largely on this campaign pledge to eliminate graft and corruption in government that the electorate overwhelmingly voted for the incumbent President. The Filipino people do not want to remain forever at the bottom third of 178 countries ranked in terms of governments free from the scourge of corruption.[80]

Neither the Constitution nor any existing law prevents the incumbent President from redeeming his campaign pledge to the Filipino people. In fact, the incumbent President's campaign pledge is merely a reiteration of the basic State policy, enshrined in Section 27, Article II of the Constitution, that:

Section 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption. (Emphasis supplied)

The incumbent President's campaign pledge also reiterates the constitutional principle that "[p]ublic office is a public trust"[81] and that "[p]ublic officers and employees must at all times be accountable to the people."[82]

This Court, in striking down EO 1 creating the Truth Commission, overrules the manifest will of the Filipino people to start the difficult task of putting an end to graft and corruption in government, denies the President his basic constitutional power to determine the facts in his faithful execution of the law, and suppresses whatever truth may come out in the purely fact-finding investigation of the Truth Commission. This Court, in invoking the equal protection clause to strike down a purely fact-finding investigation, grants immunity to those who violate anti-corruption laws and other penal laws, renders meaningless the constitutional principle that public office is a public trust, and makes public officials unaccountable to the people at any time.

Ironically, this Court, and even subordinates of the President in the Executive branch, routinely create all year round fact-finding bodies to investigate all kinds of complaints against officials and employees in the Judiciary or the Executive branch, as the case may be. The previous President created through executive issuances three purely fact-finding commissions similar to the Truth Commission. Yet the incumbent President, the only official mandated by the Constitution to execute faithfully the law, is now denied by this Court the power to create the purely fact-finding Truth Commission.

History will record the ruling today of the Court's majority as a severe case of judicial overreach that made the incumbent President a diminished Executive in an affront to a co-equal branch of government, crippled our already challenged justice system, and crushed the hopes of the long suffering Filipino people for an end to graft and corruption in government.

Accordingly, I vote to **DISMISS** the petitions.

ANTONIO T. CARPIO
Associate Justice

Notes:

[1] Also known as the Administrative Code of 1987. One of EO 1's WHEREAS clauses reads: "WHEREAS, Book III, Chapter 10, Section 31 of Executive Order No. 292, otherwise known as the Revised Administrative Code of the Philippines, gives the President the continuing authority to reorganize the Office of the President."

[2] Domingo v. Zamora, 445 Phil. 7, 13 (2003).

[3] Emphasis supplied.

[4] Emphasis supplied. President Aquino took his oath in Filipino.

[5] *Rodriguez, et al. v. Santos Diaz, et al.,* 119 Phil. 723, 727-728 (1964).

[6] TSN, 7 September 2010, pp. 56-57.

[7] No. L-29274, 27 November 1975, 68 SCRA 99, 104.

[8] Section 31, Chapter 10, Title III, Book III of EO 292, quoted on page 2.

[9] Section 22, Chapter 8, Title II, Book III of EO 292 reads:

> Section 22. *Office of the President Proper.*(1) The Office of the President Proper shall consist of the Private Office, the Executive Office, the Common Staff Support System, and the Presidential Special Assistants/Advisers System;
>
> (2) The Executive Office refers to the Offices of the Executive Secretary, Deputy Executive Secretaries and Assistant Executive Secretaries;
>
> (3) The Common Staff Support System embraces the offices or units under the general categories of development and management, general government administration and internal administration; and
>
> (4) The Presidential Special Assistants/Advisers System includes such special assistants or advisers as may be needed by the President." (Emphasis supplied)

[10] Section 22(4), Id.

[11] Section 47(2), Chapter 6, Book V of EO 292 provides:

Section 47. Disciplinary Jurisdiction. –

xxx

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. xxx. (Emphasis supplied)

[12] Paragraph 1 of PD 1416, as amended, provides:

1. **The President of the Philippines shall have continuing authority to reorganize the National Government.** In exercising this authority, the President shall be guided by generally acceptable principles of good government and responsive national development, including but not limited to the following guidelines for a more efficient, effective, economical and development-oriented governmental framework:

(a) More effective planning, implementation, and review functions;

(b) Greater decentralization and responsiveness in the decision-making process;

(c) Further minimization, if not elimination, of duplication or overlapping of purposes, functions, activities, and programs;

(d) Further development of as standardized as possible ministerial, sub-ministerial and corporate organizational structures;

(e) Further development of the regionalization process; and

(f) Further rationalization of the functions of and administrative relationship among government entities.

For purposes of this Decree, the coverage of the continuing authority of the President to reorganize shall be interpreted to encompass all agencies, entities, instrumentalities, and units of the National Government, including all government-owned or controlled corporations, as well as the entire range of the powers, functions, authorities, administrative relationships, and related aspects pertaining to these agencies, entities, instrumentalities, and units.

2. For this purpose, the President may, at his discretion, take the following actions:

(a) Group, coordinate, consolidate or integrate departments, bureaus, offices, agencies, instrumentalities and functions of the government;

(b) Abolish departments, offices, agencies or functions which may not be necessary, or create those which are necessary, for the efficient conduct of government functions services and activities;

(c) Transfer functions, appropriations, equipment, properties, records and personnel from one department, bureau, office, agency or instrumentality to another;

(d) Create, classify, combine, split, and abolish positions;

(e) Standardize salaries, materials and equipment;

(f) Create, abolish, group, consolidate, merge, or integrate entities, agencies, instrumentalities, and units of the National Government, as well as expand, amend, change, or otherwise modify their powers, functions and authorities, including, with respect to government-owned or controlled corporations, their corporate life, capitalization, and other relevant aspects of their charters; and

(g) Take such other related actions as may be necessary to carry out the purposes and objectives of this Decree. (Emphasis supplied)

[13] Paragraph 1 (c) and (e), PD 1416, as amended.

[14] The clause states: "WHEREAS, the transition towards the parliamentary form of government will necessitate flexibility in the organization of the national government."

[15]Aurillo v. Rabi, 441 Phil. 117 (2002); Drilon v. Lim, G.R. No. 112497, 4 August 1994, 235 SCRA 135; *Mondano v. Silvosa, etc. et al.,* 97 Phil. 143 (1955).

[16] Section 29(1), Article VI, 1987 Constitution.

[17]*Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, 14 July 1989, 175 SCRA 343.

[18] See Special Provision No. 2, General Appropriations Act of 2010 or Republic Act No. 9970.

[19] TSN, 7 September 2010, p. 61.

[20]*Doran v. Executive Judge Luczon*, Jr., G.R. No. 151344, 26 September 2006, 503 SCRA 106.

[21] Id.

[22] G.R. No. 179830, 3 December 2009, 606 SCRA 554, citing *Dole Philippines Inc. v. Esteva*, G.R. No. 161115, 30 November 2006, 509 SCRA 332.

[23] Id. at 570-571.

[24] Section 65, Chapter 13, Book IV of EO 292 merely provides:

> Section 65. *Approval of other types of Government Contracts*. — All other types of government contracts which are not within the coverage of this Chapter shall, in the absence of a special provision, be executed with the approval of the Secretary or by the head of the bureau or office having control of the appropriation against which the contract would create a charge. Such contracts shall be processed and approved in accordance with existing laws, rules and regulations.

[25]http://www.mb.com.ph/node/270641/ombud (http://www.mb.com.ph/node/270641/ombud), accessed on 19 November 2010.

[26] Section 1, Rule 112, Rules of Court.

[27] "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes." Also known as "The Ombudsman Act of 1989."

[28] Republic Act No. 8249, entitled "An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending For the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefore, and For Other Purposes." Approved on 5 February 1997.

[29] Section 13(1), Article XI, Constitution.

[30] G.R. No. 159747, 13 April 2004, 427 SCRA 46.

[31] Id. at 70.

[32] Id.

[33]*People vs. Morial*, 415 Phil. 310 (2001).

[34] An Act Establishing The Philippine National Police Under A Reorganized Department of Interior and Local Government And For Other Purposes. Also known as the Philippine National Police Law or the Department of Interior and Local Government Act of 1990.

[35] Section 3, Chapter I, Title III, Book IV of EO 292 provides:

> Section 3. *Powers and Functions*. – To accomplish its mandate, the Department (DOJ) shall have the following powers and functions:
>
> (1) xxx

(2) Investigate the commission of crimes, prosecute offenders and administer the probation and correction system;

xxx.

[36] TSN, 28 September 2010, pp. 41-42.

[37] Section 46(25), Chapter 7, Book V, EO 292.

[38] Section 1, Rule 21 of the Rules of Court provides:

SEC. 1. *Subpoena and Subpoena ducestecum*. – Subpoena is a process directed to a person requiring him to attend and to testify at the hearing or trial of an action, **or at any investigation conducted by competent authority**, or for the taking of his deposition. It may also require him to bring with him any books, documents, or other things under his control, in which case it is called a *subpoena ducestecum*. (Emphasis supplied)

[39] Section 9, Rule 21 of the Rules of Court provides:

SEC. 9. **Contempt**. Failure by any person without adequate cause to obey a subpoena served upon him shall be deemed a contempt of court from which the subpoena is issued. **If the subpoena was not issued by a court, the disobedience thereto shall be punished in accordance with the applicable law or Rule**. (Emphasis supplied)

[40] In sharp contrast, Section 26(1), Article VI of the Constitution provides: "Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof." Thus, the title of a bill must express the subject of the bill.

[41] With apologies to William Shakespeare. These are the lines in *Romeo and Juliet*: "What's in a name? That which we call a rose by any other name would smell as sweet."

[42] Created by Presidential Decree No. 1886 dated 14 October 1983.

[43] The Majority Opinion of the Agrava Board recommended for prosecution 26 named individuals, including Gen. Fabian Ver. The Minority Opinion of Chairperson Corazon Agrava recommended for prosecution only 7 named individuals, excluding Gen. Ver.

[44] Excluding those charged as "John Does."

[45] One of the accused died during the trial and three remained at large.

