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wily and unscrupulous debtors who, in order to evade attachment or execution, cunningly conceal their assets and wait until the statute of limitation sets in.[19]

WHEREFORE, the petition is hereby *GRANTED*. The Decision of the Court of Appeals dated June 3, 1997 in CA-G.R. SP. No. 43407 is hereby *REVERSED* and *SET ASIDE*.

SO ORDERED.

Melo (Acting Chairman), Puno, and *Mendoza JJ.*, concur.

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.*

SYNOPSIS

In this original action for *mandamus,* the petitioner raises, among others, the following questions : (1) 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? (2) Are the "General Agreement" and "Supplemental Agreement," both dated December 28, 1993 and executed between the PCGG and the Marcos heirs, valid and binding?

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[19] *Philippine National Bank vs. Bondoc, supra.*

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The recovery of the Marcoses' ill-gotten wealth is a matter of public concern and imbued with public interest since ill-gotten wealth, by its very nature, assumes a public character. Considering the intent of the framers of the Constitution, the Court believes that it is incumbent upon the PCGG and its officers as well as other government representatives, to disclose sufficient public information on any proposed settlement they have decided to take up with the ostensible owners and holders of ill-gotten wealth. Such information, though must pertain to definite propositions of the government, not necessarily to intra-agency or inter-agency recommendations or communications during the stage when common assertions are still in the process of being formulated. There is a need to observe the same restrictions on disclosure of information in general, such as on matters involving national security, diplomatic or foreign relations, intelligence and other classified information.

A perusal of the subject General and Supplemental Agreements reveals serious legal flaws. First, the Court believed that criminal immunity cannot be granted to the Marcoses, who are the principal defendants in the ill-gotten wealth cases now pending before the Sandiganbayan. Second, there was a clear violation of the Constitution when the PCGG commits to exempt from all forms of taxes the properties to be retained by the Marcos heirs. The PCGG has absolutely no power to grant tax exemptions, even under the cover of its authority to compromise ill-gotten wealth cases. Moreover, criminal violations of the Tax Code, for which legal actions have been filed in court or in which fraud is involved, cannot be compromised. Third, there was a direct encroachment on judicial powers when the government bound itself to cause the dismissal of all pending cases against the Marcos heirs. It is not within the sole power and discretion of the PCGG to guarantee the dismissal of all such criminal cases against the Marcoses pending in the courts. Fourth, the government's waiver of all claims and counterclaims against the Marcoses was contrary to law. It effectively ensconces the Marcoses beyond the reach of the law. Fifth, the Agreements did not provide for a definite or determinable period within which the parties shall fulfill their respective prestations. Sixth, the Agreements did not state with specificity the standards for determining which assets shall be forfeited

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by the government and which shall be retained by the Marcoses. The Court therefore declared said General and Supplemental Agreements null and void for being contrary to law and the Constitution.

SYLLABUS

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO INFORMATION ON MATTERS OF PUBLIC CONCERN AND ACCESS TO OFFICIAL DOCUMENTS AND RECORDS; SUFFICIENT BASIS TO UPHOLD PETITIONER'S *LOCUS STANDI* IN CASE AT BAR.** — The instant petition is anchored on the right of the people to information and access to official records, documents and papers — a right guaranteed under Section 7, Article III of the 1987 Constitution. Petitioner, a former solicitor general, is a Filipino citizen. Because of the satisfaction of the two basic requisites laid down by decisional law to sustain petitioner's legal standing, *i.e.* (1) the enforcement of a public right (2) espoused by a Filipino citizen, we rule that the petition at bar should be allowed. In any event, the question on the standing of Petitioner Chavez is rendered moot by the intervention of the Jopsons, who are among the legitimate claimants to the Marcos wealth. The standing of the Jopsons is not seriously contested by the solicitor general. Indeed, said petitioners-intervenors have a legal interest in the subject matter of the instant case, since a distribution or disposition of the Marcoses' ill-gotten properties may adversely affect the satisfaction of their claims.

2. **ID.; ID.; ID.; RIGHT TO FULL PUBLIC DISCLOSURE OF ALL TRANSACTIONS INVOLVING PUBLIC INTEREST; LIMITATIONS IN THE EXERCISE THEREOF, ENUMERATED.** — The "information" and the "transactions" referred to in Sec. 7 (Article III) and Sec. 28 (Article II) of the Constitution have as yet no defined scope and extent. There are no specific laws prescribing the exact limitations within which the right may be exercised or the correlative state duty may be obliged. However, the following are some of the recognized restrictions: (1) national security matters and intelligence information, (2) trade secrets and banking transactions, (3) criminal matters, and (4) other confidential information.

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3. **ID.; ID.; ID.; ID.; SCOPE THEREOF; TERM "PUBLIC INTEREST" AND "PUBLIC CONCERN," CONSTRUED.** — In *Valmonte v. Belmonte, Jr.*, the Court emphasized that the information sought must be "matters of public concern," access to which may be limited by law. Similarly, the state policy of full public disclosure extends only to "transactions involving public interest" and may also be "subject to reasonable conditions prescribed by law." As to the meanings of the terms "public interest" and "public concern," the Court, in *Legaspi v. Civil Service Commission*, elucidated: "In determining whether or not a particular information is of public concern there is no rigid test which can be applied. 'Public concern' like 'public interest' is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine on a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public." In *Aquino-Sarmiento v. Morato*, the Court also held that official acts of public officers done in pursuit of their official functions are public in character; hence, the records pertaining to such official acts and decisions are within the ambit of the constitutional right of *access to public records.*

4. **ID.; ID.; ID.; ID.; RATIONALE.** — Under Republic Act No. 6713, public officials and employees are mandated to "provide information on their policies and procedures in clear and understandable language, [and] ensure openness of information, public consultations and hearings whenever appropriate x x x," except when "otherwise provided by law or when required by the public interest." In particular, the law mandates free public access, at reasonable hours, to the annual performance reports of offices and agencies of government and government-owned or controlled corporations; and the statements of assets, liabilities and financial disclosures of all public officials and employees. In general, writings coming into the hands of public officers in connection with their official functions must be accessible to the public, consistent with the policy of transparency of governmental affairs. This principle is aimed at affording the people an

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opportunity to determine whether those to whom they have entrusted the affairs of the government are honestly, faithfully and competently performing their functions as public servants. Undeniably, the essence of democracy lies in the free flow of thought; but thoughts and ideas must be well-informed so that the public would gain a better perspective of vital issues confronting them and, thus, be able to criticize as well as participate in the affairs of the government in a responsible, reasonable and effective manner. Certainly, it is by ensuring an unfettered and uninhibited exchange of ideas among a well-informed public that a government remains responsive to the changes desired by the people.

