

# Recovering the Proceeds of Corruption in the Philippines: A Comparison between the Unexplained Wealth Act (R.A. No. 1379) and the Anti-Money Laundering Act (R.A. No. 9160, as Amended)

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## I. INTRODUCTION

The right of the State to recover proceeds of corrupt activities is expressly sanctioned by the 1987 Philippine Constitution as it provides that “[t]he right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel.”<sup>1</sup> This provision elevated the aim

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1. PHIL. CONST. art. XI, § 15.

of a 57-year old statute, Republic Act (R.A.) No. 1379,<sup>2</sup> also referred to as The Unexplained Wealth Act, to the level of a constitutional command. This law, passed by Congress in 1955, gave the State the power to institute forfeiture proceedings against any public officer or employee in order to recover properties found to have been unlawfully acquired by him or her.<sup>3</sup> The enactment of R.A. No. 1379 is often considered to have “marked the beginnings of anti-graft legislation in the country.”<sup>4</sup>

In 2001, Congress passed into law another piece of anti-graft legislation — R.A. No. 9160<sup>5</sup> or The Anti-Money Laundering Act of 2001.<sup>6</sup> Section 4 of the law states that a money laundering offense is committed when, through various and multi-layered transactions, it is made to appear that the proceeds of certain “unlawful activities” originate from legitimate sources.<sup>7</sup> Section 3, Paragraph i of the same law enumerates these unlawful activities,<sup>8</sup> which include graft and corruption offenses under R.A. No. 3019<sup>9</sup> and the crime of plunder under R.A. No. 7080.<sup>10</sup> Because of Section 3, Paragraph i,

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2. An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor, Republic Act No. 1379 (1955).
  3. *Id.* § 2.
  4. Ma. Concepcion R. Alfiler, Dean, National College of Public Administration and Governance, Administrative Discipline and the Implementation of Anti-Graft Policies in the Philippines, Remarks at the National Conference on Public Administration in the Seventies: Promise and Performance at the U.P. College of Public Administration (June 9–11, 1977).
  5. An Act Defining the Crime of Money Laundering, Providing Penalties Therefor and for Other Purposes [Anti-Money Laundering Act of 2001], Republic Act No. 9160, as Amended (2001).
  6. The Anti-Money Laundering Act of 2001 has been amended by Republic Act (R.A.) Nos. 9160, 10167, and 10168. An Act Amending Republic Act No. 9160, Otherwise Known as the “Anti-Money Laundering Act of 2001,” Republic Act No. 9194 (2003); An Act to Further Strengthen the Anti-Money Laundering Law, Amending for the Purpose Sections 10 And 11 Of Republic Act No. 9160, Otherwise Known as the “Anti-Money Laundering Act Of 2001,” as Amended, and for Other Purposes, Republic Act No. 10167 (2012); & An Act Defining the Crime of Financing of Terrorism, Providing Penalties Therefor and for Other Purposes [The Terrorism Financing Prevention and Suppression Act of 2012], Republic Act No. 10168 (2012).
  7. Anti-Money Laundering Act of 2001, § 4.
  8. *Id.* § 3, ¶ i.
  9. The Anti-Graft and Corrupt Practices Act, Republic Act No. 3019, as Amended, § 3, ¶¶ b, c, e, g, & h.
  10. An Act Defining and Penalizing the Crime of Plunder, Republic Act No. 7080 (1991). Plunder is the crime committed by a public officer when he amasses,

the proceeds of certain corrupt activities fall within the operational ambit of R.A. No. 9160, as amended.<sup>11</sup> Through the inclusion of the Anti-Graft Law and the Plunder Law in the list of predicate offenses, the proceeds of the corrupt activities proscribed by these two special penal statutes may be recovered by the State through a distinct procedural remedy — a petition for civil forfeiture under R.A. No. 9160.<sup>12</sup>

While R.A. No. 9160 seems to serve the same purpose as R.A. No. 1379, the former did not repeal the latter. Neither can an implied repeal be inferred from an examination of the relevant provisions of both statutes. As these laws currently stand, proceeds from corrupt activities may be recovered by the State by using either of two *non-conviction dependent*<sup>13</sup> remedies established under the two laws. Both of these stolen asset recovery statutes are currently and simultaneously in effect in the Philippines. While R.A. No. 1379 aims to achieve the forfeiture of unlawfully acquired properties that are “*manifestly out of proportion* to [a public official’s] salary ... and other lawful income” *without* the necessity of alleging and proving any violation of specific anti-corruption laws,<sup>14</sup> R.A. No. 9160 aims towards the forfeiture of unlawfully acquired properties “representing, involving, or related to, directly or indirectly,” the proceeds of graft and corruption offenses under R.A. No. 3019 or the crime of plunder under R.A. No. 7080.<sup>15</sup>

accumulates, or acquires wealth of at least 50 million pesos by means of a combination or a series of acts, each of which may constitute different offenses. It does not require that each act be proved distinctly from each other. It is enough that the acts show a pattern of accumulation. See *Estrada v. Sandiganbayan, et al.*, 369 SCRA 394, 432-39 & 449 (2001).

