



## APPENDIX 5.11

### *FRANCISCO I. CHAVEZ, PETITIONER, vs. PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG) AND MAGTANGGOL GUNIGUNDO, (IN HIS CAPACITY AS CHAIRMAN OF THE PCGG), RESPONDENTS*

The compromise agreement mentioned by Raissa Robles is reproduced in full in the decision, along with a supplemental agreement. Assailed were procedural and substantive issues regarding the compromise agreement. One procedural issue—the standing of lawyer Francisco Chavez, who filed as a taxpayer and a citizen—was rendered moot and academic because of the inclusion of the petitioners-in-intervention, who were recognized by the Supreme Court as “legitimate claimants of the Marcos wealth.” Among the substantive issues, the agreement was declared in many ways legally infirm, even unconstitutional. One wonders, however, if the agreement was approved by the president at the time, if the Supreme Court would have ruled differently.

#### **The Facts**

Petitioner Francisco I. Chavez, as “taxpayer, citizen and former government official who initiated the prosecution of the Marcoses and their cronies who committed unmitigated plunder of the public treasury and the systematic subjugation of the country’s economy,” alleges that what impelled him to bring this action were several news reports<sup>[2]</sup> bannered in a number of broadsheets sometime in September 1997. These news items referred to (1) the alleged discovery of billions of dollars of Marcos assets deposited in various coded accounts in Swiss banks; and (2) the reported execution of a compromise, between the government (through PCGG) and the Marcos heirs, on how to split or share these assets.

Petitioner, invoking his constitutional right to information<sup>[3]</sup> and the correlative duty of the state to disclose publicly all its transactions

## FIRST DIVISION

[G.R. No. 130716. December 9, 1998]

**FRANCISCO I. CHAVEZ, petitioner, vs. PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG) and MAGTANGGOL GUNIGUNDO, (in his capacity as chairman of the PCGG), respondents. GLORIA A. JOPSON, CELNAN A. JOPSON, SCARLET A. JOPSON, and TERESA A. JOPSON, petitioners-in-intervention.**

## DECISION

PANGANIBAN, J:

Petitioner asks this Court to define the nature and the extent of the people's constitutional right to information on matters of public concern. Does this right include access to the terms of government negotiations *prior* to their consummation or conclusion? May the government, through the Presidential Commission on Good Government (PCGG), be required to reveal the proposed terms of a compromise agreement with the Marcos heirs as regards their alleged ill-gotten wealth? More specifically, are the "General Agreement" and "Supplemental Agreement," both dated December 28, 1993 and executed between the PCGG and the Marcos heirs, valid and binding?

## The Case

These are the main questions raised in this original action seeking (1) to prohibit and "[e]njoin respondents [PCGG and its chairman] from privately entering into, perfecting and/or executing any agreement with the heirs of the late President Ferdinand E. Marcos x x x relating to and concerning the properties and assets of Ferdinand Marcos located in the Philippines and/or abroad -- including the so-called Marcos gold hoard"; and (2) to "[c]ompel respondent[s] to make public all negotiations and agreement, be they ongoing or perfected, and all documents related to or relating to such negotiations and agreement between the PCGG and the Marcos heirs."<sup>1</sup>

## The Facts

Petitioner Francisco I. Chavez, as "taxpayer, citizen and former government official who initiated the prosecution of the Marcoses and their cronies who committed unmitigated plunder of the public treasury and the systematic subjugation of the country's economy," alleges that what impelled him to bring this action were several news reports<sup>2</sup> bannered in a number of broadsheets sometime in September 1997. These news items referred to (1) the alleged discovery of billions of dollars of Marcos assets deposited in various coded accounts in Swiss banks; and (2) the reported execution of a compromise, between the government (through PCGG) and the Marcos heirs, on how to split or share these assets.

Petitioner, invoking his constitutional right to information<sup>3</sup> and the correlative duty of the state to disclose publicly all its transactions involving the national interest,<sup>4</sup> demands that respondents make public any and all negotiations and agreements pertaining to PCGG's task of recovering the Marcoses' ill-gotten wealth. He claims that any compromise on the alleged billions of ill-gotten wealth involves an issue of "paramount public interest," since it has a "debilitating effect on the country's economy" that would be greatly prejudicial to the national interest of the Filipino people. Hence, the people in general have a right to know the transactions or deals being contrived and effected by the government.