5. **ID.; ID.; ID.; ID.; ILL-GOTTEN WEALTH, CONSTRUED; RECOVERY OF ILL-GOTTEN WEALTH, CONSIDERED A MATTER OF PUBLIC CONCERN AND IMBUED WITH PUBLIC INTEREST.** — With such pronouncements of our government, whose authority emanates from the people, there is no doubt that the recovery of the Marcoses' alleged ill-gotten wealth is a matter of public concern and imbued with public interest. We may also add that "ill-gotten wealth," by its very nature, assumes a public character. Based on the aforementioned Executive Orders, "ill-gotten wealth" refers to assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives and close associates through or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influences or relationships, "resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines." Clearly, the assets and properties referred to supposedly originated from the government itself. To all intents and purposes, therefore, they belong to the people. As such, upon reconveyance they will be returned to the public treasury, subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts. Another declared overriding consideration for the expeditious recovery of ill-gotten wealth is that it may be used for national economic recovery. We believe the foregoing disquisition settles the question of whether petitioner has a right to respondents' disclosure of any agreement that may be arrived at concerning the Marcoses' purported ill-gotten wealth.

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6. **ID.; ID.; ID.; ID.; INCLUDES DISCLOSURE ON ANY PROPOSED SETTLEMENT BETWEEN THE PCGG AND OSTENSIBLE OWNERS AND HOLDERS OF ILL-GOTTEN WEALTH SUBJECT TO RESTRICTIONS.** — *Considering the intent of the framers of the Constitution, we believe that it is incumbent upon the PCGG and its officers, as well as other government representatives, to disclose sufficient public information on any proposed settlement they have decided to take up with the ostensible owners and holders of ill-gotten wealth.* Such information, though, must pertain to definite propositions of the government, not necessarily to intra-agency or inter-agency recommendations or communications during the stage when common assertions are still in the process of being formulated or are in the "exploratory" stage. There is a need, of course, to observe the same restrictions on disclosure of information in general, as discussed earlier — such as on matters involving national security, diplomatic or foreign relations, intelligence and other classified information.

7. **CONSTITUTIONAL LAW; PCGG; E.O. NO. 14, SECTION 5 THEREOF, AS AMENDED BY E.O. NO. 14-A; CONDITIONS UNDER WHICH THE PCGG MAY EXERCISE THE POWER TO GRANT CRIMINAL IMMUNITY, ENUMERATED.** — In the present case, the power to grant criminal immunity was conferred on PCGG by Section 5 of EO No. 14, as amended by EO No. 14-A. The said provision specifies that the PCGG may exercise such authority under these conditions: (1) the person to whom criminal immunity is granted provides information or testifies in an investigation conducted by the Commission; (2) the information or testimony pertains to the unlawful manner in which the respondent, defendant or accused acquired or accumulated ill-gotten property; and (3) such information or testimony is necessary to ascertain or prove guilt or civil liability of such individual. From the wording of the law, it can be easily deduced that the *person* referred to is a *witness* in the proceeding, not the principal respondent, defendant or accused.

8. **ID.; ID.; ID.; COMPROMISE AGREEMENT BETWEEN PCGG AND MARCOS IN CASE AT BAR, NOT IN CONFORMITY THERETO; GRANT OF CRIMINAL IMMUNITY TO PRINCIPAL DEFENDANTS IN THE ILL-GOTTEN WEALTH CASE, UNWARRANTED.** — Going now

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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," 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.

9. **ID.; ID.; NO POWER TO GRANT TAX EXEMPTION EVEN UNDER THE COVER OF ITS AUTHORITY TO COMPROMISE ILL-GOTTEN WEALTH CASES; PCGG'S COMMITMENT TO EXEMPT FROM TAX THE PROPERTIES TO BE RETAINED BY MARCOS HEIRS, CONSIDERED A VIOLATION OF THE CONSTITUTION.** — 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. 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.

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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."

10. **ID.; ID.; GRANT OF TAX EXEMPTION TO MARCOSES DOES NOT FALL WITHIN THE POWER OF COMMISSIONER OF INTERNAL REVENUE TO COMPROMISE TAXES OR ABATE TAX LIABILITY; REQUISITES FOR A VALID EXERCISE OF THE POWER TO COMPROMISE TAXES OR TO ABATE TAX LIABILITY, ENUMERATED.** — 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*. 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. 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.

11. **ID.; ID.; CANNOT GUARANTEE THE DISMISSAL OF ALL PENDING CRIMINAL CASES AGAINST THE MARCOSES.** — The government binds itself to cause the dismissal of all cases against the Marcos heirs, pending before the Sandiganbayan and other courts. 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; but the court decides,

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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. 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. *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.*

12. **ID,; ID.; STIPULATION IN THE COMPROMISE AGREEMENTS BETWEEN THE PCGG AND MARCOSES WAIVING ALL GOVERNMENT CLAIMS AND COUNTERCLAIMS AGAINST THE LATTER, CONSIDERED CONTRARY TO LAW AND A VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSE.** — The government also waives all claims and counterclaims, "whether past, present, or future, matured or inchoate," against the Marcoses. Again, this all-encompassing stipulation is contrary to law. Under the Civil Code, an action for future fraud may not be waived. 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 ensconces 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.*

13. **ID.; ID.; COMPROMISE AGREEMENTS BETWEEN THE PCGG AND MARCOSES IN CASE AT BAR DO NOT PROVIDE FOR DEFINITE PERIOD FOR FULFILLMENT OF THE PRESTATION.** — The Agreements do not provide

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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.

14. **ID.; ID.; ID.; DO NOT STATE WITH SPECIFICITY THE STANDARDS FOR DETERMINING WHICH ASSETS TO BE FORFEITED AND WHICH SHALL BE RETAINED BY THE MARCOSES.** — 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, invite their indictment for corruption under the said law.