11. Anti-Money Laundering Act of 2001, § 3, ¶ i.

12. *Id.* § 12.

13. That these remedies are non-conviction dependent must be emphasized because other anti-corruption laws also provide for forfeiture of the proceeds of corruption, but as part of the punishment to be imposed after an accused is found guilty beyond reasonable doubt. For example, Section 9 (a) of the Anti-Graft Law provides that

[a]ny public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5[,] and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than [15] years, perpetual disqualification from public office, and *confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.*

R.A. No. 3019, § 9, ¶ a (emphasis supplied).

14. R.A. No. 1379, § 2.

15. Anti-Money Laundering Act of 2001, § 7, ¶ 2.

This Article aims to explain the salient features of both forfeiture proceedings and highlight their differences in terms of substantive and procedural requirements. This comparison is important for several reasons. First, it facilitates the understanding of the intricacies of forfeiture proceedings involving illegally acquired properties under R.A. No. 1379 and R.A. No. 9160. Second, it helps in determining which forfeiture proceeding is the better remedy for a given situation, taking into account the relative strengths and shortcomings of both remedies. Finally, it helps in preventing any jurisdictional conflict — a battle over turf — between the government agencies mandated to enforce both statutes, namely, the Office of the Ombudsman, which is authorized to initiate forfeiture cases under R.A. No. 1379,<sup>16</sup> and the Anti-Money Laundering Council (AMLC),<sup>17</sup> acting through the Office of the Solicitor General, which is authorized to initiate civil forfeiture proceedings under R.A. No. 9160.<sup>18</sup>

## II. THE OPERATIVE PROVISIONS THAT AUTHORIZE THE FORFEITURE OF CORRUPTION PROCEEDS

Section 7 of R.A. No. 9160 confers on the AMLC the authority to recover on behalf and in favor of the State any “monetary instrument”<sup>19</sup> or property

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16. R.A. No. 1379, § 2 & An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes [The Ombudsman Act of 1989], Republic Act No. 6770, § 15, ¶ 11 (1989).

17. The Anti-Money Laundering Council (AMLC) is “composed of the Governor of the Bangko Sentral ng Pilipinas, as chairman, the Commissioner of the Insurance Commission and the Chairman of the Securities and Exchange Commission[,] as members.” Anti-Money Laundering Act of 2001, § 7. According to its organizational chart, “[t]he AMLC is assisted by a Secretariat[,] headed by an Executive Director[,] and consists of five units: Compliance and Investigation Group [ ], Legal and Evaluation Group [ ], Information Management and Analysis Group [ ], Technical Services Staff[,] and Administrative and Financial Services Division[.]” Anti-Money Laundering Council, The Anti-Money Laundering Council (AMLC), *available at* <http://www.amlc.gov.ph/amlc.html> (last accessed Nov. 15, 2012).

18. Anti-Money Laundering Act of 2001, § 7, ¶ 3.

19. Monetary instrument, as defined in R.A. No. 9160, covers:

- (1) coins or currency of legal tender of the Philippines, or of any other country;
- (2) drafts, checks[,] and notes;
- (3) securities or negotiable instruments, bonds, commercial papers, deposit certificates, trust certificates, custodial receipts or deposit substitute instruments, trading orders, transaction tickets[,] and confirmations of sale or investments and money market instruments; and

considered as “proceeds”<sup>20</sup> of unlawful activities specifically identified in the law, including violations of R.A. No. 3019 and R.A. No. 7080. It provides

Section 7. *Creation of [AMLC].* — The [AMLC] is hereby created and shall be composed of the Governor of the Bangko Sentral ng Pilipinas as chairman, the Commissioner of the Insurance Commission and the Chairman of the Securities and Exchange Commission[,] as members. The AMLC shall act unanimously in the discharge of its functions as defined hereunder:

- (1) to require and receive covered transaction reports from covered institutions;
- (2) to issue orders addressed to the appropriate Supervising Authority or the covered institution to determine the true identity of the owner of any monetary instrument or property subject of a covered transaction report or request for assistance from a foreign State, or believed by the Council, on the basis of substantial evidence, to be, in whole or in part, wherever located, representing, involving, or related to, directly or indirectly, in any manner or by any means, the proceeds of an unlawful activity;
- (3) *to institute civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General;*
- ...
- (5) to initiate investigations of covered transactions, money laundering activities and other violations of this Act[.]<sup>21</sup>

Section 3, Paragraph i of R.A. No. 9160, as amended, enumerates certain unlawful activities, the proceeds of which may be subject to a petition for civil forfeiture. They are: (1) kidnapping for ransom, (2) drug trafficking and other violations of the Comprehensive Dangerous Drugs Act of 2002,<sup>22</sup> (3) graft and corruption under R.A. No. 3019, (4) plunder, (5) robbery and extortion, (6) *jueteng* and *masiao*, (7) piracy on the high seas, (8)

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- (4) other similar instruments where title thereto passes to another by endorsement, assignment[,] or delivery.

*Id.* § 3, ¶ c.

20. Proceeds “refer[ ] to an amount derived or realized from unlawful activity.” *Id.* § 3, ¶ f.

21. *Id.* § 7 (emphasis supplied).

22. An Act Instituting the Comprehensive Dangerous Drugs Act Of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes [Comprehensive Dangerous Drugs Act of 2002], Republic Act No. 9165 (2002).

qualified theft, (9) swindling, (10) smuggling, (11) violations of the Electronic Commerce Act of 2000,<sup>23</sup> (12) hijacking, destructive arson, and murder, including those perpetrated by terrorists, (13) fraudulent practices and other violations under the Securities Regulation Code of 2000,<sup>24</sup> and (14) felonies or offenses of a similar nature punishable under the penal laws of other countries.<sup>25</sup>

Through the inclusion of R.A. No. 3019 and R.A. No. 7080 in the list of predicate offenses in R.A. No. 9160, the proceeds of corrupt activities proscribed by these two special penal statutes are forfeitable to the State through a petition for civil forfeiture which may be filed directly before Regional Trial Courts.<sup>26</sup> A separate set of rules on these civil forfeiture proceedings has been promulgated by the Supreme Court pursuant to R.A. No. 9160, through Supreme Court Administrative Matter No. 05-11-04-SC.<sup>27</sup>

It must be noted that the corrupt activities defined and punished under the Anti-Graft Law are comprehensive and may apply to both public officials and private individuals.<sup>28</sup> Section 3, for example, contains an extensive list of offenses designed to encompass corrupt practices in all forms and guises.<sup>29</sup> The Plunder Law, in contrast, is intended to address large-scale corruption that involves the amassing, accumulation, or acquisition of at least ₱50 million in ill-gotten wealth.<sup>30</sup> On the one hand, the inclusion of both statutes in the list of unlawful activities the proceeds of which are recoverable under the forfeiture process created by R.A. No. 9160 ensures that the net is cast wider, so to speak. It ensures that the forfeiture process under that law

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23. An Act Providing for the Recognition and Use of Electronic Commercial and Non-Commercial Transactions and Documents, Penalties for Unlawful Use Thereof and for Other Purposes [Electronic Commerce Act of 2000], Republic Act No. 8792 (2000).

24. The Securities Regulation Code [SECURITIES REGULATION CODE], Republic Act No. 8799 (2000).

25. Anti-Money Laundering Act of 2001, § 3, ¶ i.

26. *Id.* § 5.

27. RULES OF PROCEDURE IN CASES OF CIVIL FORFEITURE, ASSET PRESERVATION, AND FREEZING MONETARY INSTRUMENT PROPERTY, OR PROCEEDINGS REPRESENTING, INVOLVING, OR RELATING, TO AN UNLAWFUL ACTIVITY OR MONEY LAUNDERING OFFENSE UNDER REPUBLIC ACT NO. 9160, AS AMENDED, A.M. NO. 05-11-04-SC, Dec. 15, 2005 [hereinafter RULES OF PROCEDURE ON CIVIL FORFEITURE].

28. R.A. NO. 3019, § 1 & NOEL G. VILLAROMAN, LAWS AND JURISPRUDENCE ON GRAFT AND CORRUPTION 119 (3d ed. 2010) (citing *Meneses v. People*, 153 SCRA 303 (1987)).