Respondents, on the other hand, do not deny forging a compromise agreement with the Marcos heirs. They claim, though, that petitioner's action is premature, because there is no showing that he has asked the PCGG to disclose the negotiations and the Agreements. And even if he has, PCGG may not yet be compelled to make any disclosure, since the proposed terms and conditions of the Agreements have not become effective and binding.

Respondents further aver that the Marcos heirs have submitted the subject Agreements to the Sandiganbayan for its approval in Civil Case No. 141, entitled *Republic v. Heirs of Ferdinand E. Marcos*, and that the Republic opposed such move on the principal grounds that (1) said Agreements have not been ratified by or even submitted to the President for approval, pursuant to Item No. 8 of the General Agreement; and (2) the Marcos heirs have failed to comply with their undertakings therein, particularly the collation and submission of an inventory of their assets. The Republic also cited an April 11, 1995 Resolution in Civil Case No. 0165, in which the Sandiganbayan dismissed a similar petition filed by the Marcoses' attorney-in-fact.

Figure 1. A screenshot from the Supreme Court of the Philippines Website.

Source: Supreme Court of the Philippines. 1998. "Francisco I. Chavez, petitioner, vs. Presidential Commission On Good Government (PCGG) and Magtanggol Gunigundo, (in his capacity as chairman of the PCGG), respondents. Gloria A. Jopson, Celnan A. Jopson, Scarlet A. Jopson, and Teresa A. Jopson, petitioners-in-intervention." Republic of the Philippines.

<http://sc.judiciary.gov.ph/jurisprudence/1998/dec1998/130716.htm>.

involving the national interest,<sup>[4]</sup> demands that respondents make public any and all negotiations and agreements pertaining to PCGG's task of recovering the Marcoses' ill-gotten wealth. He claims that any compromise on the alleged billions of ill-gotten wealth involves an issue of "paramount public interest," since it has a "debilitating effect on the country's economy" that would be greatly prejudicial to the national interest of the Filipino people. Hence, the people in general have a right to know the transactions or deals being contrived and effected by the government.

Respondents, on the other hand, do not deny forging a compromise agreement with the Marcos heirs. They claim, though, that petitioner's action is premature, because there is no showing that he has asked the PCGG to disclose the negotiations and the Agreements. And even if he has, PCGG may not yet be compelled to make any disclosure, since the proposed terms and conditions of the Agreements have not become effective and binding.

Respondents further aver that the Marcos heirs have submitted the subject Agreements to the Sandiganbayan for its approval in Civil Case No. 141, entitled *Republic v. Heirs of Ferdinand E. Marcos*, and that the Republic opposed such move on the principal grounds that (1) said Agreements have not been ratified by or even submitted to the President for approval, pursuant to Item No. 8 of the General Agreement; and (2) the Marcos heirs have failed to comply with their undertakings therein, particularly the collation and submission of an inventory of their assets. The Republic also cited an April 11, 1995 Resolution in Civil Case No. 0165, in which the Sandiganbayan dismissed a similar petition filed by the Marcoses' attorney-in-fact.

Furthermore, then President Fidel V. Ramos, in his May 4, 1998 Memorandum<sup>[5]</sup> to then PCGG Chairman Magtanggol Gunigundo, categorically stated:

"This is to reiterate my previous position embodied in the Palace Press Release of 6 April 1995 that I have not authorized you to approve the Compromise Agreements of December 28, 1993 or any agreement at all with the Marcoses, and would have disapproved them had they been submitted to me.

"The Full Powers of Attorney of March 1994 and July 4, 1994, did not authorize you to approve said Agreements, which I reserve for myself as President of the Republic of the Philippines."

The assailed principal Agreement<sup>[6]</sup> reads:

"GENERAL AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement entered into this 28th day of December, 1993, by and between -

The Republic of the Philippines, through the Presidential Commission on Good Government (PCGG), a governmental agency vested with authority defined under Executive Orders Nos. 1, 2 and 14, with offices at the Philcomcen Building, Pasig, Metro Manila, represented by its Chairman referred to as the FIRST PARTY,

– and –

Estate of Ferdinand E. Marcos, represented by Imelda Romualdez Marcos and Ferdinand R. Marcos, Jr., all of legal age, and with address at c/o No. 154 Lopez Rizal St., Mandaluyong, Metro Manila, and Imelda Romualdez Marcos, Imee Marcos Manotoc, Ferdinand E. Marcos, Jr., and Irene Marcos Araneta, hereinafter collectively referred to as the PRIVATE PARTY.