15. **ID.; ID.; ID.; CONSIDERED INVALID.** — 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.*

16. **REMEDIAL LAW; COMPROMISE; PROHIBITED COMPROMISE, ENUMERATED.** — In general, the law encourages compromises in *civil* cases, except with regard to the following matters: (1) the civil status of persons, (2) the validity of a marriage or a legal separation, (3) any ground for legal separation, (4) future support, (5) the jurisdiction of courts, and (6) future legitime. And like any other contract, the terms and conditions of a compromise must not be contrary to law, morals, good customs, public policy or public order. A compromise is binding and has the force of law between the parties, unless the consent of a party is vitiated — such as by

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mistake, fraud, violence, intimidation or undue influence — or when there is forgery, or if the terms of the settlement are so palpably unconscionable. In the latter instances, the agreement may be invalidated by the courts.

17. **ID.; ID.; EFFECT THEREOF IN CIVIL ACTION.** — One of the consequences of a compromise, and usually its primary object, is to avoid or to end a litigation. In fact, the law urges courts to persuade the parties in a civil case to agree to a fair settlement. As an incentive, a court may mitigate damages to be paid by a losing party who shows a sincere desire to compromise.

18. **ID.; ID.; RELATING TO CIVIL LIABILITY ARISING FROM AN OFFENSE DOES NOT AUTOMATICALLY EXTINGUISH CRIMINAL LIABILITY; POWER TO GRANT CRIMINAL IMMUNITY MUST BE SPECIFICALLY CONFERRED.** — *Any compromise relating to the civil liability arising from an offense does not automatically terminate the criminal proceeding against or extinguish the criminal liability of the malefactor.* While a compromise in civil suits is expressly authorized by law, there is no similar general sanction as regards criminal liability. The authority must be specifically conferred.

19. **ID.; COURTS; SUPREME COURT; HAS JURISDICTION OVER ISSUE INVOLVING THE PRECISE INTERPRETATION IN TERMS OF SCOPE, OF THE TWIN CONSTITUTIONAL PROVISIONS ON PUBLIC TRANSACTIONS.** — In *Tañada* and *Legaspi*, we upheld therein petitioners' resort to a *mandamus* proceeding, seeking to enforce a public right as well as to compel performance of a public duty mandated by no less than the fundamental law. Further, Section 5, Article VIII of the Constitution, expressly confers upon the Supreme Court *original* jurisdiction over petitions for *certiorari, prohibition, mandamus, quo warranto* and *habeas corpus*. Respondents argue that petitioner should have properly sought relief before the Sandiganbayan, particularly in Civil Case No. 0141, in which the enforcement of the compromise Agreements is pending resolution. There may seem to be some merit in such argument, if petitioner is merely seeking to enjoin the enforcement of the compromise and/or to compel the PCGG to disclose to the public the terms contained in said Agreements. However, petitioner is here

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seeking the public disclosure of "all negotiations and agreement, be they ongoing or perfected, and documents related to or relating to such negotiations and agreement between the PCGG and the Marcos heirs." In other words, this petition is not confined to the Agreements that have already been drawn, but likewise to any other ongoing or future undertaking towards any settlement on the alleged Marcos loot. Ineluctably, the core issue boils down to the precise interpretation, in terms of scope, of the twin constitutional provisions on "public transactions." This broad and prospective relief sought by the instant petition brings it out of the realm of Civil Case No. 0141.

VITUG, *J., separate opinion:*

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; TWO APPROACHES IN THE APPRECIATION OF LEGAL STANDING, LENIENT AND STRICT APPROACH.** — It is a cardinal principle in constitutional adjudication that anyone who invokes it has a personal and substantial interest on the dispute. Jurisprudentially there is either the lenient or the strict approach in the appreciation of legal standing. The liberal approach recognizes legal standing to raise constitutional issues of nontraditional plaintiffs, such as taxpayers and citizens, directly affecting them. A developing trend appears to be towards a narrow and exacting approach, requiring that a *logical nexus* must be shown between the status asserted and the claim sought to be adjudicated in order to ensure that one is the proper and appropriate party to invoke judicial power.

2. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO INFORMATION; FRAMERS OF THE CONSTITUTION HAVE FAVORED THE LIBERAL APPROACH THERETO.** — With respect to the right to information, it being a public right where the real parties in interest are the people themselves in general and where the only recognized limitation is "public concern," it would seem that the framers of the Constitution have favored the liberal approach.

3. **CIVIL LAW; CONTRACTS;; WHEN ASSAILED PROVISIONS OF A CONTRACT CAN BE SEEN TO BE OF ESSENCE, THE AGREEMENT IN ITS ENTIRETY CAN BE ADVERSELY AFFECTED.** — While there is legal possibility

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when the terms of a contract are not totally invalidated and only those opposed to law, morals, good custom, public order and public policy are rendered inefficacious, when, however, the assailed provisions can be seen to be of essence, like here, the agreement in its entirely can be adversely affected. True, the validity or invalidity of a contract is a matter that generally may not be passed upon in a *mandamus* petition, for it is as if petitioner were seeking declaratory relief or an advisory opinion from this Court over which it has no original jurisdiction, the immediacy and significance of the issues, nevertheless, has impelled the Court to rightly assume jurisdiction and to resolve the incidental, albeit major, issues that evidently and continually *vex* the parties.

APPEARANCES OF COUNSEL

Francisco I. Chavez for and his own behalf.
Hernandez & Mendoza for petitioners-intervenors.
The Solicitor General for respondents.

D E C I S I O N

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

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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."[1]

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[2] 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[3] and the correlative duty of the state to disclose publicly all its

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[1] Petition, p. 3; *rollo*, p. 4.

[2] 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.

[3] § 7, Art. III, 1987 Constitution.

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transactions involving the national interest,[4] 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[5] to then PCGG Chairman Magtanggol Gunigundo, categorically stated:

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[4] § 28, Art. II, *Ibid.*

[5] The Solicitor General's Manifestation, dated August 11, 1998.

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"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[6] 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.

W I T N E S S E T H:

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;

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[6] *Rollo*, pp. 213-216.

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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

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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.

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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

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FERDINAND R. MARCOS, JR.[7]

[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: [8]

"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.