29. R.A. No. 3019, § 3.

30. R.A. No. 7080, § 2.

will encompass a broad range of corrupt behavior and will reach stolen wealth regardless of the amount.

On the other hand, R.A. No. 1379 authorizes the forfeiture in favor of the State of property of a public officer or employee which is “manifestly out of proportion to his salary as [a] public officer or employee and [ ] his other lawful income.”<sup>31</sup> Section 2 of R.A. No. 1379 is the focal provision, which states —

Section 2. *Filing of Petition* — Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. The Solicitor General ... shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State.<sup>32</sup>

In *Cabal v. Kapunan, Jr.*,<sup>33</sup> the Supreme Court recognized that when property out of proportion to one’s lawful income is seized in favor of the State, the forfeiture involved partakes of the nature of a penalty.<sup>34</sup> In the same case, the Court also adopted the following definition of forfeiture —

[F]orfeiture is a divestiture of property without compensation, in consequence of a default or an offense, and the term is used in such a sense in this article. A forfeiture, as thus defined, is imposed by way of *punishment* not by the mere convention of the parties, but by the lawmaking power, to insure a prescribed course of conduct. It is a method deemed necessary by the legislature to restrain the *commission of an offense* and to *aid in the prevention of such an offense*. The effect of such a forfeiture is to transfer the title to the specific thing from the owner to the sovereign power.<sup>35</sup>

### III. THE CONDUCT OF INVESTIGATIONS BEFORE INSTITUTING FORFEITURE PROCEEDINGS

Under Section 7, Paragraph 5 of R.A. No. 9160, the AMLC is authorized “to initiate investigations of covered transactions, money laundering

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31. R.A. No. 1379, § 2.

32. *Id.*

33. *Cabal v. Kapunan, Jr.*, 6 SCRA 1059 (1962).

34. *Id.* at 1063-64.

35. *Id.* at 1064 (citing 36 AM. JUR. 2D *Forfeitures and Penalties* § 1 (1968)) (emphases supplied).

activities[,] and other violations of [the said law.]”<sup>36</sup> In practice, investigations by the AMLC are usually triggered by one of the following: the transaction reports it receives from banks, insurance companies, and other covered institutions, referrals of law enforcement agencies, referrals by other government agencies, complaints from private individuals, or even media reports.<sup>37</sup> During the investigation phase, the crucial issue before the AMLC is the threshold of evidence the Council, through the Office of the Solicitor General, must adduce before it can file a petition for civil forfeiture. The question during an investigation is — what evidence is enough to warrant a filing of a petition for forfeiture? In Section 7, Paragraph 2 of R.A. No. 9160, *substantial evidence* is mentioned as the quantum of evidence required before the AMLC can issue an order addressed to a bank, an insurance company, a pre-need company, or any covered institution “to determine the true identity of the owner of any monetary instrument or property” suspected of being proceeds of unlawful activities, including corruption offenses.<sup>38</sup> It is not clear, however, whether R.A. No. 9160 also considers substantial evidence as the evidentiary threshold applicable when filing a petition for civil forfeiture. Section 12 (a) of R.A. No. 9160 reads —

Section 12. *Forfeiture Provisions.* —

(a) Civil Forfeiture. — When there is a covered transaction report made, and the court has, in a petition filed for the purpose, ordered seizure of any monetary instrument or property, in whole or in part, directly or indirectly, related to said report, the Revised Rules of Court on civil forfeiture shall apply.<sup>39</sup>

Section 12, Paragraph (a) does not at all state any evidentiary threshold that must be met in order to warrant the filing of a petition for civil forfeiture. Rule 12 on the Authority to Institute Forfeiture Proceedings of the Revised Implementing Rules and Regulations (RIRRs) of R.A. No. 9160<sup>40</sup> is likewise silent on what standard of evidence the AMLC must satisfy before deciding to file a petition for civil forfeiture. Instead, the RIRRs simply refer again to the Rules of Procedure on Civil Forfeiture, the

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36. The Anti-Money Laundering Act of 2001, § 7, ¶ 5.

37. See Julia C. Bacay-Abad, *The Role of the Anti-Money Laundering Council (AMLC) in Identifying, Freezing, Confiscating and Recovering Proceeds of Corruption* (An Unpublished Paper Submitted to the Third Regional Seminar on Good Governance for Southeast Asian Countries) 36, available at [http://www.unafei.or.jp/english/pdf/PDF\\_ThirdGGSeminar/Third\\_GGSeminar\\_P34-38.pdf](http://www.unafei.or.jp/english/pdf/PDF_ThirdGGSeminar/Third_GGSeminar_P34-38.pdf) (last accessed Nov. 15, 2012).