WITNESSETH:

WHEREAS, the PRIVATE PARTY has been impelled by their sense of nationalism and love of country and of the entire Filipino people, and their desire to set up a foundation and finance impact projects like installation of power plants in selected rural areas and initiation of other community projects for the empowerment of the people;

WHEREAS, the FIRST PARTY has obtained a judgment from the Swiss Federal Tribunal of December 21, 1990, that the \$356 million belongs in principle to the Republic of the Philippines provided certain conditionalities are met, but even after 7 years, the FIRST PARTY has not been able to procure a final judgment of conviction against the PRIVATE PARTY;

WHEREAS, the FIRST PARTY is desirous of avoiding a long-drawn out litigation which, as proven by the past 7 years, is consuming money, time and effort, and is counter-productive and ties up assets which the FIRST PARTY could otherwise utilize for its Comprehensive Agrarian Reform Program, and other urgent needs;

WHEREAS, His Excellency, President Fidel V. Ramos, has adopted a policy of unity and reconciliation in order to bind the nation's

wounds and start the process of rebuilding this nation as it goes on to the twenty-first century;

WHEREAS, this Agreement settles all claims and counterclaims which the parties may have against one another, whether past, present, or future, matured or inchoate.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. The parties will collate all assets presumed to be owned by, or held by other parties for the benefit of, the PRIVATE PARTY for purposes of determining the totality of the assets covered by the settlement. The subject assets shall be classified by the nature thereof, namely: (a) real estate; (b) jewelry; (c) paintings and other works of art; (d) securities; (e) funds on deposit; (f) precious metals, if any, and (g) miscellaneous assets or assets which could not appropriately fall under any of the preceding classification. The list shall be based on the full disclosure of the PRIVATE PARTY to insure its accuracy.
2. Based on the inventory, the FIRST PARTY shall determine which shall be ceded to the FIRST PARTY, and which shall be assigned to/retained by the PRIVATE PARTY. The assets of the PRIVATE PARTY shall be net of, and exempt from, any form of taxes due the Republic of the Philippines. However, considering the unavailability of all pertinent and relevant documents and information as to balances and ownership, the actual specification of assets to be retained by the PRIVATE PARTY shall be covered by supplemental agreements which shall form part of this Agreement.
3. Foreign assets which the PRIVATE PARTY shall fully disclose but which are held by trustees, nominees, agents or foundations are hereby waived over by the PRIVATE PARTY in favor of the FIRST PARTY. For this purpose, the parties shall cooperate in taking the appropriate action, judicial and/or extrajudicial, to recover the same for the FIRST PARTY.
4. All disclosures of assets made by the PRIVATE PARTY shall not be used as evidence by the FIRST PARTY in

any criminal, civil, tax or administrative case, but shall be valid and binding against said PARTY for use by the FIRST PARTY in withdrawing any account and/or recovering any asset. The PRIVATE PARTY withdraws any objection to the withdrawal by and/or release to the FIRST PARTY by the Swiss banks and/or Swiss authorities of the \$356 million, its accrued interests, and/or any other account; over which the PRIVATE PARTY waives any right, interest or participation in favor of the FIRST PARTY. However, any withdrawal or release of any account aforementioned by the FIRST PARTY shall be made in the presence of any authorized representative of the PRIVATE PARTY.

5. The trustees, custodians, safekeepers, depositaries, agents, nominees, administrators, lawyers, or any other party acting in similar capacity in behalf of the PRIVATE PARTY are hereby informed through this General Agreement to insure that it is fully implemented and this shall serve as absolute authority from both parties for full disclosure to the FIRST PARTY of said assets and for the FIRST PARTY to withdraw said account and/or assets and any other assets which the FIRST PARTY on its own or through the help of the PRIVATE PARTY/their trustees, etc., may discover.
6. Any asset which may be discovered in the future as belonging to the PRIVATE PARTY or is being held by another for the benefit of the PRIVATE PARTY and which is not included in the list per No. 1 for whatever reason shall automatically belong to the FIRST PARTY, and the PRIVATE PARTY in accordance with No. 4 above, waives any right thereto.
7. This Agreement shall be binding on, and inure to the benefit of, the parties and their respective legal representatives, successors and assigns and shall supersede any other prior agreement.
8. The PARTIES shall submit this and any other implementing Agreements to the President of the Philippines for approval. In the same manner, the PRIVATE PARTY shall provide the FIRST PARTY