W I T N E S S E T H:

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.

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

[8] *Rollo*, pp. 217-218.

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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.[9]

[Sgd.] IRENE MARCOS-ARANETA

Assisted by:

[Sgd.] ATTY. SIMEON M. MESINA, JR.
Counsel & Attorney-in-Fact"

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

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Acting on a motion of petitioner, the Court issued a Temporary Restraining Order[10] 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."[11]

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.*

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[10] *Rollo*, pp. 159-160.

[11] Resolution dated March 16, 1998, pp. 1-2; *Ibid.*, pp. 147-148.

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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[12] of the solicitor general on said motion merely reiterated his aforecited arguments against the main petition.[13]

The Court's Ruling

The petition is imbued with merit.

First Procedural Issue:
Petitioner's Standing

Petitioner, on the one hand, explains that as a taxpayer and citizen, he has the legal personality to file the instant petition. He submits that since ill-gotten wealth "belongs to the Filipino people and [is], in truth and in fact, part of the public treasury," any compromise in relation to it would constitute a diminution of the public funds, which can be enjoined by a taxpayer whose interest is for a full, if not substantial, recovery of such assets.

Besides, petitioner emphasizes, the matter of recovering the ill-gotten wealth of the Marcoses is an issue "of transcendental importance to the public." He asserts that ordinary taxpayers have a right to initiate and prosecute actions questioning the validity of acts or orders of government agencies or instrumentalities, if the issues raised are "of paramount public interest"; and if they "immeasurably affect the social, economic, and moral well-being of the people."

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[12] *Rollo*, pp. 396-403.

[13] 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.

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Moreover, the mere fact that he is a citizen satisfies the requirement of personal interest, when the proceeding involves the assertion of a public right,[14] such as in this case. He invokes several decisions[15] of this Court which have set aside the procedural matter of *locus standi*, when the subject of the case involved public interest.

On the other hand, the solicitor general, on behalf of respondents, contends that petitioner has no standing to institute the present action, because no expenditure of public funds is involved and said petitioner has no actual interest in the alleged agreement. Respondents further insist that the instant petition is premature, since there is no showing that petitioner has requested PCGG to disclose any such negotiations and agreements; or that, if he has, the Commission has refused to do so.

Indeed, the arguments cited by petitioner constitute the controlling decisional rule as regards his legal standing to institute the instant petition. Access to public documents and records is a public right, and the real parties in interest are the people themselves.[16]

In *Tañada v. Tuvera*,[17] the Court asserted that when the issue concerns a public right and the object of *mandamus* is to obtain the enforcement of a public duty, the people are regarded as the real parties in interest; and because it is sufficient that petitioner is a citizen and as such is interested in the execution of the laws, he need not show that he has any legal or special interest in the result of the action.[18] In the aforesaid case, the

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[14] Citing *Legaspi v. Civil Service Commission*, 150 SCRA 530, 536, May 29, 1987.

[15] Such as *Avelino v. Cuenco*, 83 Phil 17 (1949); *Basco v. PAGCOR*, 197 SCRA 52, May 14, 1991; *Kapatiran ng Mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan*, 163 SCRA 371, June 30, 1988.

[16] Joaquin G. Bernas, SJ, *The Constitution of the Republic of the Philippines: A Commentary*, 1996 ed., p. 334.

[17] 136 SCRA 27, 36-37, April 24, 1985, per Escolin, *J.*

[18] Quoting from *Severino v. Governor General*, 16 Phil 366, 378 (1910).

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petitioners sought to enforce their right to be informed on matters of public concern, a right then recognized in Section 6, Article IV of the 1973 Constitution,[19] in connection with the rule that laws in order to be valid and enforceable must be published in the Official Gazette or otherwise effectively promulgated. In ruling for the petitioners' legal standing, the Court declared that the right they sought to be enforced "is a public right recognized by no less than the fundamental law of the land."

Legaspi v. Civil Service Commission,[20] while reiterating *Tañada,* further declared that "when a *mandamus* proceeding involves the assertion of a public right, the requirement of personal interest is satisfied by the mere fact that petitioner is a citizen and, therefore, part of the general 'public' which possesses the right."[21]

Further, in *Albano v. Reyes*,[22] we said that while expenditure of public funds may not have been involved under the questioned contract for the development, the management and the operation of the Manila International Container Terminal, "public interest [was] definitely involved considering the important role [of the subject contract] x x x in the economic development of the country and the magnitude of the financial consideration involved." We concluded that, as a consequence, the disclosure provision in the Constitution would constitute sufficient authority for upholding the petitioner's standing.

Similarly, the instant petition is anchored on the right of the people to information and access to official records, documents and papers — a right guaranteed under Section 7, Article III of the 1987 Constitution. Petitioner, a former solicitor general, is

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[19] "Section 6. The right of the people to information on matters of public concern shall be recognized, access to official records, and to documents and papers pertaining to official acts, transactions, or decisions shall be afforded the citizens subject to such limitation as may be provided by law."

[20] *Supra*, per Cortes, *J.*

[21] Also in *Gonzales v. Chavez*, 205 SCRA 816, 847, February 4, 1992. *Cf. Oposa v. Factoran*, 224 SCRA 792, July 30, 1993.

[22] 175 SCRA 264, 273, July 11, 1989, per Paras, *J.*

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a Filipino citizen. Because of the satisfaction of the two basic requisites laid down by decisional law to sustain petitioner's legal standing, *i.e.* (1) the enforcement of a public right (2) espoused by a Filipino citizen, we rule that the petition at bar should be allowed.

In any event, the question on the standing of Petitioner Chavez is rendered moot by the intervention of the Jopsons, who are among the legitimate claimants to the Marcos wealth. The standing of the Jopsons is not seriously contested by the solicitor general. Indeed, said petitioners-intervenors have a legal interest in the subject matter of the instant case, since a distribution or disposition of the Marcoses' ill-gotten properties may adversely affect the satisfaction of their claims.

Second Procedural Issue:
The Court's Jurisdiction

Petitioner asserts that because this petition is an original action for *mandamus* and one that is not intended to delay any proceeding in the Sandiganbayan, its having been filed before this Court was proper. He invokes Section 5, Article VIII of the Constitution, which confers upon the Supreme Court original jurisdiction over petitions for prohibition and *mandamus*.