[46]Virata v. Sandiganbayan, G.R. No. 86926, 15 October 1991, 202 SCRA 680; PCGG v. Peña, 293 Phil. 93 (1988); and Baseco v. PCGG, 234 Phil. 180 (1987).

[47] Article 90, in relation to Articles 211-A and 217, of the Revised Penal Code.

[48] Section 11, RA No. 3019.

[49] Section 1, Act No. 3326.

[50] Section 2, EO 1.

[51] Section 2(b), EO 1.

[52] Id.

[53] See *People v. Duque*, G.R. No. 100285, 13 August 1992, 212 SCRA 607.

[54] Section 15, Article XI, Constitution.

[55] Section 14 of EO 1 provides that "the Commission shall accomplish its mission on or before December 31, 2012."

[56] In People v. delaPiedra, 403 Phil. 31, 54 (2001), the Court stated, "The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws."

[57] G.R. No. 86926, 15 October 1991, 202 SCRA 680.

[58] Id. at 698. (Emphasis supplied)

[59] Created by President Franklin Roosevelt.

[60] Created by President Lyndon Johnson.

[61] Created through law by the U.S. Congress.

[62] Executive Order No. 1, dated 28 February 1986.

[63] Administrative Order No. 53 – Creating an Ad-hoc and Independent Citizens' Committee to Investigate All the Facts and Circumstances Surrounding Philippine Centennial Projects, Including its Component Activities, dated 24 February 1999.

[64] Even prior to the 1987 Constitution, public officials could not acquire ownership of their ill-gotten wealth by prescription. Section 11 of Republic Act No. 1379, or the *Law on Forfeiture of Ill-Gotten Wealth* enacted on 18 June 1956, provides:

> Section 11. *Laws on prescription*. — The laws concerning acquisitive prescription and limitation of actions cannot be invoked by, nor shall they benefit the respondent, in respect of any property unlawfully acquired by him.
>
> Under Article 1133 of the New Civil Code, "[m]ovables possessed through a crime can never be acquired through prescription by the offender." And under Article 1956 of the Spanish Civil Code of 1889, "ownership of personal property stolen or taken by robbery cannot be acquired by prescription by the thief or robber, or his accomplices, or accessories, unless the crime or misdemeanor or the penalty therefor and the action to enforce the civil liability arising from the crime or misdemeanor are barred by prescription."

[65] 517 U.S. 456, decided 13 May 1996. The U.S. Supreme Court reiterated this ruling in United States v. Bass, 536 U.S. 862 (2002), a per curiam decision.

[66] 517 U.S. 456, 465.

[67] Id. at 464.

[68] 470 U.S. 821 (1985).

[69] Id. at 832.

[70] 197 Phil. 407, 423 (1982). This ruling was reiterated in City of Manila v. Laguio, 495 Phil. 289 (2005); Mejia v. Pamaran, 243 Phil. 600 (1998); Bautista v. Juinio, 212 Phil. 307 (1984); and Calubaquib v. Sandiganbayan, 202 Phil. 817 (1982).

[71] 403 Phil. 31 (2001).

[72] Id. at 54-56.

[73] G.R. No. 168918, 2 March 2009, 580 SCRA 409.

[74] G.R. No. 173176, 26 August 2008, 563 SCRA 341.

[75] Section 1, Article XI, Constitution.

[76] Id.

[77] Supra, note 46.

[78] See Spouses Aduan v. Levi Chong, G.R. No. 172796, 13 July 2009, 592 SCRA 508; UCPB v. Looyuko, G.R. No. 156337, 28 September 2007, 534 SCRA 322; First Women's Credit Corporation v. Perez, G.R. No. 169026, 15 June 2006, 490 SCRA 774; and Dupasquier v. Court of Appeals, 403 Phil. 10 (2001).

[79] Memorandum for Respondents, p. 91.

[80] The 2010 Transparency International Corruption Index ranks the Philippines at 134 out of 178 countries. See http:/www.transparency.org/policy_research/surveys_indices/cpi/2010/results, accessed on 13 November 2010.

[81] Section 1, Article XI, Constitution.

[82] Id.

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DISSENTING OPINION

CARPIO, *J.:*

The two petitions before this Court seek to declare void Executive Order No. 1, *Creating the Philippine Truth Commission of 2010* (EO 1), for being unconstitutional.

In G.R. No. 192935, petitioner Louis C. Biraogo (Biraogo), as a Filipino citizen and as a taxpayer, filed a petition under Rule 65 for prohibition and injunction. Biraogo prays for the issuance of a writ of preliminary injunction and temporary restraining order to declare EO 1 unconstitutional, and to direct the Philippine Truth Commission (Truth Commission) to desist from proceeding under the authority of EO 1.

In G.R. No. 193036, petitioners Edcel C. Lagman, Rodolfo B. Albano, Jr., Simeon A. Datumanong, and Orlando B. Fua, Sr. (Lagman, *et al.*), as Members of the House of Representatives, filed a petition under Rule 65 for certiorari and prohibition. Petitioners Lagman, *et al.* pray for the issuance of a temporary restraining order or writ of preliminary injunction to declare void EO 1 for being unconstitutional.

The Powers of the President

Petitioners Biraogo and Lagman, *et al.* (collectively petitioners) assail the creation of the Truth Commission. They claim that President Benigno S. Aquino III (President Aquino) has no power to create the Commission. Petitioners' objections are mere sound bites, devoid of sound legal reasoning.

On 30 July 2010, President Aquino issued EO 1 pursuant to Section 31, Chapter 10, Title III, Book III of Executive Order No. 292 (EO 292).[1] Section 31 reads:

Section 31. *Continuing Authority of the President to Reorganize his Office.* The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:

(1) **Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Staff Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another**;

(2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and

(3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies. (Emphasis supplied)

The law expressly grants the President the "continuing authority to reorganize the administrative structure of the Office of the President," which necessarily includes the power to create offices within the Office of the President Proper. The power of the President to reorganize the Office of the President Proper cannot be disputed as this power is expressly granted to the President by law. Pursuant to this power to reorganize, all Presidents under the 1987 Constitution have created, abolished or merged offices or units within the Office of the

President Proper, EO 1 being the most recent instance. This Court explained the rationale behind the President's continuing authority to reorganize the Office of the President Proper in this way:

xxx The law grants the President this power in recognition of the recurring need of every President to reorganize his office "to achieve simplicity, economy and efficiency." The Office of the President is the nerve center of the Executive Branch. To remain effective and efficient, the Office of the President must be capable of being shaped and reshaped by the President in the manner he deems fit to carry out his directives and policies. After all, the Office of the President is the command post of the President. This is the rationale behind the President's continuing authority to reorganize the administrative structure of the Office of the President.[1] (Emphasis supplied)

The Power To Execute Faithfully the Laws

Section 1, Article VI of the 1987 Constitution states that "[t]he executive power is vested in the President of the Philippines." Section 17, Article VII of the 1987 Constitution states that "[t]he President shall have control of all the executive departments, bureaus and offices. **He shall ensure that the laws be faithfully executed.**"[3] Before he enters office, the President takes the following oath prescribed in Section 5, Article VII of the 1987 Constitution: "I do solemnly swear that I will faithfully and conscientiously fulfill my duties as President of the Philippines, preserve and defend its Constitution, **execute its laws**, do justice to every man, and consecrate myself to the service of the Nation. So help me God."[4]

Executive power is vested exclusively in the President. Neither the Judiciary nor the Legislature can execute the law. As the Executive, the President is mandated not only to execute the law, but also to execute faithfully the law.

To execute ***faithfully*** the law, the President must first know the facts that justify or require the execution of the law. To know the facts, the President may have to conduct fact-finding investigations. Otherwise, without knowing the facts, the President may be blindly or negligently, and not faithfully and intelligently, executing the law.

Due to time and physical constraints, the President cannot obviously conduct by himself the fact-finding investigations. The President will have to delegate the fact-finding function to one or more subordinates. Thus, the President may appoint a single fact-finding investigator, or a collegial body or committee. In recognizing that the President has the power to appoint an investigator to inquire into facts, this Court held:

Moreover, petitioner cannot claim that his investigation as acting general manager is for the purpose of removing him as such for having already been relieved, the obvious purpose of the investigation is merely to gather facts that may aid the President in finding out why the NARIC failed to attain its objectives, particularly in the stabilization of the prices of rice and corn. His investigation is, therefore, not punitive, but merely an inquiry into matters which the President is entitled to know so that he can be properly guided in the performance of his duties relative to the execution and enforcement of the laws of the land. In this sense, the President may authorize the appointment of an investigator of petitioner Rodriguez in his capacity as acting general manager even if under the law the authority to appoint him and discipline him belongs to the NARIC Board of Directors. The petition for prohibition, therefore, has no merit.[5] (Boldfacing and italicization supplied)

The Power To Find Facts

The power to find facts, or to conduct fact-finding investigations, is necessary and proper, and thus ***inherent*** in the President's power to execute faithfully the law. Indeed, the power to find facts is inherent not only in Executive power, but also in Legislative as well as Judicial power. The Legislature cannot sensibly enact a law without knowing the factual milieu upon which the law is to operate. Likewise, the courts cannot render justice without knowing the facts of the case if the issue is not purely legal. Petitioner Lagman admitted this during the oral arguments:

ASSOCIATE JUSTICE CARPIO:
xxx The power to fact-find is inherent in the legislature, correct? I mean, before you can pass a law, you must determine the facts. So, it's essential that you have to determine the facts to pass a law, and therefore, the power to fact-find is inherent in legislative power, correct?

CONGRESSMAN LAGMAN:
Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:
And it is also inherent in judicial power, we must know the facts to render a decision, correct?

CONGRESSMAN LAGMAN:
Yes, Your Honor.

ASSOCIATE JUSTICE CARPIO:
And it is also inherent in executive power that [the] President has to know the facts so that he can faithfully execute the laws, correct?

CONGRESSMAN LAGMAN:
Yes, Your Honor, in that context (interrupted).