assistance by way of testimony or deposition on any information it may have that could shed light on the cases being pursued by the FIRST PARTY against other parties. The FIRST PARTY shall desist from instituting new suits already subject of this Agreement against the PRIVATE PARTY and cause the dismissal of all other cases pending in the Sandiganbayan and in other courts.

9. In case of violation by the PRIVATE PARTY of any of the conditions herein contained, the PARTIES shall be restored automatically to the *status quo ante* the signing of this Agreement.

For purposes of this Agreement, the PRIVATE PARTY shall be represented by Atty. Simeon M. Mesina, Jr., as their only Attorney-in-Fact.

IN WITNESS WHEREOF, the parties have signed this instrument this 28th day of December, 1993, in Makati, Metro Manila.

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT

By:

[Sgd.] MAGTANGGOL C. GUNIGUNDO

Chairman

ESTATE OF FERDINAND E. MARCOS, IMELDA R. MARCOS, MA. IMELDA MARCOS-MANOTOC, FERDINAND R. MARCOS, JR., & IRENE MARCOS-ARANETA

By:

[Sgd.]IMELDA ROMUALDEZ-MARCOS

[Sgd.] MA. IMELDA MARCOS-MANOTOC

FERDINAND R. MARCOS, JR.<sup>[21]</sup>

[Sgd.] IRENE MARCOS-ARANETA

Assisted by:

[Sgd.] ATTY. SIMEON M. MESINA, JR.

Counsel & Attorney-in-Fact”

Petitioner also denounces this supplement to the above Agreement:<sup>[8]</sup>

#### “SUPPLEMENTAL AGREEMENT

This Agreement entered into this 28th day of December, 1993, by and between –

The Republic of the Philippines, through the Presidential Commission on Good Government (PCGG), a governmental agency vested with

authority defined under Executive Orders Nos. 1, 2 and 14, with offices at the Philcomcen Building, Pasig, Metro Manila, represented by its Chairman Magtanggol C. Gunigundo, hereinafter referred to as the FIRST PARTY,

– and –

Estate of Ferdinand E. Marcos, represented by Imelda Romualdez Marcos and Ferdinand R. Marcos, Jr., all of legal age, and with address at c/o No. 154 Lopez Rizal St., Mandaluyong, Metro Manila, and Imelda Romualdez Marcos, Imee Marcos Manotoc, Ferdinand E. Marcos, Jr., and Irene Marcos Araneta, hereinafter collectively referred to as the PRIVATE PARTY.

WITNESSETH:

The parties in this case entered into a General Agreement dated Dec. 28, 1993;

The PRIVATE PARTY expressly reserve their right to pursue their interest and/or sue over local assets located in the Philippines against parties other than the FIRST PARTY.

The parties hereby agree that all expenses related to the recovery and/or withdrawal of all assets including lawyers' fees, agents' fees, nominees' service fees, bank charges, traveling expenses and all other expenses related thereto shall be for the account of the PRIVATE PARTY.

In consideration of the foregoing, the parties hereby agree that the PRIVATE PARTY shall be entitled to the equivalent of 25% of the amount that may be eventually withdrawn from said \$356 million Swiss deposits.

IN WITNESS WHEREOF, the parties have signed this instrument this 28th day of December, 1993, in Makati, Metro Manila.

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT

By:

[Sgd.] MAGTANGGOL C. GUNIGUNDO

Chairman

ESTATE OF FERDINAND E. MARCOS, IMELDA R. MARCOS, MA. IMELDA MARCOS-MANOTOC, FERDINAND R. MARCOS, JR., & IRENE MARCOS-ARANETA

By:



[Sgd.] IMELDA ROMUALDEZ-MARCOS  
 [Sgd.] MA. IMELDA MARCOS-MANOTOC  
 FERDINAND R. MARCOS, JR.<sup>[9]</sup>  
 [Sgd.] IRENE MARCOS-ARANETA  
 Assisted by:  
 [Sgd.] ATTY. SIMEON M. MESINA, JR.  
 Counsel & Attorney-in-Fact

Acting on a motion of petitioner, the Court issued a Temporary Restraining Order<sup>[10]</sup> dated March 23, 1998, enjoining respondents, their agents and/or representatives from “entering into, or perfecting and/or executing any agreement with the heirs of the late President Ferdinand E. Marcos relating to and concerning their ill-gotten wealth.”