38. The Anti-Money Laundering Act of 2001, § 7, ¶ 2.

39. *Id.* § 12 (a).

40. See Anti-Money Laundering Council, Revised Rules and Regulations Implementing the Anti-Money Laundering Act of 2001, Republic Act No. 9160, as Amended, rule 12 (2003).



provisions of which apply only after the AMLC has already decided, as a result of its investigation, to file a petition for civil forfeiture in the trial court.<sup>41</sup> A crucial question is left unanswered — what quantum of evidence must be satisfied *during the investigation phase* in order to warrant a decision to file a civil forfeiture proceeding? Reflecting this gap in the law, Julia C. Bacay-Abad, a member of the AMLC Secretariat, states that —

[a]fter due investigation on a particular monetary instrument, property[,] or proceeds, if the AMLC finds sufficient evidence that would support a conclusion that the said monetary instrument, property[,] or proceeds are related to an unlawful activity or a money laundering offense, it shall file, through the Office of the Solicitor General, a petition for civil forfeiture against the said monetary instrument, property[,] or proceeds. The petition for civil forfeiture is being filed with the Regional Trial Court, a court of general jurisdiction.<sup>42</sup>

This still raises the question — what is sufficient evidence to warrant the filing of a petition for civil forfeiture? R.A. No. 9160, as amended, does not provide clear standards to guide the AMLC on the issue of initiating a civil forfeiture proceeding. Is the quantum of evidence required simply *substantial evidence*, as is the case for issuing orders to covered institutions to reveal the identity of the owner of a suspected monetary instrument or property? Or is it something higher, for instance, *probable cause*, akin to what is used during preliminary investigations in criminal proceedings?<sup>43</sup> This question is important in order to curb excessive discretion on the part of the AMLC, whose actions must be circumscribed within legal bounds. To leave the quantum of evidence in the investigation phase unclear is to invite the hasty filing of civil forfeitures under R.A. No. 9160, or, worse, increase the likelihood that the forfeiture process will be abused. This lacuna in R.A. No. 9160 and its implementing rules should be addressed.

In contrast to R.A. No. 9160, R.A. No. 1379 requires the conduct of “a previous inquiry similar to preliminary investigations in criminal cases”<sup>44</sup> before a petition for forfeiture can be filed. This previous inquiry has three objectives. First, consistent with due process considerations, the required inquiry gives an individual, whose property may be subjected to the penalty of forfeiture, sufficient opportunity to explain his or her legal title over the properties in question even before the trial stage. Second, it limits the filing of petitions for forfeiture to those cases where the government has a reasonably strong chance of a favorable outcome, thereby enabling the State to maximize the use of its limited resources, including the resources of the

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41. *Id.* rule 12, ¶ b.

42. Bacay-Abad, *supra* note 37, at 36.

43. See 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 112, § 3.

44. R.A. No. 1379, § 2.

courts. Third and finally, the inquiry enables the determination of whether the required evidentiary threshold (which is akin to probable cause) has been met, warranting the filing of a petition for forfeiture under R.A. No. 1379.

Under the original procedure outlined in Section 2 of R.A. No. 1379, the city or provincial fiscal is required to conduct and the respondent is entitled to “a previous inquiry similar to preliminary investigations in criminal cases.”<sup>45</sup> If the city or provincial fiscal determines afterwards that “there is reasonable ground to believe that there has been committed a violation of [R.A. No. 1379] and the respondent is probably guilty thereof,”<sup>46</sup> he shall submit a certification to that effect to the Solicitor General who shall then file a petition for forfeiture before the then Court of First Instance.<sup>47</sup>

While the interplay of subsequent legislation defining the powers of the Sandiganbayan and the Ombudsman produced an implied and partial repeal of Section 2 of R.A. No. 1379,<sup>48</sup> it must be stressed that these subsequent laws did not remove the requirement of “*previous inquiry similar to preliminary investigations in criminal cases*”<sup>49</sup> before the filing of a petition for forfeiture on the basis of R.A. No. 1379. The respondent in possible forfeiture cases still has the right to demand it. The necessity for this procedural step was, in fact, recognized by the Supreme Court in the 2003 case of *Republic v. Sandiganbayan*,<sup>50</sup> when it stated that while forfeiture proceedings involve three steps, namely: a petition, an answer, and a hearing,<sup>51</sup> there is still a “preliminary investigation required prior to the filing of such petition, in accordance with Section 2 of [R.A. No. 1379].”<sup>52</sup> This preliminary investigation is “similar to a preliminary investigation in a criminal case,”<sup>53</sup> despite forfeiture proceedings being civil in nature.<sup>54</sup> As the law now stands, the duty to conduct a previous inquiry similar to preliminary investigations