ASSOCIATE JUSTICE CARPIO:
So (interrupted)

CONGRESSMAN LAGMAN:
Your Honor, in that context, the legislature has the inherent power to make factual inquiries in aid of legislation. In the case of the Supreme Court and the other courts, the power to inquire into facts [is] in aid of adjudication. And in the case of the Office of the President, or the President himself [has the power] to inquire into the facts in order to execute the laws.[6]

Being an inherent power, there is no need to confer explicitly on the President, in the Constitution or in the statutes, the power to find facts. *Evangelista v. Jarencio*[7] underscored the importance of the power to find facts or to investigate:

It has been essayed that the lifeblood of the administrative process is the flow of fact[s], the gathering, the organization and the analysis of evidence. **Investigations are useful for all administrative functions, not only for rule making, adjudication, and licensing, but also for prosecuting, for supervising and directing, for determining general policy, for recommending legislation, and for purposes no more specific than illuminating obscure areas to find out**

what if anything should be done. An administrative agency may be authorized to make investigations, not only in proceedings of a legislative or judicial nature, but also in proceedings whose sole purpose is to obtain information upon which future action of a legislative or judicial nature may be taken and may require the attendance of witnesses in proceedings of a purely investigatory nature. It may conduct general inquiries into evils calling for correction, and to report findings to appropriate bodies and make recommendations for actions. (Emphasis supplied)

The Power To Create A Public Office

The creation of a public office must be distinguished from the creation of an *ad hoc* fact-finding public body.

The power to create a public office is undeniably a legislative power. There are two ways by which a public office is created: (1) by law, or (2) by delegation of law, as found in the President's authority to reorganize his Office. The President as the Executive does not inherently possess the power to reorganize the Executive branch. However, the Legislature has delegated to the President the power to create public offices within the Office of the President Proper, as provided in Section 31(1), Chapter 10, Title III, Book III of EO 292.

Thus, the President can create the Truth Commission as a public office in his Office pursuant to his power to reorganize the Office of the President Proper. [8] In such a case, the President is exercising his delegated power to create a public office within the Office of the President Proper. There is no dispute that the President possesses this delegated power.

In the alternative, the President can also create the Truth Commission as an *ad hoc* body to conduct a fact-finding investigation pursuant to the President's inherent power to find facts as basis to execute faithfully the law. The creation of such *ad hoc* fact-finding body is indisputably **necessary and proper** for the President to execute faithfully the law. In such a case, members of the Truth Commission may be appointed as Special Assistants or Advisers of the President,[9] and then assigned to conduct a fact-finding investigation. The President can appoint as many Special Assistants or Advisers as he may need.[10] There is no public office created and members of the Truth Commission are incumbents already holding public office in

government. These incumbents are given an assignment by the President to be members of the Truth Commission. Thus, the Truth Commission is merely an *ad hoc* body assigned to conduct a fact-finding investigation.

The creation of *ad hoc* fact-finding bodies is a routine occurrence in the Executive and even in the Judicial branches of government. Whenever there is a complaint against a government official or employee, the Department Secretary, head of agency or head of a local government unit usually creates a fact-finding body whose members are incumbent officials in the same department, agency or local government unit.[11] This is also true in the Judiciary, where this Court routinely appoints a fact-finding investigator, drawn from incumbent Judges or Justices (or even retired Judges or Justices who are appointed consultants in the Office of the Court Administrator), to investigate complaints against incumbent officials or employees in the Judiciary.

The creation of such *ad hoc* investigating bodies, as well as the appointment of *ad hoc* investigators, does not result in the creation of a public office. In creating *ad hoc* investigatory bodies or appointing *ad hoc* investigators, executive and judicial officials do not create public offices but merely exercise a power inherent in their primary constitutional or statutory functions, which may be to execute the law, to exercise disciplinary authority, or both. These fact-finding bodies and investigators are not permanent bodies or functionaries, unlike public offices or their occupants. There is no separate compensation, other than *per diems* or allowances, for those designated as members of *ad hoc* investigating bodies or as ad hoc investigators.

Presidential Decree No. 1416 (PD 1416) cannot be used as basis of the President's power to reorganize his Office or create the Truth Commission. PD 1416, as amended, delegates to the President "continuing authority to reorganize the National Government,"[12] which means the Executive, Legislative and Judicial branches of government, in addition to the independent constitutional bodies. Such delegation can exist only in a dictatorial regime, not under a democratic government founded on the separation of powers. The other powers granted to the President under PD 1416, as amended, like the power to transfer appropriations without conditions and the power to standardize salaries, are also contrary to the provisions of the

1987 Constitution.[13] PD 1416, which was promulgated during the Martial Law regime to facilitate the transition from the presidential to a parliamentary form of government under the 1973 Constitution,[14] is now functus officio and deemed repealed upon the ratification of the 1987 Constitution.

The President's power to create *ad hoc* fact-finding bodies does not emanate from the President's power of control over the Executive branch. The President's power of control is the power to reverse, revise or modify the decisions of subordinate executive officials, or substitute his own decision for that of his subordinate, or even make the decision himself without waiting for the action of his subordinate.[15] This power of control does not involve the power to create a public office. Neither does the President's power to find facts or his broader power to execute the laws give the President the power to create a public office. The President can exercise the power to find facts or to execute the laws without creating a public office.

Objections to EO 1

There Is No Usurpation of Congress'
Power To Appropriate Funds

Petitioners Lagman, *et al.* argue that EO 1 usurps the exclusive power of Congress to appropriate funds because it gives the President the power to appropriate funds for the operations of the Truth Commission. Petitioners Lagman, *etal.*add that no particular source of funding is identified and that the amount of funds to be used is not specified.

Congress is exclusively vested with the "power of the purse," recognized in the constitutional provision that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law."[16] The specific purpose of an appropriation law is to authorize the release of unappropriated public funds from the National Treasury.[17]

Section 11 of EO 1 merely states that "the Office of the President shall provide the necessary funds for the Commission to ensure that it can exercise its powers, execute its functions, and perform its duties and responsibilities as effectively, efficiently, and expeditiously as possible." Section 11 does not direct the National Treasurer to release unappropriated funds in the

National Treasury to finance the operations of the Truth Commission. Section 11 does not also say that the President is appropriating, or is empowered to appropriate, funds from the unappropriated funds in the National Treasury. Clearly, there is absolutely no language in EO 1 appropriating, or empowering the President to appropriate, unappropriated funds in the National Treasury.

Section 11 of EO 1 merely states that the Office of the President shall fund the operations of the Truth Commission. Under EO 1, the funds to be spent for the operations of the Truth Commission have already been appropriated by Congress to the Office of the President under the current General Appropriations Act. The budget for the Office of the President under the annual General Appropriations Act always contains a Contingent Fund[18] that can fund the operations of ad hoc investigating bodies like the Truth Commission. In this case, there is no appropriation but merely a disbursement by the President of funds that Congress had already appropriated for the Office of the President.

The Truth Commission Is Not
A Quasi-Judicial Body

While petitioners Lagman, *et al.* insist that the Truth Commission is a quasi-judicial body, they admit that there is no specific provision in EO 1 that states that the Truth Commission has quasi-judicial powers.[19]

ASSOCIATE JUSTICE CARPIO:
Okay. Now. Let's tackle that issue. Where in the Executive Order is it stated that [the Truth Commission] has a quasi-judicial power? Show me the provision.

CONGRESSMAN LAGMAN:
There is no exact provision.

There is no language in EO 1 granting the Truth Commission quasi-judicial power, **whether expressly or impliedly**, because the Truth Commission is not, and was never intended to be, a quasi-judicial body. The power of the President to create offices within the Office of the President Proper is a power to create only executive or administrative offices, not quasi-judicial

offices or bodies. Undeniably, a quasi-judicial office or body can only be created by the Legislature. The Truth Commission, as created under EO 1, is not a quasi-judicial body and is not vested with any quasi-judicial power or function.

The exercise of quasi-judicial functions involves the determination, with respect to the matter in controversy, of what the law is, what the legal rights and obligations of the contending parties are, and based thereon and the facts obtaining, the adjudication of the respective rights and obligations of the parties.[20] The tribunal, board or officer exercising quasi-judicial functions must be clothed with the power to pass judgment on the controversy.[21] ***In short, quasi-judicial power is the power of an administrative body to adjudicate the rights and obligations of parties under its jurisdiction in a manner that is final and binding, unless there is a proper appeal.*** In the recent case of *Bedol v. Commission on Elections*,[22] this Court declared:

Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency *to adjudicate the rights of persons before it*. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.[23] (Emphasis supplied)

Under EO 1, the Truth Commission primarily investigates reports of graft and corruption and recommends the appropriate actions to be taken. Thus, Section 2 of EO 1 states that the Truth Commission is "primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption and thereafter submit its findings and recommendations to the President, Congress and the Ombudsman." The President, Congress and the Ombudsman are

not bound by the findings and recommendations of the Truth Commission. Neither are the parties subject of the fact-finding investigation bound by the findings and recommendations of the Truth Commission.

Clearly, the function of the Truth Commission is merely **investigative** and **recommendatory** in nature. The Truth Commission has no power to adjudicate the rights and obligations of the persons who come before it. Nothing whatsoever in EO 1 gives the Truth Commission quasi-judicial power, expressly or impliedly. In short, the Truth Commission is not a quasi-judicial body because it does not exercise the quasi-judicial power to bind parties before it with its actions or decisions.

The creation of the Truth Commission has three distinct purposes since it is tasked to submit its findings to the President, Congress and the Ombudsman. The Truth Commission will submit its findings to the President so that the President can faithfully execute the law. For example, the Truth Commission may recommend to the President that Department Secretaries should personally approve disbursements of funds in certain contracts or projects above a certain amount and not delegate such function to their Undersecretaries.[24] The Truth Commission will also submit its findings to Congress for the possible enactment by Congress of remedial legislation. For example, Congress may pass a law penalizing Department Secretaries who delegate to their Undersecretaries the approval of disbursement of funds contrary to the directive of the President. Lastly, the Truth Commission will submit its findings to the Ombudsman for possible further investigation of those who may have violated the law. The Ombudsman may either conduct a further investigation or simply ignore the findings of the Truth Commission. Incidentally, the Ombudsman has publicly stated that she supports the creation of the Truth Commission and that she will cooperate with its investigation.[25]

That EO 1 declares that the Truth Commission "will act as an independent collegial body" cannot invalidate EO 1. This provision merely means that the President will not dictate on the members of the Truth Commission on what their findings and recommendations should be. The Truth Commission is free to come out with its own findings and recommendations, free

from any interference or pressure from the President. Of course, as EO 1 expressly provides, the President, Congress and the Ombudsman are not bound by such findings and recommendations.