Issues

The Oral Argument, held on March 16, 1998, focused on the following issues:

“(a) Procedural:

- (1) Whether or not the petitioner has the personality or legal standing to file the instant petition; and
- (2) Whether or not this Court is the proper court before which this action may be filed.

(b) Substantive:

- (1) Whether or not this Court could require the PCGG to disclose to the public the details of any agreement, perfected or not, with the Marcoses; and
- (2) Whether or not there exist any legal restraints against a compromise agreement between the Marcoses and the PCGG relative to the Marcoses’ ill-gotten wealth.”<sup>[11]</sup>

After their oral presentations, the parties filed their respective memoranda.

On August 19, 1998, Gloria, Celnan, Scarlet and Teresa, all surnamed Jopson, filed before the Court a Motion for Intervention, attaching thereto their Petition in Intervention. They aver that they are “among the 10,000 claimants whose right to claim from the Marcos Family and/or the Marcos Estate is recognized by the decision in *In re*

*Estate of Ferdinand Marcos, Human Rights Litigation, Maximo Hilao, et al., Class Plaintiffs No. 92-15526, U.S. Court of Appeals for the 9th Circuit US App. Lexis 14796, June 16, 1994 and the Decision of the Swiss Supreme Court of December 10, 1997.*” As such, they claim to have personal and direct interest in the subject matter of the instant case, since a distribution or disposition of the Marcos properties may adversely affect their legitimate claims. In a minute Resolution issued on August 24, 1998, the Court granted their motion to intervene and required the respondents to comment thereon. The September 25, 1998 Comment<sup>[12]</sup> of the solicitor general on said motion merely reiterated his aforecited arguments against the main petition.<sup>[13]</sup>

<sup>[1]</sup> Petition, p. 3; rollo, p. 4.

<sup>[2]</sup> Annexed to the Petition were the following news articles:

1. Estrella Torres, “\$2-B FM Hoard Found,” *Today*, September 25, 1997, p.1.
2. “Gov’t Working Out Secret Deal on Marcos Gold,” *The Manila Times*, September 25, 1997, p.1.
3. Estrella Torres, “FVR Man Has FM Money,” *Today*, September 27, 1997, p.1.
4. Donna Cueto and Cathy Cañares, “Swiss, RP Execs Plotted Gold Sale,” *Philippine Daily Inquirer*, September 28, 1997.
5. Jocelyn Montemayor, “Coded Swiss Accounts Traced to Palace Boys?” *The Manila Times*, September 29, 1997.

<sup>[3]</sup> § 7, Art. III, 1987 Constitution.

<sup>[4]</sup> § 28, Art. II, *ibid*.

<sup>[5]</sup> The solicitor general’s Manifestation, dated August 11, 1998.

<sup>[6]</sup> Rollo, pp. 213-216.

<sup>[7]</sup> It appears that Ferdinand R. Marcos Jr. did not sign the General Agreement.

<sup>[8]</sup> Rollo, pp. 217-218.

<sup>[9]</sup> It appears that Ferdinand R. Marcos Jr. did not sign the Supplemental Agreement either.

<sup>[10]</sup> Rollo, pp. 159-160.

<sup>[11]</sup> Resolution dated March 16, 1998, pp. 1-2; *ibid.*, pp. 147-148.

<sup>[12]</sup> Rollo, pp. 396-403.

<sup>[13]</sup> This case was deemed submitted for resolution on September 28, 1998, when the Court received the solicitor general’s Comment on the Motion and Petition for Intervention.