The solicitor general, on the other hand, argues that the petition has been erroneously brought before this Court, since there is neither a justiciable controversy nor a violation of petitioner's rights by the PCGG. He alleges that the assailed agreements are already the very *lis mota* in *Sandiganbayan* Civil Case No. 0141, which has yet to dispose of the issue; thus, this petition is premature. Furthermore, respondents themselves have opposed the Marcos heirs' motion, filed in the graft court, for the approval of the subject Agreements. Such opposition belies petitioner's claim that the government, through respondents, has concluded a settlement with the Marcoses as regards their alleged ill-gotten assets.

In *Tañada* and *Legaspi*, we upheld therein petitioners' resort to a *mandamus* proceeding, seeking to enforce a public right as well as to compel performance of a public duty mandated by

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no less than the fundamental law.[23] Further, Section 5, Article VIII of the Constitution, expressly confers upon the Supreme Court *original* jurisdiction over petitions for *certiorari*, *prohibition*, *mandamus*, *quo warranto* and *habeas corpus*.

Respondents argue that petitioner should have properly sought relief before the *Sandiganbayan*, particularly in Civil Case No. 0141, in which the enforcement of the compromise Agreements is pending resolution. There may seem to be some merit in such argument, if petitioner is merely seeking to enjoin the enforcement of the compromise and/or to compel the PCGG to disclose to the public the terms contained in said Agreements. However, petitioner is here seeking the public disclosure of "all negotiations and agreement, be they ongoing or perfected, and documents related to or relating to such negotiations and agreement between the PCGG and the Marcos heirs."

In other words, this petition is not confined to the Agreements that have already been drawn, but likewise to any other ongoing or future undertaking towards any settlement on the alleged Marcos loot. Ineluctably, the core issue boils down to the precise interpretation, in terms of scope, of the twin constitutional provisions on "public transactions." This broad and prospective relief sought by the instant petition brings it out of the realm of Civil Case No. 0141.

First Substantive Issue:
Public Disclosure of Terms of
Any Agreement, Perfected or Not

In seeking the public disclosure of negotiations and agreements pertaining to a compromise settlement with the Marcoses as regards their alleged ill-gotten wealth, petitioner invokes the following provisions of the Constitution:

"Sec. 7 [Article III]. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts,

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[23] See also *Valmonte v. Belmonte Jr.*, 170 SCRA 256, February 13, 1989.

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transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law."

"Sec. 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."

Respondents' opposite view is that the above constitutional provisions refer to completed and operative official acts, not to those still being considered. As regards the assailed Agreements entered into by the PCGG with the Marcoses, there is yet no right of action that has accrued, because said Agreements have not been approved by the President, and the Marcos heirs have failed to fulfill their express undertaking therein. Thus, the Agreements have not become effective. Respondents add that they are not aware of any ongoing negotiation for another compromise with the Marcoses regarding their alleged ill-gotten assets.

The "information" and the "transactions" referred to in the subject provisions of the Constitution have as yet no defined scope and extent. There are no specific laws prescribing the exact limitations within which the right may be exercised or the correlative state duty may be obliged. However, the following are some of the recognized restrictions: (1) national security matters and intelligence information, (2) trade secrets and banking transactions, (3) criminal matters, and (4) other confidential information.

Limitations to the Right:
(1) National Security Matters

At the very least, this jurisdiction recognizes the common law holding that there is a governmental privilege against public disclosure with respect to state secrets regarding military, diplomatic and other national security matters.[24] But where

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[24] IV RECORD OF THE CONSTITUTIONAL COMMISSION 921-922, 931 (1986) [hereafter, "RECORD"]; *Almonte v. Vasquez,* 244 SCRA 286, 295, 297, May 23, 1995.

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there is no need to protect such state secrets, the privilege may not be invoked to withhold documents and other information,[25] provided that they are examined "in strict confidence" and given "scrupulous protection."

Likewise, information on inter-government exchanges prior to the conclusion of treaties and executive agreements may be subject to reasonable safeguards for the sake of national interest.[26]

(2) Trade Secrets and Banking Transactions

The drafters of the Constitution also unequivocally affirmed that, aside from national security matters and intelligence information, trade or industrial secrets (pursuant to the Intellectual Property Code[27] and other related laws) as well as banking transactions (pursuant to the Secrecy of Bank Deposits Act[28]) are also exempted from compulsory disclosure.[29]

(3) Criminal Matters

Also excluded are classified law enforcement matters, such as those relating to the apprehension, the prosecution and the detention of criminals,[30] which courts may not inquire into *prior* to such arrest, detention and prosecution. Efforts at effective law enforcement would be seriously jeopardized by free public access to, for example, police information regarding rescue operations, the whereabouts of fugitives, or leads on covert criminal activities.

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[25] *Almonte, Ibid.*

[26] V RECORD 25.

[27] RA No. 8293, approved on June 6, 1997.

[28] RA No. 1405, as amended.

[29] V RECORD 25. *See also* Vol. I, p. 709.

[30] 66 Am Jur § 27, Records and Recording Laws.

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(4) Other Confidential Information

The Ethical Standards Act[31] further prohibits public officials and employees from using or divulging "confidential or classified information officially known to them by reason of their office and not made available to the public."[32]

Other acknowledged limitations to information access include diplomatic correspondence, closed door Cabinet meetings and executive sessions of either house of Congress, as well as the internal deliberations of the Supreme Court.[33]

Scope: Matters of Public Concern and Transactions Involving Public Interest

In *Valmonte v. Belmonte Jr.*,[34] the Court emphasized that the information sought must be "matters of public concern," access to which may be limited by law. Similarly, the state policy of full public disclosure extends only to "transactions involving public interest" and may also be "subject to reasonable conditions prescribed by law." As to the meanings of the terms "public interest" and "public concern," the Court, in *Legaspi v. Civil Service Commission*,[35] elucidated:

"In determining whether or not a particular information is of public concern there is no rigid test which can be applied. 'Public concern' like 'public interest' is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine on a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public."

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[31] RA No. 6713, enacted on February 20, 1989.

[32] § 7 (c), *Ibid.*

[33] *Legaspi, supra.*

[34] *Supra*, p. 266.