There Is No Usurpation of the
Powers of the Ombudsman

Petitioners Lagman, *et al.* argue that since the Ombudsman has the exclusive jurisdiction to investigate graft and corruption cases, the Truth Commission encroaches on this exclusive power of the Ombudsman.

There are three types of fact-finding investigations in the Executive branch. *First*, there is the purely fact-finding investigation the purpose of which is to establish the facts as basis for future executive action, excluding the determination of administrative culpability or the determination of probable cause. *Second*, there is the administrative investigation to determine administrative culpabilities of public officials and employees. *Third*, there is the preliminary investigation whose sole purpose is to determine probable cause as to the existence and perpetrator of a crime. These three types of fact-finding investigations are separate and distinct investigations.

A purely fact-finding investigation under the Office of the President is the first type of fact-finding investigation. Such fact-finding investigation has three distinct objectives. The first is to improve administrative procedures and efficiency, institute administrative measures to prevent corruption, and recommend policy options—all with the objective of enabling the President to execute faithfully the law. The second is to recommend to Congress possible legislation in response to new conditions brought to light in the fact-finding investigation. The third is to recommend to the head of office the filing of a formal administrative charge, or the filing of a criminal complaint before the prosecutor.

Under the third objective, the fact-finding investigation is merely a gathering and evaluation of facts to determine whether there is sufficient basis to proceed with a formal administrative charge, or the filing of a criminal complaint before the prosecutor who will conduct a preliminary investigation. This purely fact-finding investigation does not determine

administrative culpability or the existence of probable cause. The fact-finding investigation comes before an administrative investigation or preliminary investigation, where administrative culpability or probable cause, respectively, is determined.

On the other hand, an administrative investigation follows, and takes up, the recommendation of a purely fact-finding investigation to charge formally a public official or employee for possible misconduct in office. Similarly, a preliminary investigation is an inquiry to determine whether there is sufficient ground to believe that a crime has been committed and that the respondent is probably guilty of such crime, and should be held for trial.[26] A preliminary investigation's sole purpose is to determine whether there is probable cause to charge a person for a crime.

Section 15 of Republic Act No. 6770[27] provides:

SEC. 15. *Powers, Functions and Duties*. – The Office of the Ombudsman shall have the following powers, functions and duties: x xx

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency when such act or omission appears to be illegal, unjust, improper or inefficient. **It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of his primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases**; x xx (Emphasis supplied)

The Ombudsman has "primary jurisdiction over cases cognizable by the Sandiganbayan." The cases cognizable by the Sandiganbayan are criminal cases as well as quasi-criminal cases like the forfeiture of unexplained wealth.[28] "[I]n the exercise of this primary jurisdiction" over cases cognizable by the Sandiganbayan, the Ombudsman "may take over x xx the investigation of such cases" from any investigatory agency of the Government. The cases covered by the "*primary jurisdiction*" of the Ombudsman are criminal or quasi-criminal cases but not administrative cases. Administrative cases, such as administrative disciplinary cases, are not cognizable by the Sandiganbayan. With more reason, purely fact-finding investigations conducted by the Executive branch are not cognizable by the Sandiganbayan.

Purely fact-finding investigations to improve administrative procedures and efficiency, to institute administrative measures to prevent corruption, to provide the President with policy options, to recommend to Congress remedial legislation, and even to determine whether there is basis to file a formal administrative charge against a government official or employee, do not fall under the "primary jurisdiction" of the Ombudsman. These fact-finding investigations do not involve criminal or quasi-criminal cases cognizable by the Sandiganbayan.

If the Ombudsman has the power to take-over purely fact-finding investigations from the President or his subordinates, then the President will become inutile. The President will be wholly dependent on the Ombudsman, waiting for the Ombudsman to establish the facts before the President can act to execute faithfully the law. The Constitution does not vest such power in the Ombudsman. No statute grants the Ombudsman such power, and if there were, such law would be unconstitutional for usurping the power of the President to find facts necessary and proper to his faithful execution of the law.

Besides, if the Ombudsman has the ***exclusive*** power to conduct fact-finding investigations, then even the Judiciary and the Legislature cannot perform their fundamental functions without the action or approval of the Ombudsman. While the Constitution grants the Office of the Ombudsman the power to "[i]nvestigate on its own x xx any act or omission of any public official, employee, office or agency,"[29] such power is **not exclusive**. To hold that such investigatory power is exclusive to the Ombudsman is to make the Executive, Legislative and Judiciary wholly dependent on the Ombudsman for the performance of their Executive, Legislative and Judicial functions.

Even in investigations involving criminal and quasi-criminal cases cognizable by the Sandiganbayan, the Ombudsman does not have exclusive jurisdiction to conduct preliminary investigations. In *Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice*,[30] this Court held:

In summation, the Constitution, Section 15 of the Ombudsman Act of 1989 and Section 4 of the Sandiganbayan Law, as amended, **do not give to the Ombudsman exclusive jurisdiction to investigate offenses committed by public officers or employees**. The authority of the

Ombudsman to investigate offenses involving public officers or employees is concurrent with other government investigating agencies such as provincial, city and state prosecutors. However, the Ombudsman, in the exercise of its primary jurisdiction over cases cognizable by the Sandiganbayan, may take over, at any stage, from any investigating agency of the government, the investigation of such cases.[31] (Emphasis supplied)

To repeat, *Honasan II* categorically ruled that **"the Constitution, Section 15 of the Ombudsman Act of 1989 and Section 4 of the Sandiganbayan Law, as amended, do not give the Ombudsman exclusive jurisdiction to investigate offenses committed by public officials and employees."**

The *concurrent jurisdiction* of the Ombudsman refers to the conduct of a *preliminary investigation* to determine if there is probable cause to charge a public officer or employee with an offense, not to the conduct of a purely administrative fact-finding investigation that does not involve the determination of probable cause.[32] The Truth Commission is a purely fact-finding body that does not determine the existence of probable cause. There is no accused or even a suspect before the Truth Commission, which merely conducts a general inquiry on reported cases of graft and corruption. No one will even be under custodial investigation before the Truth Commission.[33] Thus, the claim that the Truth Commission is usurping the investigatory power of the Ombudsman, or of any other government official, has no basis whatsoever.

In ***criminal fact-finding investigations***, the law expressly vests in the Philippine National Police (PNP) and the National Bureau of Investigation (NBI) investigatory powers. Section 24 of Republic Act No. 6975[34] provides:

Section 24. Powers and Functions – The PNP shall have the following powers and duties:

(a) xxx

xxx

(c) **Investigate** and prevent **crimes**, effect the arrest of criminal offenders, bring offenders to justice, and assist in their prosecution;

xxx. (Emphasis supplied)

Section 1 of Republic Act No. 157 also provides:

Section 1. There is hereby created a Bureau of Investigation under the Department of Justice which shall have the following functions:

(a) **To undertake investigation of crimes and other offenses** against the laws of the Philippines, upon its own initiative and as public interest may require;

xxx. (Emphasis supplied)

The PNP and the NBI are under the **control** of the President. Indisputably, the President can at any time direct the PNP and NBI, whether singly, jointly or in coordination with other government bodies, to investigate possible violations of penal laws, whether committed by public officials or private individuals. To say that the Ombudsman has the exclusivepower to conduct fact-finding investigations of crimes involving public officials and employees is to immobilize our law-enforcement agencies and allow graft and corruption to run riot. The fact-finding arm of the Department of Justice (DOJ) to investigate crimes, whether committed by public or private parties, is the NBI.[35] The DOJ Proper does not conduct fact-finding investigations of crimes, but only preliminary investigations.

The Truth Commission
Has Subpoena Powers

Section 2 of EO 1 provides that the Truth Commission shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of EO 292, which reads:

Sec. 37. *Powers Incidental to Taking of Testimony*. – When authority to take testimony or receive evidence is conferred upon any administrative officer or any non-judicial person, committee, or other body, such authority shall include the power to administer oaths, summon

witnesses, and require the production of documents by a *subpoena ducestecum*. (Emphasis supplied)

Section 2(e) of EO 1 confers on the Truth Commission the power to "[i]nvite or subpoena witnesses and take their testimonies and for that purpose, administer oaths or affirmation as the case may be." Thus, the Truth Commission, a body authorized to take testimony, can administer oaths and issue subpoena and *subpoena ducestecum* pursuant to Section 37, Chapter 9, Book I of EO 292. In fact, this power to administer oaths and to issue subpoena and subpoena ducestecum is a power of every administrative fact-finding investigative body created in the Executive, Legislative or Judicial branch. Section 37, Chapter 9, Book I of EO 292 grants such power to every fact-finding body so created.

The Truth Commission
Has No Contempt Powers

Section 9 of EO 1 provides:

Section 9. *Refusal to Obey Subpoena, Take Oath or Give Testimony.* Any government official or personnel who, without lawful excuse, fails to appear upon subpoena issued by the Commission or who, appearing before the Commission refuses to take oath or affirmation, give testimony or produce documents for inspection, when required, shall be subject to administrative disciplinary action. Any private person who does the same may be dealt with in accordance with law.

There is no provision in EO 1 that gives the Truth Commission the power to cite persons for contempt. As explained by Solicitor General Jose Anselmo I. Cadiz, if the person who refuses to obey the subpoena, take oath or give testimony is a public officer, he can be charged with "defiance of a lawful order,"[36] which should mean insubordination[37] if his superior had ordered him to obey the subpoena of the Truth Commission. If the person is not a public officer or employee, he can only be dealt with in accordance with law, which should mean that the Truth Commission could file a petition with the proper court to cite such private person in contempt pursuant to Sections 1[38] and 9[39] of Rule 21 of the Rules of Court.