\*\*\*\*\*

### ***Validity of the PCGG-Marcos Compromise Agreements***

Going now to the subject General and Supplemental Agreements between the PCGG and the Marcos heirs, a cursory perusal thereof reveals serious legal flaws. *First*, the Agreements do not conform to the above requirements of EO Nos. 14 and 14-A. **We believe that criminal**

**immunity under Section 5 cannot be granted to the Marcoses, who are the principal defendants in the spate of ill-gotten wealth cases now pending before the Sandiganbayan.** As stated earlier, the provision is applicable mainly to *witnesses* who provide information or testify against a respondent, defendant or accused in an ill-gotten wealth case.

While the General Agreement states that the Marcoses “shall provide the [government] assistance by way of testimony or deposition on any information [they] may have that could shed light on the cases being pursued by the [government] against other parties,”<sup>1571</sup> the clause does not fully comply with the law. Its inclusion in the Agreement may have been only an afterthought, conceived in *pro forma* compliance with Section 5 of EO No. 14, as amended. There is no indication whatsoever that any of the Marcos heirs has indeed provided vital information against any respondent or defendant as to the manner in which the latter may have unlawfully acquired public property.

*Second*, under Item No. 2 of the General Agreement, the PCGG commits to exempt from all forms of taxes the properties to be retained by the Marcos heirs. This is a clear violation of the Constitution. The power to tax and to grant tax exemptions is vested in the Congress and, to a certain extent, in the local legislative bodies.<sup>1581</sup> Section 28 (4), Article VI of the Constitution, specifically provides: “No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress.” **The PCGG has absolutely no power to grant tax exemptions, even under the cover of its authority to compromise ill-gotten wealth cases.**

Even granting that Congress enacts a law exempting the Marcoses from paying taxes on their properties, such law will definitely not pass the test of the equal protection clause under the Bill of Rights. Any special grant of tax exemption in favor only of the Marcos heirs will constitute class legislation. It will also violate the constitutional rule that “taxation shall be uniform and equitable.”<sup>1591</sup>

Neither can the stipulation be construed to fall within the power of the commissioner of internal revenue to compromise taxes. Such authority may be exercised only when (1) there is *reasonable doubt as to the validity of the claim* against the taxpayer, and (2) the taxpayer’s financial position demonstrates a *clear inability to pay*.<sup>1601</sup> Definitely, neither requisite is present in the case of the Marcoses, because under the Agreement they are effectively conceding the validity of the claims against their properties, part of which they will be allowed to retain. Nor can the PCGG grant of tax exemption fall within the power of the

commissioner to abate or cancel a tax liability. This power can be exercised only when (1) the tax appears to be unjustly or excessively assessed, or (2) the administration and collection costs involved do not justify the collection of the tax due.<sup>[61]</sup> In this instance, the cancellation of tax liability is done even before the determination of the amount due. In any event, criminal violations of the Tax Code, for which legal actions have been filed in court or in which fraud is involved, cannot be compromised.<sup>[62]</sup>

*Third*, the government binds itself to cause the dismissal of all cases against the Marcos heirs, pending before the Sandiganbayan and other courts.<sup>[63]</sup> This is a direct encroachment on judicial powers, particularly in regard to criminal jurisdiction. Well-settled is the doctrine that once a case has been filed before a court of competent jurisdiction, the matter of its dismissal or pursuance lies within the full discretion and control of the judge. In a criminal case, the manner in which the prosecution is handled, including the matter of whom to present as witnesses, may lie within the sound discretion of the government prosecutor;<sup>[64]</sup> but the court decides, based on the evidence proffered, in what manner it will dispose of the case. Jurisdiction, once acquired by the trial court, is not lost despite a resolution, even by the justice secretary, to withdraw the information or to dismiss the complaint.<sup>[65]</sup> The prosecution's motion to withdraw or to dismiss is not the least binding upon the court. On the contrary, decisional rules require the trial court to make its own evaluation of the merits of the case, because granting such motion is equivalent to effecting a disposition of the case itself.<sup>[66]</sup>

**Thus, the PCGG, as the government prosecutor of ill-gotten wealth cases, cannot guarantee the dismissal of all such criminal cases against the Marcoses pending in the courts, for said dismissal is not within its sole power and discretion.**