[35] *Supra*, p. 541. Also quoted in *Valmonte v. Belmonte Jr., supra.*

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Considered a public concern in the above-mentioned case was the "legitimate concern of citizens to ensure that government positions requiring civil service eligibility are occupied only by persons who are eligibles." So was the need to give the general public adequate notification of various laws that regulate and affect the actions and conduct of citizens, as held in *Tañada*. Likewise did the "public nature of the loanable funds of the GSIS and the public office held by the alleged borrowers (members of the defunct *Batasang Pambansa*)" qualify the information sought in *Valmonte* as matters of public interest and concern. In *Aquino-Sarmiento v. Morato*,[36] the Court also held that official acts of public officers done in pursuit of their official functions are public in character; hence, the records pertaining to such official acts and decisions are within the ambit of the constitutional right of *access to public records*.

Under Republic Act No. 6713, public officials and employees are mandated to "provide information on their policies and procedures in clear and understandable language, [and] ensure openness of information, public consultations and hearings whenever appropriate x x x," except when "otherwise provided by law or when required by the public interest." In particular, the law mandates free public access, at reasonable hours, to the annual performance reports of offices and agencies of government and government-owned or controlled corporations; and the statements of assets, liabilities and financial disclosures of all public officials and employees.[37]

In general, writings coming into the hands of public officers in connection with their official functions must be accessible to the public, consistent with the policy of transparency of governmental affairs. This principle is aimed at affording the people an opportunity to determine whether those to whom they have entrusted the affairs of the government are honestly, faithfully and competently performing their functions as public

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[36] 203 SCRA 515, 522-23, November 13, 1991.

[37] §§ 5(b) & 8, RA No. 6713.

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servants.[38] Undeniably, the essence of democracy lies in the free flow of thought;[39] but thoughts and ideas must be well-informed so that the public would gain a better perspective of vital issues confronting them and, thus, be able to criticize as well as participate in the affairs of the government in a responsible, reasonable and effective manner. Certainly, it is by ensuring an unfettered and uninhibited exchange of ideas among a well-informed public that a government remains responsive to the changes desired by the people.[40]

The Nature of the Marcoses' Alleged Ill-Gotten Wealth

We now come to the immediate matter under consideration.

Upon the departure from the country of the Marcos family and their cronies in February 1986, the new government headed by President Corazon C. Aquino was specifically mandated to "[r]ecover ill-gotten properties amassed by the leaders and supporters of the previous regime and [to] protect the interest of the people through orders of sequestration or freezing of assets or accounts."[41] Thus, President Aquino's very first executive orders (which partook of the nature of legislative enactments) dealt with the recovery of these alleged ill-gotten properties.

Executive Order No. 1, promulgated on February 28, 1986, only two (2) days after the Marcoses fled the country, created the PCGG which was primarily tasked to assist the President in the recovery of vast government resources allegedly amassed by former President Marcos, his immediate family, relatives and close associates both here and abroad.

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[38] 66 Am Jur § 19, Records and Recording Laws, citing *MacEwan* v. *Holm*, 266 Or 27, 359 P2d 413, 85 ALR2d 1086.

[39] See *Legaspi, supra*, p. 540.

[40] 16A Am Jur 2d 315-317, § 497.

[41] § 1 (d), Art. II of Proclamation No. 3 (known as the Provisional or Freedom Constitution), promulgated on March 25, 1986.

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Under Executive Order No. 2, issued twelve (12) days later, all persons and entities who had knowledge or possession of ill-gotten assets and properties were warned and, under pain of penalties prescribed by law, prohibited from concealing, transferring or dissipating them or from otherwise frustrating or obstructing the recovery efforts of the government.

On May 7, 1986, another directive (EO No. 14) was issued giving additional powers to the PCGG which, taking into account *the overriding considerations of national interest and national survival*, required it to achieve expeditiously and effectively its vital task of recovering ill-gotten wealth.

With such pronouncements of our government, whose authority emanates from the people, there is no doubt that the recovery of the Marcoses' alleged ill-gotten wealth is a matter of public concern and imbued with public interest.[42] We may also add that "ill-gotten wealth," by its very nature, assumes a public character. Based on the aforementioned Executive Orders, "ill-gotten wealth" refers to assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives and close associates through or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influences or relationships, "resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines." Clearly, the assets and properties referred to supposedly originated from the government itself. To all intents and purposes, therefore, they belong to the people. As such, upon reconveyance they will be returned to the public treasury, subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts. Another declared overriding consideration for the expeditious recovery of ill-gotten wealth is that it may be used for national economic recovery.

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[42] *Republic v. Provident International Resources Corp.*, 269 SCRA 316, 325, March 7, 1997; *Republic v. Palanca*, 182 SCRA 911, 918, February 28, 1990; *Republic v. Lobregat et al.*, 376 SCRA 388, January 23, 1995.

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We believe the foregoing disquisition settles the question of whether petitioner has a right to respondents' disclosure of any agreement that may be arrived at concerning the Marcoses' purported ill-gotten wealth.

Access to Information on Negotiating Terms

But does the constitutional provision likewise guarantee access to information regarding *ongoing* negotiations or proposals prior to the final agreement? This same clarification was sought and clearly addressed by the constitutional commissioners during their deliberations, which we quote hereunder:[43]

"MR. SUAREZ. And when we say 'transactions' which should be distinguished from contracts, agreements, or treaties or whatever, does the Gentleman refer to the steps leading to the consummation of the contract, or does he refer to the contract itself?

"MR. OPLE. The 'transactions' used here, I suppose, is generic and, therefore, it can cover both steps leading to a contract, and already a consummated contract, Mr. Presiding Officer.

"MR. SUAREZ. This contemplates inclusion of negotiations leading to the consummation of the transaction?

"MR. OPLE. Yes, subject to reasonable safeguards on the national interest."

Considering the intent of the framers of the Constitution, we believe that it is incumbent upon the PCGG and its officers, as well as other government representatives, to disclose sufficient public information on any proposed settlement they have decided to take up with the ostensible owners and holders of ill-gotten wealth. Such information, though, must pertain to definite propositions of the government, not necessarily to intra-agency or inter-agency recommendations or communications[44] during the stage when common assertions are still in the process of

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[43] V RECORD 25 (1986).