However, the mere fact that the Truth Commission, by itself, has no coercive power to compel any one, whether a government employee or a private individual, to testify before the Commission does not invalidate the creation by the President, or by the Judiciary or Legislature, of a purely administrative fact-finding investigative body. There are witnesses who may voluntarily testify, and bring relevant documents, before such fact-finding body. The fact-finding body may even rely only on official records of the government. To require every administrative fact-finding body to have coercive or contempt powers is to invalidate all administrative fact-finding bodies created by the Executive, Legislative and Judicial branches of government.

The Name "Truth Commission"
Cannot Invalidate EO 1

There is much ado about the words "Truth Commission" as the name of the fact-finding body created under EO 1. **There is no law or rule prescribing how a fact-finding body should be named.** In fact, there is no law or rule prescribing how permanent government commissions, offices, or entities should be named.[40] **There is also no law or rule prohibiting the use of the words "Truth Commission" as the name of a fact-finding body.** Most fact-finding bodies are named, either officially or unofficially, after the chairperson of such body, which by itself, will not give any clue as to the nature, powers or functions of the body. Thus, the name Feliciano Commission or Melo Commission, by itself, does not indicate what the commission is all about. Naming the present fact-finding body as the "Truth Commission" is more descriptive than naming it the Davide Commission after the name of its chairperson.

The name of a government commission, office or entity does not determine its nature, powers or functions. The specific provisions of the charter creating the commission, office or entity determine its nature, powers or functions. The name of the commission, office or entity is not important and may even be misleading. For example, the term Ombudsman connotes a male official but no one in his right mind will argue that a female cannot be an Ombudsman. In fact, the present Ombudsman is not a man but a woman. In the private sector, the name of a corporation may not even indicate what the corporation is all about. Thus, Apple Corporation is not in the business of selling apples or even oranges. An individual may be named Honesto but

he may be anything but honest. **All this tells us that in determining the nature, powers or functions of a commission, office or entity, courts should not be fixated by its name but should examine what it is tasked or empowered to do.**

In any event, there is nothing inherently wrong in the words "Truth Commission" as the name of a fact-finding body. The primary purpose of every fact-finding body is to establish the facts. The facts lead to, or even constitute, the truth. In essence, to establish the facts is to establish the truth. Thus, the name "Truth Commission" is as appropriate as the name "Fact-Finding Commission." If the name of the commission created in EO 1 is changed to "Fact-Finding Commission," the nature, powers and functions of the commission will remain exactly the same. This simply shows that the name of the commission created under EO 1 is not important, and any esoteric discourse on the ramifications of the name "Truth Commission" is merely an academic exercise. Of course, the name "Truth Commission" is more appealing than the worn-out name "Fact-Finding Commission." Courts, however, cannot invalidate a law or executive issuance just because its draftsman has a flair for catchy words and a disdain for trite ones. Under the law, a fact-finding commission by any other name is a fact-finding commission.[41]

The Public Will Not Be Deceived that
Findings of Truth Commission Are Final

The fear that the public will automatically perceive the findings of the Truth Commission as the "truth," and any subsequent contrary findings by the Ombudsman or Sandiganbayan as the "untruth," is misplaced. First, EO 1 is unequivocally clear that the findings of the Truth Commission are neither final nor binding on the Ombudsman, more so on the Sandiganbayan which is not even mentioned in EO 1. No one reading EO 1 can possibly be deceived or misled that the Ombudsman or the Sandiganbayan are bound by the findings of the Truth Commission.

Second, even if the Truth Commission is renamed the "Fact-Finding Commission," the same argument can also be raised—that the public may automatically perceive the findings of the Fact-Finding Commission as the unquestionable "facts," and any subsequent contrary findings

by the Ombudsman or Sandiganbayan as "non-factual." This argument is bereft of merit because the public can easily read and understand what EO 1 expressly says—that the findings of the Truth Commission are not final or binding but merely recommendatory.

Third, the Filipino people are familiar with the Agrava Board,[42] a fact-finding body that investigated the assassination of former Senator Benigno S. Aquino, Jr. The people know that the findings of the Agrava Board were not binding on the then Tanodbayan or the Sandiganbayan. The Agrava Board recommended for prosecution 26 named individuals[43] but the Tanodbayan charged 40 named individuals[44] before the Sandiganbayan. On the other hand, the Sandiganbayan convicted only 16 of those charged by the Tanodbayan and acquitted 20 of the accused.[45]

Fourth, as most Filipinos know, many persons who undergo preliminary investigation and are charged for commission of crimes are eventually acquitted by the trial courts, and even by the appellate courts. In short, the fear that the public will be misled that the findings of the Truth Commission is the unerring gospel truth is more imagined than real.

EO 1 Does Not Violate
The Equal Protection Clause

Petitioners Lagman, et al. argue that EO 1 violates the equal protection clause because the investigation of the Truth Commission is limited to alleged acts of graft and corruption during the Arroyo administration.

A reading of Section 17 of EO 1 readily shows that the Truth Commission's investigation is not limited to the Arroyo administration. Section 17 of EO 1 provides:

Section 17. *Special Provision Concerning Mandate*. If and when in the judgment of the President there is a need to expand the mandate of the Commission as defined in Section 1 hereof to include the investigation of cases and instances of graft and corruption during the prior administrations, such mandate may be extended accordingly by way of a supplemental Executive Order.(Emphasis supplied)

The President can expand the mandate of the Truth Commission to investigate alleged graft and corruption cases of other past administrations even as its primary task is to investigate the Arroyo administration. EO 1 does not confine the mandate of the Truth Commission solely to alleged acts of graft and corruption during the Arroyo Administration.

Section 17 of EO 1 is the same as Section 2(b) of Executive Order No. 1 dated 28 February 1986 issued by President Corazon Aquino creating the Presidential Commission on Good Government (PCGG Charter). Section 2(b) of the PCGG Charter provides:

Section 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:

(a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates xxx.

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

xxxx . (Emphasis supplied)

Thus, under Section 2(b) of the PCGG Charter, the President can expand the investigation of the PCCG even as its primary task is to recover the ill-gotten wealth of the Marcoses and their cronies. Both EO 1 and the PCGG Charter have the same provisions on the scope of their investigations. Both the Truth Commission and the PCGG are primarily tasked to conduct specific investigations, with their mandates subject to expansion by the President from time to time. This Court has consistently upheld the constitutionality of the PCGG Charter.[46]

Like Section 2(b) of the PCGG Charter, Section 17 of EO 1 merely prioritizes the investigation of acts of graft and corruption that may have taken place during the Arroyo administration. If time allows, the President may extend the mandate of the Truth Commission to investigate other administrations prior to the Arroyo administration. The prioritization of such work or assignment does not violate the equal protection clause because the prioritization is based on reasonable grounds.

First, the prescriptive period for the most serious acts of graft and corruption under the Revised Penal Code is 20 years,[47] 15 years for offenses punishable under the Anti-Graft and Corrupt Practices Act,[48] and 12 years for offenses punishable under special penal laws that do not expressly provide for prescriptive periods.[49] Any investigation will have to focus on alleged acts of graft and corruption within the last 20 years, almost half of which or 9 years is under the Arroyo administration.

While it is true that the prescriptive period is counted from the time of discovery of the offense, the "reported cases"[50] of "large scale corruption"[51] involving "third level public officers and higher,"[52] which the Truth Commission will investigate, have already been **widely reported in media**, and many of these reported cases have even been investigated by the House of Representatives or the Senate. Thus, the prescriptive periods of these "reported cases" of "large scale corruption" may have already began to run since these anomalies are publicly known and may be deemed already discovered.[53] These prescriptive periods refer to the criminal acts of public officials under penal laws, and not to the recovery of ill-gotten wealth which under the Constitution is imprescriptible.[54]

Second, the Marcos, Ramos and Estrada administrations were already investigated by their successor administrations. This alone is incontrovertible proof that the Arroyo administration is not being singled out for investigation or prosecution.

Third, all the past Presidents, with the exception of Presidents Ramos, Estrada and Arroyo, are already dead. The possible witnesses to alleged acts of graft and corruption during the Presidencies of the deceased presidents may also be dead or unavailable. In fact, the only living President whose administration has not been investigated by its successor administration is President Arroyo.

Fourth, the more recent the alleged acts of graft and corruption, the more readily available will be the witnesses, and the more easily the witnesses can recall with accuracy the relevant events. Inaction over time means the loss not only of witnesses but also of material documents, not to mention the loss of public interest.

Fifth, the 29-month time limit given to the Truth Commission prevents it from investigating other past administrations.[55]There is also the constraint on the enormous resources needed to investigate other past administrations. Just identifying the transactions, locating relevant documents, and looking for witnesses would require a whole bureaucracy.

These are not only reasonable but also compelling grounds for the Truth Commission to prioritize the investigation of the Arroyo administration. ***To prioritize based on reasonable and even compelling grounds is not to discriminate, but to act sensibly and responsibly.***

In any event, there is no violation of the equal protection clause just because the authorities focus their investigation or prosecution on one particular alleged law-breaker, for surely a person accused of robbery cannot raise as a defense that other robbers like him all over the country are not being prosecuted.[56] By the very nature of an investigation or prosecution, there must be a focus on particular act or acts of a person or a group of persons.

Indeed, almost every fact-finding body focuses its investigation on a specific subject matter—whether it be a specific act, incident, event, situation, condition, person or group of persons. This specific focus results from the nature of a fact-finding investigation, which is a necessary and proper response to a specific compelling act, incident, event, situation, or condition involving a person or group of persons. Thus, the fact-finding commissions created under the previous Arroyo administration had specific focus: the Feliciano Commission focused on the Oakwood mutiny, the Melo Commission focused on extra-judicial killings, and the Zeñarosa Commission focused on private armies.