*Fourth*, the government also waives all claims and counterclaims, "whether past, present, or future, matured or inchoate," against the Marcoses.<sup>[67]</sup> Again, this all-encompassing stipulation is contrary to law. Under the Civil Code, an action for future fraud may not be waived.<sup>[68]</sup> The stipulation in the Agreement does not specify the exact scope of future claims against the Marcoses that the government thereby relinquishes. Such vague and broad statement may well be interpreted to include all future illegal acts of any of the Marcos heirs, practically giving them a license to perpetrate fraud against the government without any liability at all. This is a palpable violation of

the due process and equal protection guarantees of the Constitution. It effectively enconces the Marcoses beyond the reach of the law. It also sets a dangerous precedent for public accountability. **It is a virtual warrant for public officials to amass public funds illegally, since there is an open option to compromise their liability in exchange for only a portion of their ill-gotten wealth.**

*Fifth*, the Agreements do not provide for a definite or determinable period within which the parties shall fulfill their respective prestations. It may take a lifetime before the Marcoses submit an inventory of their total assets.

*Sixth*, the Agreements do not state with specificity the standards for determining which assets shall be forfeited by the government and which shall be retained by the Marcoses. While the Supplemental Agreement provides that the Marcoses shall be entitled to 25 per cent of the \$356 million Swiss deposits (less government recovery expenses), such sharing arrangement pertains only to the said deposits. No similar splitting scheme is defined with respect to the other properties. Neither is there, anywhere in the Agreements, a statement of the basis for the 25-75 percent sharing ratio. Public officers entering into an arrangement appearing to be manifestly and grossly disadvantageous to the government, in violation of the Anti-Graft and Corrupt Practices Act,<sup>[69]</sup> invite their indictment for corruption under the said law.

*Finally*, the absence of then President Ramos' approval of the principal Agreement, an express condition therein, renders the compromise incomplete and unenforceable. Nevertheless, as detailed above, even if such approval were obtained, the Agreements would still not be valid.

**From the foregoing disquisition, it is crystal clear to the Court that the General and Supplemental Agreements, both dated December 28, 1993, which the PCGG entered into with the Marcos heirs, are violative of the Constitution and the laws aforementioned.**

**WHEREFORE**, the petition is *GRANTED*. The General and Supplemental Agreements dated December 28, 1993, which PCGG and the Marcos heirs entered into are hereby declared *NULL AND VOID* for being contrary to law and the Constitution. Respondent PCGG, its officers and all government functionaries and officials who are or may be directly or indirectly involved in the recovery of the alleged ill-gotten wealth of the Marcoses and their associates are *DIRECTED* to disclose to the public the terms of any proposed compromise settlement, as well as the final agreement, relating to such

alleged ill-gotten wealth, in accordance with the discussions embodied in this Decision. No pronouncement as to costs.

SO ORDERED.

<sup>1571</sup> General Agreement, par. 8.

<sup>1581</sup> *Mactan Cebu International Airport Authority v. Marcos*, 261 SCRA 667, September 11, 1996.

<sup>1591</sup> § 28 (1), Art. VI, Constitution. *Commissioner of Internal Revenue v. Court of Appeals*, 261 SCRA 236, August 29, 1996; *Tolentino v. Secretary of Finance*, 249 SCRA 628, October 30, 1995; *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan*, 163 SCRA 371, 383, June 30, 1988, citing *City of Baguio v. De Leon*, 134 Phil. 912, 919-920 (1968).

<sup>1601</sup> § 204 (1), National Internal Revenue Code, as amended by § 3, RA 7646.

<sup>1611</sup> § 204 (2), NIRC.

<sup>1621</sup> Par. 2, *ibid.*

<sup>1631</sup> General Agreement, par. 8.

<sup>1641</sup> *People v. Nazareno*, 260 SCRA 256, August 1, 1996; *People v. Porras*, 255 SCRA 514, March 29, 1996.

<sup>1651</sup> *Ledesma v. Court of Appeals*, GR No. 113216, September 5, 1997, pp. 21-22.

<sup>1661</sup> *Ibid.*, p. 23, citing *Crespo v. Mogul*, 151 SCRA 462, June 30, 1987; *Marcelo v. Court of Appeals*, 235 SCRA 39, August 4, 1994; *Martinez v. Court of Appeals*, 237 SCRA 575, October 13, 1994; and *Roberts Jr. v. Court of Appeals*, 254 SCRA 307, March 5, 1996.

<sup>1671</sup> Last “Whereas” clause of the General Agreement.

<sup>1681</sup> Art. 1171.

<sup>1691</sup> Specifically § 3 (g) of RA 3019.