[44] 66 Am Jur 2d § 39.

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being formulated or are in the "exploratory" stage. There is a need, of course, to observe the same restrictions on disclosure of information in general, as discussed earlier — such as on matters involving national security, diplomatic or foreign relations, intelligence and other classified information.

Second Substantive Issue:

Legal Restraints on a Marcos-PCGG Compromise

Petitioner lastly contends that any compromise agreement between the government and the Marcoses will be a virtual condonation of all the alleged wrongs done by them, as well as an unwarranted permission to commit graft and corruption.

Respondents, for their part, assert that there is no legal restraint on entering into a compromise with the Marcos heirs, provided the agreement does not violate any law.

Prohibited Compromises

In general, the law encourages compromises in *civil* cases, except with regard to the following matters: (1) the civil status of persons, (2) the validity of a marriage or a legal separation, (3) any ground for legal separation, (4) future support, (5) the jurisdiction of courts, and (6) future legitime.[45] And like any other contract, the terms and conditions of a compromise must not be contrary to law, morals, good customs, public policy, or public order.[46] A compromise is binding and has the force of law between the parties,[47] unless the consent of a party is vitiated — such as by mistake, fraud, violence, intimidation or undue influence — or when there is forgery, or if the terms of the settlement are so palpably

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[45] Art. 2035, Civil Code; *Republic v. Sandiganbayan, Benedict, et al.*, 226 SCRA 314, 327, September 10, 1993.

[46] Art. 2028 in rel. to Art. 1306, Civil Code; *Republic v. Benedicto, Ibid.*, citing *First Philippine Holdings Corp. v. Sandiganbayan*, 202 SCRA 212, September 30, 1991; *Heirs of Gabriel Capili v. Court of Appeals*, 234 SCRA 110, 115, July 14, 1994.

[47] *Sanchez v. Court of Appeals*, GR No. 108947, September 29, 1997.

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unconscionable. In the latter instances, the agreement may be invalidated by the courts.[48]

Effect of Compromise on Civil Actions

One of the consequences of a compromise, and usually its primary object, is to avoid or to end a litigation.[49] In fact, the law urges courts to persuade the parties in a civil case to agree to a fair settlement.[50] As an incentive, a court may mitigate damages to be paid by a losing party who shows a sincere desire to compromise.[51]

In *Republic & Campos Jr. v. Sandiganbayan*,[52] which affirmed the grant by the PCGG of civil and criminal immunity to Jose Y. Campos and family, the Court held that in the absence of an express prohibition, the rule on compromises in civil actions under the Civil Code is applicable to PCGG cases. Such principle is pursuant to the objectives of EO No. 14, particularly the just and expeditious recovery of ill-gotten wealth, so that it may be used to hasten economic recovery. The same principle was upheld in *Benedicto v. Board of Administrators of Television Stations RPN, BBC* and IBC[53] and *Republic v. Benedicto*,[54] which ruled in favor of the validity of the PCGG compromise agreement with Roberto S. Benedicto.

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[48] Art. 2038 in rel. to Art. 1330, Civil Code; *Domingo v. Court of Appeals*, 255 SCRA 189, 199-200, March 20, 1996; *Unicane Workers Union, CLUP v. NLRC,* 261 SCRA 573, September 9, 1996; *Del Rosario v. Madayag*, 247 SCRA 767, 770, August 28, 1995.

[49] *Domingo v. Court of Appeals, supra*; *Del Rosario v. Madayag, supra; Osmeña v. Commission on Audit*, 238 SCRA 463, 471, November 29, 1994.

[50] Art. 2029, Civil Code.

[51] Art. 2031, *Ibid.*

[52] 173 SCRA 72, 84, May 4, 1989.

[53] 207 SCRA 659, 667, March 31, 1992.

[54] *Supra*, pp. 319 & 324.

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Immunity from
Criminal Prosecution

However, any compromise relating to the civil liability arising from an offense does not automatically terminate the criminal proceeding against or extinguish the criminal liability of the malefactor.[55] While a compromise in civil suits is expressly authorized by law, there is no similar general sanction as regards criminal liability. The authority must be specifically conferred. In the present case, the power to grant criminal immunity was conferred on PCGG by Section 5 of EO No. 14, as amended by EO No. 14-A, which provides:

"SECTION 5. The Presidential Commission on Good Government is authorized to grant immunity from criminal prosecution to any person who provides information or testifies in any investigation conducted by such Commission to establish the unlawful manner in which any respondent, defendant or accused has acquired or accumulated the property or properties in question in any case where such information or testimony is necessary to ascertain or prove the latter's guilt or his civil liability. The immunity thereby granted shall be continued to protect the witness who repeats such testimony before the *Sandiganbayan* when required to do so by the latter or by the Commission."

The above provision specifies that the PCGG may exercise such authority under these conditions: (1) the person to whom criminal immunity is granted provides information or testifies in an investigation conducted by the Commission; (2) the information or testimony pertains to the unlawful manner in which the respondent, defendant or accused acquired or accumulated ill-gotten property; and (3) such information or testimony is necessary to ascertain or prove guilt or civil liability of such individual. From the wording of the law, it can be easily deduced that the *person* referred to is a *witness* in the proceeding, not the principal respondent, defendant or accused.

Thus, in the case of Jose Y. Campos, the grant of both civil and criminal immunity to him and his family was "[i]n

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[55] Art. 2034, Civil Code.

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consideration of the full cooperation of Mr. Jose Y. Campos [with] this Commission, his voluntary surrender of the properties and assets [—] disclosed and declared by him to belong to deposed President Ferdinand E. Marcos [—] to the Government of the Republic of the Philippines[;] his full, complete and truthful disclosures[;] and his commitment to pay a sum of money as determined by the Philippine Government."[56] Moreover, the grant of criminal immunity to the Camposes and the Benedictos was limited to acts and omissions prior to February 25, 1996. At the time such immunity was granted, no criminal cases have yet been filed against them before the competent courts.

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,"[57] 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.

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[56] *Republic & Campos Jr. v. Sandiganbayan*, *supra*, p. 83.

[57] General Agreement, par. 8.

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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.[58] 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."[59]

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*.[60] 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

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[58] *Mactan Cebu International Airport Authority v. Marcos*, 261 SCRA 667, September 11, 1996.