Significantly, the PCGG Charter even specifies the persons to be investigated for the recovery of ill-gotten wealth. Thus, Section 2(a) of the PCGG Charter provides:

Section 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:

(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) xxx . (Emphasis supplied)

The PCGG Charter has survived all constitutional attacks before this Court, including the claim that its Section 2(a) violates the equal protection clause. In Virata v. Sandiganbayan,[57] this Court categorically ruled that the PCGG Charter "does not violate the equal protection clause and is not a bill of attainder or an ex post facto law."[58]

This specific focus of fact-finding investigations is also true in the United States. Thus, the Roberts Commission[59] focused on the Pearl Harbor attack, the Warren Commission[60] focused on the assassination of President John F. Kennedy, and the 9/11 Commission[61] focused on the 11 September 2001 terrorist attacks on the United States. These fact-finding commissions were created with specific focus to assist the U.S. President and Congress in crafting executive and legislative responses to specific acts or events of grave national importance. Clearly, fact-finding investigations by their very nature must have a specific focus.

Graft and corruption cases before the Arroyo administration have already been investigated by the previous administrations. President Corazon Aquino created the Presidential Commission on Good Government to recover the ill-gotten wealth of the Marcoses and their cronies.[62] President Joseph Estrada created the Saguisag Commission to investigate the Philippine Centennial projects of President Fidel Ramos.[63] The glaring acts of corruption during the Estrada administration have already been investigated resulting in the conviction of President Estrada for plunder. Thus, it stands to reason that the Truth Commission should give priority to the alleged acts of graft and corruption during the Arroyo administration.

The majority opinion claims that EO 1 violates the equal protection clause because the Arroyo administration belongs to a class of past administrations and the other past administrations are not included in the investigation of the Truth Commission. Thus, the majority opinion states:

In this regard, it must be borne in mind that the Arroyo administration is but just a member of a class, that is, a class of past administrations. It is not a class of its own. **Not to include past administrations similarly situated** constitutes arbitrariness which the equal protection clause cannot sanction. Such discriminating differentiation clearly reverberates to label the commission as a vehicle for vindictiveness and selective retribution.

xxx

xxx**The PTC [Philippine Truth Commission], to be true to its mandate of searching the truth, must not exclude the other past administrations**. **The PTC must, at least, have the authority to investigate all past administrations**. While reasonable prioritization is permitted, it should not be arbitrary lest it be struck down for being unconstitutional.

xxx

xxx**To exclude the earlier administrations in the guise of "substantial distinctions" would only confirm the petitioners' lament that the subject executive order is only an "adventure in partisan hostility**." x xx.

xxx

T**o reiterate, in order for a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class**. "Such a classification must not be based on existing circumstances only, or so constituted as to preclude additions to the number included within a class, but must be of such a nature as to embrace all those who may hereafter be in similar circumstances and conditions. Furthermore, all who are in situations and circumstances which are relative to the discriminatory legislation and which are indistinguishable from those of the members of the class must be brought under the influence of the law and treated by it in the same way as are the members of the class." (Emphasis supplied)

The majority opinion goes on to suggest that EO 1 could be amended "to include the earlier past administrations" to allow it "**to pass the test of reasonableness and not be an affront to the Constitution**."

The majority opinion's reasoning is specious, illogical, impractical, impossible to comply, and contrary to the Constitution and well-settled jurisprudence. To require that "**earlier past administrations**" must also be included in the investigation of the Truth Commission, with the Truth Commission expressly empowered "**to investigate *all* past administrations**," before there can be a valid investigation of the Arroyo administration under the equal protection clause, is to prevent absolutely the investigation of the Arroyo administration under any circumstance.

While the majority opinion admits that there can be "**reasonable prioritization**" of past administrations to be investigated, it not only fails to explain how such reasonable prioritization can be made, it also proceeds to strike down EO 1 for prioritizing the Arroyo administration in the investigation of the Truth Commission. And while admitting that there can be a valid classification based on substantial distinctions, the majority opinion inexplicably makes any substantial distinction immaterial by stating that "**[t]o exclude the earlier administrations in the guise of "substantial distinctions" would only confirm the petitioners' lament that the subject executive order is only an 'adventure in partisan hostility**.'"

The "**earlier** past administrations" prior to the Arroyo administration cover the Presidencies of Emilio Aguinaldo, Manuel Quezon, Jose Laurel, Sergio Osmeña, Manuel Roxas, ElpidioQuirino, Ramon Magsaysay, Carlos Garcia, DiosdadoMacapagal, Ferdinand Marcos, Corazon Aquino, Fidel Ramos, and Joseph Estrada, a period spanning 102 years or more than a century. All these administrations, plus the 9-year Arroyo administration, already constitute the universe of all past administrations, covering a total period of 111 years. All these "**earlier past administrations**" cannot constitute just one class of administrations because if they were to constitute just one class, then there would be no other class of administrations. It is like saying that since all citizens are human beings, then all citizens belong to just one class and you cannot classify them as disabled, impoverished, marginalized, illiterate, peasants, farmers, minors, adults or seniors.

Classifying the "**earlier past administrations**" in the last 111 years as just one class is not germane to the purpose of investigating possible acts of graft and corruption. There are prescriptive periods to prosecute crimes. There are administrations that have already been investigated by their successor administrations. There are also administrations that have been

subjected to several Congressional investigations for alleged large-scale anomalies. There are past Presidents, and the officials in their administrations, who are all dead. There are past Presidents who are dead but some of the officials in their administrations are still alive. Thus, all the "**earlier past administrations**" cannot be classified as just one single class—"**a class of past administrations**"—because they are not all similarly situated.

On the other hand, just because the Presidents and officials of "**earlier past administrations**" are now all dead, or the prescriptive periods under the penal laws have all prescribed, does not mean that there can no longer be any investigation of these officials. The State's right to recover the ill-gotten wealth of these officials is **imprescriptible**.[64] Section 15, Article XI of the 1987 Constitution provides:

Section 15. The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall **not be barred by prescription**, laches or estoppel. (Emphasis supplied)

Legally and morally, any ill-gotten wealth since the Presidency of Gen. Emilio Aguinaldo can still be recovered by the State. **Thus, if the Truth Commission is required to investigate "earlier past administrations" that could still be legally investigated, the Truth Commission may have to start with the Presidency of Gen. Emilio Aguinaldo**.

A fact-finding investigation of "**earlier past administrations**," spanning 111 years punctuated by two world wars, a war for independence, and several rebellions—would obviously be an impossible task to undertake for an ad hoc body like the Truth Commission. To insist that "**earlier past administrations**" must also be investigated by the Truth Commission, together with the Arroyo administration, is utterly bereft of any reasonable basis other than to prevent absolutely the investigation of the Arroyo administration. No nation on this planet has even attempted to assign to one *ad-hoc* fact-finding body the investigation of all its senior public officials in the past 100 years.

The majority opinion's overriding thesis—that "**earlier past administrations**" belong to only one class and they must all be included in the investigation of the Truth Commission, with the Truth Commission expressly empowered "**to investigate *all* past administrations**"—is even the wrong

assertion of discrimination that is violative of the equal protection clause. The logical and correct assertion of a violation of the equal protection clause is that the Arroyo administration is being investigated for possible acts of graft and corruption while other past administrations similarly situated were not.

Thus, in the leading case of United States v. Armstrong,[65] decided in 1996, the U.S. Supreme Court ruled that "to establish a discrimination effect in a race case, the claimant must show that similarly situated individuals of a different race were not prosecuted."[66] Applied to the present petitions, petitioners must establish that similarly situated officials of other past administrations were not investigated. However, the incontrovertible and glaring fact is that the Marcoses and their cronies were investigated and prosecuted by the PCGG, President Fidel Ramos and his officials in the Centennial projects were investigated by the Saguisag Commission, and President Joseph Estrada was investigated, prosecuted and convicted of plunder under the Arroyo administration. Indisputably, the Arroyo administration is not being singled out for investigation or prosecution because other past administrations and their officials were also investigated or prosecuted.

In United States v. Armstrong, the U.S. Supreme Court further stated that "[a] selective-prosecution claim asks a court to exercise judicial power over a "special province" of the Executive,"[67] citing Hecker v. Chaney[68] which held that a decision whether or not to indict "has long been regarded as the special province of the Executive Branch, inasmuch it is the Executive who is charged by the Constitution to 'take Care that the Laws be faithfully executed.'"[69] These U.S. cases already involved the prosecution of cases before the grand jury or the courts, well past the administrative fact-finding investigative phase.

In the present case, no one has been charged before the prosecutor or the courts. What petitioners want this Court to do is invalidate a mere administrative fact-finding investigation by the Executive branch, an investigative phase prior to preliminary investigation. Clearly, if courts cannot exercise the Executive's "special province" to decide whether or not to indict, which is the equivalent of determination of probable cause, with greater reason courts cannot exercise the Executive's "special province" to decide what or what not to investigate for administrative fact-finding purposes.

For this Court to exercise this "special province" of the President is to encroach on the exclusive domain of the Executive to execute the law in blatant violation of the finely crafted constitutional separation of power. Any unwarranted intrusion by this Court into the exclusive domain of the Executive or Legislative branch disrupts the separation of power among the three co-equal branches and ultimately invites re-balancing measures from the Executive or Legislative branch.

A claim of selective prosecution that violates the equal protection clause can be raised only by the party adversely affected by the discriminatory act. In Nunez v. Sandiganbayan,[70] this Court declared:

'x x x Those adversely affected may under the circumstances invoke the equal protection clause only if they can show that the governmental act assailed, far from being inspired by the attainment of the common weal was prompted by the spirit of hostility, or at the very least, discrimination that finds no support in reason.' x xx. (Emphasis supplied)

Here, petitioners do not claim to be adversely affected by the alleged selective prosecution under EO 1. Even in the absence of such a claim by the proper party, the majority opinion strikes down EO 1 as discriminatory and thus violative of the equal protection clause. This is a gratuitous act to those who are not before this Court, a discriminatory exception to the rule that only those "adversely affected" by an alleged selective prosecution can invoke the equal protection clause. Ironically, such discriminatory exception is a violation of the equal protection clause. In short, the ruling of the majority is in itself a violation of the equal protection clause, the very constitutional guarantee that it seeks to enforce.

The majority opinion's requirement that "**earlier past administrations**" in the last 111 years should be included in the investigation of the Truth Commission to comply with the equal protection clause is a recipe for all criminals to escape prosecution. This requirement is like saying that before a person can be charged with estafa, the prosecution must also charge all persons who in the past may have committed estafa in the country. Since it is impossible for the prosecution to charge all those who in the past may have committed estafa in the country, then it becomes impossible to prosecute anyone for estafa.

This Court has categorically rejected this specious reasoning and false invocation of the equal protection clause in People v. dela Piedra,[71] where the Court emphatically ruled:

The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. xxx

xxx The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboangueña, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws.

There is also common sense practicality in sustaining appellant's prosecution.

While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society . . . . Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime. (People v. Montgomery, 117 P.2d 437 [1941])

Likewise,

[i]f the failure of prosecutors to enforce the criminal laws as to some persons should be converted into a defense for others charged with crime, the result would be that the trial of the district attorney for nonfeasance would become an issue in the trial of many persons charged with heinous crimes and the enforcement of law would suffer a complete breakdown (State v. Hicks, 325 P.2d 794 [1958]).[72] (Emphasis supplied)

The Court has reiterated this "common sense" ruling in People v. Dumlao[73] and in Santos v. People,[74] for to hold otherwise is utter nonsense as it means effectively granting immunity to all criminals.

Indeed, it is a basic statutory principle that non-observance of a law by disuse is not a ground to escape prosecution for violation of a law. Article 7 of Civil Code expressly provides:

Article 7. Laws are repealed only by subsequent ones, and their violation or **non-observance shall not be excused by disuse**, or custom or practice to the contrary.

xxx. (Emphasis supplied)

A person investigated or prosecuted for a possible crime cannot raise the defense that he is being singled out because others who may have committed the same crime are not being investigated or prosecuted. **Such person cannot even raise the defense that after several decades he is *the first and only one* being investigated or prosecuted for a specific crime.** The law expressly states that disuse of a law, or custom or practice allowing violation of a law, will never justify the violation of the law or its non-observance.

A fact-finding investigation in the Executive or Judicial branch, even if limited to specific government officials—whether incumbent, resigned or retired—does not violate the equal protection clause. If an anomaly is reported in a government transaction and a fact-finding investigation is conducted, the investigation by necessity must focus on the public officials involved in the transaction. It is ridiculous for anyone to ask this Court to stop the investigation of such public officials on the ground that past public officials of the same rank, who may have been involved in similar anomalous transactions in the past, are not being investigated by the same fact-finding body. To uphold such a laughable claim is to grant immunity to all criminals, throwing out of the window the constitutional principle that "[p]ublic office is a public trust"[75] and that "[p]ublic officials and employees must at all times be accountable to the people."[76]

When the Constitution states that public officials are "at all times" accountable to the people, it means at any time public officials can be held to account by the people. Nonsensical claims, like the selective prosecution invoked in People v. delaPiedra, are unavailing. Impossible conditions, like requiring the investigation of "**earlier past administrations**," are disallowed. All these flimsy and dilatory excuses violate the clear command of the Constitution that public officials are accountable to the people "at all times."

The majority opinion will also mean that the PCGG Charter—which tasked the PCGG to recover the ill-gotten wealth of the Marcoses and their cronies—violates the equal protection clause because the PCCG Charter specifically mentions the Marcoses and their cronies. The majority opinion reverses several decisions[77] of this Court upholding the constitutionality of the PCCG Charter, endangering over two decades of hard work in recovering ill-gotten wealth.

Ominously, the majority opinion provides from hereon every administration a cloak of immunity against any investigation by its successor administration. This will institutionalize impunity in transgressing anti-corruption and other penal laws. Sadly, the majority opinion makes it impossible to bring good governance to our government.

The Truth Commission is only a fact-finding body to provide the President with facts so that he can understand what happened in certain government transactions during the previous administration. There is no preliminary investigation yet and the Truth Commission will never conduct one. No one is even being charged before the prosecutor or the Ombudsman. This Court has consistently refused to interfere in the determination by the prosecutor of the existence of probable cause in a preliminary investigation.[78] With more reason should this Court refuse to interfere in the purely fact-finding work of the Truth Commission, which will not even determine whether there is probable cause to charge any person of a crime.

Before the President executes the law, he has the right, and even the duty, to know the facts to assure himself and the public that he is correctly executing the law. This Court has no power to prevent the President from knowing the facts to understand certain government transactions in the Executive branch, transactions that may need to be reviewed, revived, corrected, terminated or completed. If this Court can do so, then it can also prevent the House of Representatives or the Senate from conducting an investigation, in aid of legislation, on the financial transactions of the Arroyo administration, on the ground of violation of the equal protection clause. Unless, of course, the House or the Senate attempts to do the impossible—conduct an investigation on the financial transactions of "**earlier past administrations**" since the Presidency of General Emilio Aguinaldo. Indeed, under the majority opinion, neither the House nor the Senate can conduct any investigation on any administration, past or present, if "earlier past administrations" are not included in the legislative investigation.

In short, the majority opinion's requirements that EO 1 should also include "**earlier** past administrations," with the Truth Commission empowered "**to investigate *all* past administrations**," to comply with the equal protection clause, is a requirement that is not only illogical and impossible to comply, it also allows the impunity to commit graft and corruption and other crimes under our penal laws. The majority opinion completely ignores the constitutional principle that public office is a public trust and that public officials are at all times accountable to the people.

A Final Word

The incumbent President was overwhelmingly elected by the Filipino people in the 10 May 2010 elections based on his announced program of eliminating graft and corruption in government. As the Solicitor General explains it, the incumbent President has pledged to the electorate that the elimination of graft and corruption will start with the investigation and prosecution of those who may have committed large-scale corruption in the previous administration.[79] During the election campaign, the incumbent President identified graft and corruption as the major cause of poverty in the country as depicted in his campaign theme "kung walang corrupt, walangmahirap." It was largely on this campaign pledge to eliminate graft and corruption in government that the electorate overwhelmingly voted for the incumbent President. The Filipino people do not want to remain forever at the bottom third of 178 countries ranked in terms of governments free from the scourge of corruption.[80]

Neither the Constitution nor any existing law prevents the incumbent President from redeeming his campaign pledge to the Filipino people. In fact, the incumbent President's campaign pledge is merely a reiteration of the basic State policy, enshrined in Section 27, Article II of the Constitution, that:

Section 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption. (Emphasis supplied)

The incumbent President's campaign pledge also reiterates the constitutional principle that "[p]ublic office is a public trust"[81] and that "[p]ublic officers and employees must at all times be accountable to the people."[82]

This Court, in striking down EO 1 creating the Truth Commission, overrules the manifest will of the Filipino people to start the difficult task of putting an end to graft and corruption in government, denies the President his basic constitutional power to determine the facts in his faithful execution of the law, and suppresses whatever truth may come out in the purely fact-finding investigation of the Truth Commission. This Court, in invoking the equal protection clause to strike down a purely fact-finding investigation, grants immunity to those who violate anti-corruption laws and other penal laws, renders meaningless the constitutional principle that public office is a public trust, and makes public officials unaccountable to the people at any time.

Ironically, this Court, and even subordinates of the President in the Executive branch, routinely create all year round fact-finding bodies to investigate all kinds of complaints against officials and employees in the Judiciary or the Executive branch, as the case may be. The previous President created through executive issuances three purely fact-finding commissions similar to the Truth Commission. Yet the incumbent President, the only official mandated by the Constitution to execute faithfully the law, is now denied by this Court the power to create the purely fact-finding Truth Commission.

History will record the ruling today of the Court's majority as a severe case of judicial overreach that made the incumbent President a diminished Executive in an affront to a co-equal branch of government, crippled our already challenged justice system, and crushed the hopes of the long suffering Filipino people for an end to graft and corruption in government.

Accordingly, I vote to **DISMISS** the petitions.

ANTONIO T. CARPIO
Associate Justice

Notes:

[1] Also known as the Administrative Code of 1987. One of EO 1's WHEREAS clauses reads: "WHEREAS, Book III, Chapter 10, Section 31 of Executive Order No. 292, otherwise known as the Revised Administrative Code of the Philippines, gives the President the continuing authority to reorganize the Office of the President."

[2] Domingo v. Zamora, 445 Phil. 7, 13 (2003).

[3] Emphasis supplied.

[4] Emphasis supplied. President Aquino took his oath in Filipino.

[5] *Rodriguez, et al. v. Santos Diaz, et al.,* 119 Phil. 723, 727-728 (1964).

[6] TSN, 7 September 2010, pp. 56-57.

[7] No. L-29274, 27 November 1975, 68 SCRA 99, 104.

[8] Section 31, Chapter 10, Title III, Book III of EO 292, quoted on page 2.

[9] Section 22, Chapter 8, Title II, Book III of EO 292 reads:

> Section 22. *Office of the President Proper.*(1) The Office of the President Proper shall consist of the Private Office, the Executive Office, the Common Staff Support System, and the Presidential Special Assistants/Advisers System;
>
> (2) The Executive Office refers to the Offices of the Executive Secretary, Deputy Executive Secretaries and Assistant Executive Secretaries;
>
> (3) The Common Staff Support System embraces the offices or units under the general categories of development and management, general government administration and internal administration; and
>
> (4) The Presidential Special Assistants/Advisers System includes such special assistants or advisers as may be needed by the President." (Emphasis supplied)

[10] Section 22(4), Id.