[59] § 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).

[60] §204 (1), National Internal Revenue Code, as amended by §3, RA 7646.

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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.[61] 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.[62]

Third, the government binds itself to cause the dismissal of all cases against the Marcos heirs, pending before the *Sandiganbayan* and other courts.[63] 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;[64] 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.[65] 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

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[61] §204 (2), NIRC.

[62] Par. 2, *ibid.*

[63] General Agreement, par. 8.

[64] *People v. Nazareno*, 260 SCRA 256, August 1, 1996; *People v. Porras*, 255 SCRA 514, March 29, 1996.

[65] *Ledesma v. Court of Appeals*, G.R No. 113216, September 5, 1997, pp. 21-22.

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motion is equivalent to effecting a disposition of the case itself.[66]

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.[67] Again, this all-encompassing stipulation is contrary to law. Under the Civil Code, an action for future fraud may not be waived.[68] 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 ensconces 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

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[66] *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.

[67] Last "Whereas" clause of the General Agreement.

[68] Art. 1171.

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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,[69] 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.

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[69] Specifically § 3 (g) of RA 3019.

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Davide, Jr., C.J. (Chairman), Melo, and *Quisumbing, JJ.,* concur.

Vitug, J., please see separate opinion.

VITUG, *J., Separate Opinion:*

I concur in the results, *pro hac vice*, for it is paramount that matters of national interest deserve a proper place in any forum. The procedural rules in the courts of law, like the *locus standi* of petitioner Francisco I. Chavez, the propriety of the special legal action of *mandamus* used as a vehicle to reach this Court on the issues involved and considered by the Court, as well as kindred legal technicalities and nicety raised by respondents to thwart the petition are no trickle matters, to be sure, but I do not see them to be cogent reasons to deny to the Court its taking cognizance of the case.

It is a cardinal principle in constitutional adjudication that anyone who invokes it has a personal and substantial interest on the dispute.[1] Jurisprudentially there is either the lenient or the strict approach in the appreciation of legal standing. The liberal approach recognizes legal standing to raise constitutional issues of nontraditional plaintiffs, such as taxpayers and citizens, directly affecting them.[2] A developing trend appears to be towards a narrow and exacting approach, requiring that a *logical nexus* must be shown between the status asserted and the claim sought to be adjudicated in order to ensure that one is the proper and appropriate party to invoke judicial power.[3]

With respect to the right to information, it being a public right where the real parties in interest are the people themselves

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[1] *People vs. Vera,* 65 Phil. 56, 89; *Macasiano vs. National Housing Authority,* 224 SCRA 236, 244.

[2] Defensor Santiago, Miriam, *Constitutional Law*, First Edition, 1994, p. 11

[3] Am Jur§ 189, p. 591, S v. D., 410 US 641, 35 L Ed 2d 536, 93 S Ct 1146.

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in general[4] and where the only recognized limitation is "public concern," it would seem that the framers of the Constitution have favored the liberal approach. Rev. Fr. Joaquin Bernas, S.J., a member of the Constitutional Commission, observes:

> The real problem, however, lies in determining what matters are of public concern and what are not. Unwittingly perhaps, by this provision the Constitution might have opened a Pandora's box. For certainly every act of a public officer in the conduct of the governmental process is a matter of public concern. Jurisprudence in fact has said that "public concern," like "public interest," eludes exact definition and embraces a broad spectrum of subjects which the public may want to know, either because these directly affects their lives or simply because such matters arouse the interest of an ordinary citizen.[5]

Corrolarily, there is need of preserving a certain degree of confidentiality in matters involving nationl security and public relations, to cite a few,[6] and until a balance is struck, the Court may be constrained on occassions to accept an electric notion that frees itself from the shackles of the trechant requisites of *locus standi*.

The Presidential Commission on Good Government (PCGG) has a limited life in carrying out its task and time is running short. It is thus imperative that the Court must hold even now, and remind PCGG, that it has indeed exceeded its bounds in entering into the General and Supplemental Agreements. The agreements clearly suffer from Constitutional and statutory infirmities,[7] to wit: (1) The agreements contravene the statute in granting criminal immunity to the Marcos heirs;[8] (2) PCGG's

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[4] *Legaspi vs. Civil Service Commission,* 150 SCRA, 530, 540; *Tañada vs. Tuvera,* 136 SCRA 27, 36, 37.

[5] The 1987 Constitution of the Republic of the Philippines, A Commentary, 1996 edition, pp. 336-337.

[6] *Ibid.*

[7] Noteworthy is the absence of the President's *Imprimatur* on the agreement.

[8] Executive Order Nos. 14 and 14-A.

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commitment to exempt from all forms of taxes the property to be retained the Marcos' heirs controverts the Constitution;[9] and (3) the government's undertaking to cause the dismissal of all cases filed against the Marcoses pending before the *Sandiganbayan* and other courts enroaches upon judicial powers. I also see, like my other colleagues, too much vagueness on such items as the period within which the parties shall fulfill their respective prestations and the lack of appropriate standards for determining the assets to be forfeited by the goverment and those to be retained by the Marcoses.

In this respect, while there is legal possibility when the terms of a contract are not totally invalidated and only those opposed to law, morals, good custom, public order and public policy are rendered inefficacious, when, however, the assailed provisions can be seen to be of essence, like here, the agreement in its entirety can be adversely affected. True, the validity or invalidity of a contract is a matter that generally may not be passed upon in a *mandamus* petition, for it is as if petitioner were seeking declaratory relief or an advisory opinion from this Court over which it has no original jurisdiction,[10] the immediacy and significance of the issues, nevertheless, has impelled the Court to rightly assume jurisdiction and to resolve the incidental, albeit major, issues that evidently and continually *vex* the parties

WHEREFORE, I vote to grant the petition.

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[9] Section 28 (4), Article VI, 1987 Constitution of the Republic of the Philippines. No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of Congress.

[10] Sec. 17, Republic Act No. 296, Judiciary Act of 1948; Sec Art. VIII, 1987 Constitution of the Republic of the Philippines; *Remontigue vs. Osmeña, Jr.*, 129 Phil. 60, 61; *Rural Bank of Olongapo, Inc. vs. Commissioner of Land Registration, et al.*, 102 Phil 794 - 795.