[11] Section 47(2), Chapter 6, Book V of EO 292 provides:

Section 47. Disciplinary Jurisdiction. –

xxx

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. xxx. (Emphasis supplied)

[12] Paragraph 1 of PD 1416, as amended, provides:

1. **The President of the Philippines shall have continuing authority to reorganize the National Government.** In exercising this authority, the President shall be guided by generally acceptable principles of good government and responsive national development, including but not limited to the following guidelines for a more efficient, effective, economical and development-oriented governmental framework:

(a) More effective planning, implementation, and review functions;

(b) Greater decentralization and responsiveness in the decision-making process;

(c) Further minimization, if not elimination, of duplication or overlapping of purposes, functions, activities, and programs;

(d) Further development of as standardized as possible ministerial, sub-ministerial and corporate organizational structures;

(e) Further development of the regionalization process; and

(f) Further rationalization of the functions of and administrative relationship among government entities.

For purposes of this Decree, the coverage of the continuing authority of the President to reorganize shall be interpreted to encompass all agencies, entities, instrumentalities, and units of the National Government, including all government-owned or controlled corporations, as well as the entire range of the powers, functions, authorities, administrative relationships, and related aspects pertaining to these agencies, entities, instrumentalities, and units.

2. For this purpose, the President may, at his discretion, take the following actions:

(a) Group, coordinate, consolidate or integrate departments, bureaus, offices, agencies, instrumentalities and functions of the government;

(b) Abolish departments, offices, agencies or functions which may not be necessary, or create those which are necessary, for the efficient conduct of government functions services and activities;

(c) Transfer functions, appropriations, equipment, properties, records and personnel from one department, bureau, office, agency or instrumentality to another;

(d) Create, classify, combine, split, and abolish positions;

(e) Standardize salaries, materials and equipment;

(f) Create, abolish, group, consolidate, merge, or integrate entities, agencies, instrumentalities, and units of the National Government, as well as expand, amend, change, or otherwise modify their powers, functions and authorities, including, with respect to government-owned or controlled corporations, their corporate life, capitalization, and other relevant aspects of their charters; and

(g) Take such other related actions as may be necessary to carry out the purposes and objectives of this Decree. (Emphasis supplied)

[13] Paragraph 1 (c) and (e), PD 1416, as amended.

[14] The clause states: "WHEREAS, the transition towards the parliamentary form of government will necessitate flexibility in the organization of the national government."

[15]Aurillo v. Rabi, 441 Phil. 117 (2002); Drilon v. Lim, G.R. No. 112497, 4 August 1994, 235 SCRA 135; *Mondano v. Silvosa, etc. et al.,* 97 Phil. 143 (1955).

[16] Section 29(1), Article VI, 1987 Constitution.

[17]*Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, 14 July 1989, 175 SCRA 343.

[18] See Special Provision No. 2, General Appropriations Act of 2010 or Republic Act No. 9970.

[19] TSN, 7 September 2010, p. 61.

[20]*Doran v. Executive Judge Luczon*, Jr., G.R. No. 151344, 26 September 2006, 503 SCRA 106.

[21] Id.

[22] G.R. No. 179830, 3 December 2009, 606 SCRA 554, citing *Dole Philippines Inc. v. Esteva*, G.R. No. 161115, 30 November 2006, 509 SCRA 332.

[23] Id. at 570-571.

[24] Section 65, Chapter 13, Book IV of EO 292 merely provides:

> Section 65. *Approval of other types of Government Contracts*. — All other types of government contracts which are not within the coverage of this Chapter shall, in the absence of a special provision, be executed with the approval of the Secretary or by the head of the bureau or office having control of the appropriation against which the contract would create a charge. Such contracts shall be processed and approved in accordance with existing laws, rules and regulations.

[25]http://www.mb.com.ph/node/270641/ombud (http://www.mb.com.ph/node/270641/ombud), accessed on 19 November 2010.

[26] Section 1, Rule 112, Rules of Court.

[27] "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes." Also known as "The Ombudsman Act of 1989."

[28] Republic Act No. 8249, entitled "An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending For the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefore, and For Other Purposes." Approved on 5 February 1997.

[29] Section 13(1), Article XI, Constitution.

[30] G.R. No. 159747, 13 April 2004, 427 SCRA 46.

[31] Id. at 70.

[32] Id.

[33]*People vs. Morial*, 415 Phil. 310 (2001).

[34] An Act Establishing The Philippine National Police Under A Reorganized Department of Interior and Local Government And For Other Purposes. Also known as the Philippine National Police Law or the Department of Interior and Local Government Act of 1990.

[35] Section 3, Chapter I, Title III, Book IV of EO 292 provides:

> Section 3. *Powers and Functions*. – To accomplish its mandate, the Department (DOJ) shall have the following powers and functions:
>
> (1) xxx

(2) Investigate the commission of crimes, prosecute offenders and administer the probation and correction system;

xxx.

[36] TSN, 28 September 2010, pp. 41-42.

[37] Section 46(25), Chapter 7, Book V, EO 292.

[38] Section 1, Rule 21 of the Rules of Court provides:

SEC. 1. *Subpoena and Subpoena ducestecum*. – Subpoena is a process directed to a person requiring him to attend and to testify at the hearing or trial of an action, **or at any investigation conducted by competent authority**, or for the taking of his deposition. It may also require him to bring with him any books, documents, or other things under his control, in which case it is called a *subpoena ducestecum*. (Emphasis supplied)

[39] Section 9, Rule 21 of the Rules of Court provides:

SEC. 9. **Contempt**. Failure by any person without adequate cause to obey a subpoena served upon him shall be deemed a contempt of court from which the subpoena is issued. **If the subpoena was not issued by a court, the disobedience thereto shall be punished in accordance with the applicable law or Rule**. (Emphasis supplied)

[40] In sharp contrast, Section 26(1), Article VI of the Constitution provides: "Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof." Thus, the title of a bill must express the subject of the bill.

[41] With apologies to William Shakespeare. These are the lines in *Romeo and Juliet*: "What's in a name? That which we call a rose by any other name would smell as sweet."

[42] Created by Presidential Decree No. 1886 dated 14 October 1983.

[43] The Majority Opinion of the Agrava Board recommended for prosecution 26 named individuals, including Gen. Fabian Ver. The Minority Opinion of Chairperson Corazon Agrava recommended for prosecution only 7 named individuals, excluding Gen. Ver.

[44] Excluding those charged as "John Does."

[45] One of the accused died during the trial and three remained at large.

[46]Virata v. Sandiganbayan, G.R. No. 86926, 15 October 1991, 202 SCRA 680; PCGG v. Peña, 293 Phil. 93 (1988); and Baseco v. PCGG, 234 Phil. 180 (1987).

[47] Article 90, in relation to Articles 211-A and 217, of the Revised Penal Code.

[48] Section 11, RA No. 3019.

[49] Section 1, Act No. 3326.

[50] Section 2, EO 1.

[51] Section 2(b), EO 1.

[52] Id.

[53] See *People v. Duque*, G.R. No. 100285, 13 August 1992, 212 SCRA 607.

[54] Section 15, Article XI, Constitution.

[55] Section 14 of EO 1 provides that "the Commission shall accomplish its mission on or before December 31, 2012."

[56] In People v. delaPiedra, 403 Phil. 31, 54 (2001), the Court stated, "The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws."

[57] G.R. No. 86926, 15 October 1991, 202 SCRA 680.

[58] Id. at 698. (Emphasis supplied)

[59] Created by President Franklin Roosevelt.

[60] Created by President Lyndon Johnson.

[61] Created through law by the U.S. Congress.

[62] Executive Order No. 1, dated 28 February 1986.

[63] Administrative Order No. 53 – Creating an Ad-hoc and Independent Citizens' Committee to Investigate All the Facts and Circumstances Surrounding Philippine Centennial Projects, Including its Component Activities, dated 24 February 1999.

[64] Even prior to the 1987 Constitution, public officials could not acquire ownership of their ill-gotten wealth by prescription. Section 11 of Republic Act No. 1379, or the *Law on Forfeiture of Ill-Gotten Wealth* enacted on 18 June 1956, provides:

> Section 11. *Laws on prescription*. — The laws concerning acquisitive prescription and limitation of actions cannot be invoked by, nor shall they benefit the respondent, in respect of any property unlawfully acquired by him.
>
> Under Article 1133 of the New Civil Code, "[m]ovables possessed through a crime can never be acquired through prescription by the offender." And under Article 1956 of the Spanish Civil Code of 1889, "ownership of personal property stolen or taken by robbery cannot be acquired by prescription by the thief or robber, or his accomplices, or accessories, unless the crime or misdemeanor or the penalty therefor and the action to enforce the civil liability arising from the crime or misdemeanor are barred by prescription."

[65] 517 U.S. 456, decided 13 May 1996. The U.S. Supreme Court reiterated this ruling in United States v. Bass, 536 U.S. 862 (2002), a per curiam decision.

[66] 517 U.S. 456, 465.

[67] Id. at 464.

[68] 470 U.S. 821 (1985).

[69] Id. at 832.

[70] 197 Phil. 407, 423 (1982). This ruling was reiterated in City of Manila v. Laguio, 495 Phil. 289 (2005); Mejia v. Pamaran, 243 Phil. 600 (1998); Bautista v. Juinio, 212 Phil. 307 (1984); and Calubaquib v. Sandiganbayan, 202 Phil. 817 (1982).

[71] 403 Phil. 31 (2001).

[72] Id. at 54-56.

[73] G.R. No. 168918, 2 March 2009, 580 SCRA 409.

[74] G.R. No. 173176, 26 August 2008, 563 SCRA 341.

[75] Section 1, Article XI, Constitution.

[76] Id.

[77] Supra, note 46.

[78] See Spouses Aduan v. Levi Chong, G.R. No. 172796, 13 July 2009, 592 SCRA 508; UCPB v. Looyuko, G.R. No. 156337, 28 September 2007, 534 SCRA 322; First Women's Credit Corporation v. Perez, G.R. No. 169026, 15 June 2006, 490 SCRA 774; and Dupasquier v. Court of Appeals, 403 Phil. 10 (2001).

[79] Memorandum for Respondents, p. 91.

[80] The 2010 Transparency International Corruption Index ranks the Philippines at 134 out of 178 countries. See http:/www.transparency.org/policy_research/surveys_indices/cpi/2010/results, accessed on 13 November 2010.

[81] Section 1, Article XI, Constitution.

[82] Id.