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45. *Id.*

46. *Id.*

47. *Id.*

48. See Revising Presidential Decree No. 1486 Creating a Special Court to be Known as the “Sandiganbayan” and for Other Purposes, Presidential Decree No. 1606, § 4 (1978) & The Ombudsman Act of 1989, §§ 11 & 15.

49. R.A. No. 1379, § 2 (emphasis supplied).

50. *Republic v. Sandiganbayan*, 416 SCRA 133 (2003).

51. *Id.* at 143.

52. *Id.*

53. *Id.*

54. *Id.* at 142.

in criminal cases and the duty to file a petition for forfeiture under R.A. No. 1379 are both vested with the Office of the Ombudsman.<sup>55</sup>

#### IV. THE AUTHORITY TO INSTITUTE FORFEITURE PROCEEDINGS

Under R.A. No. 9160, on the one hand, the AMLC, through the Office of the Solicitor General, has the authority to file a petition for civil forfeiture in order to recover any monetary instrument, property, or proceeds representing, involving, or relating to specifically identified unlawful activities including the corruption offenses punished by the Anti-Graft Law and the Plunder Law.<sup>56</sup> Such petition “shall be filed in any [R]egional [T]rial [C]ourt of the judicial region where the monetary instrument, property, or proceeds representing, involving, or relating to an unlawful activity or to a money laundering offense are located.”<sup>57</sup> However, when some or all of “the monetary instrument, property, or proceeds [are] located outside the Philippines, the petition may be filed in the [R]egional [T]rial [C]ourt in Manila or of the judicial region where any portion of the monetary instrument, property, or proceeds is located, at the option of the petitioner.”<sup>58</sup> Moreover, the “petition shall be filed directly with the executive judge of the [R]egional [T]rial [C]ourt or, in his absence, the vice-executive judge or, in their absence, any judge of the [R]egional [T]rial [C]ourt of the same station. He shall act on the petition within [24] hours after its filing.”<sup>59</sup>

On the other hand, under R.A. No. 1379, it is the Office of the Ombudsman which has the authority to investigate and initiate petitions for forfeiture, in order to recover any “ill-gotten and/or unexplained wealth amassed after [25 February 1986.]”<sup>60</sup> Such petitions fall within the exclusive original jurisdiction of the Sandiganbayan.<sup>61</sup> However, a petition for

55. VILLAROMAN, *supra* note 28, at 300-01.

56. The Anti-Money Laundering Act of 2001, § 7, ¶ 3.

57. RULES OF PROCEDURE ON CIVIL FORFEITURE, § 3.

58. *Id.*

59. *Id.* § 5.

60. The Ombudsman Act of 1989, § 15, ¶ 11.

61. Section 4 of P.D. No. 1606, as amended by R.A. No. 8249, provides that the Sandiganbayan shall exercise *exclusive original jurisdiction* over the following clusters of offenses:

- (a) Violations of [R.A.] No. 3019 as amended, otherwise known as the Anti-[G]raft and Corrupt Practices Act, [R.A.] No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense;

forfeiture under R.A. No. 1379 may be filed before the Sandiganbayan, even if amassed before such date, *provided that* it satisfies the court's other jurisdictional requirements, namely: that the unlawful acquisition of wealth was done in relation to office<sup>62</sup> and that the respondent public officer or employee is one of the officials enumerated in Section 4, P.D. No. 1606, as amended.<sup>63</sup> In other words, the Sandiganbayan cannot take cognizance of

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(c) Civil and criminal cases filed pursuant to and in connection with [E.O.] Nos. 1, 2, 14[,] and 14-A, issued in 1986.

P.D. No. 1606, § 4, ¶¶ a & c.

62. For a discussion of the meaning of "in relation to office," *see generally* *Rodriguez v. Sandiganbayan*, 424 SCRA 236, 248-49 (2004) & *Barriga v. Sandiganbayan*, 457 SCRA 301, 308-09 (2005).
63. Section 4 of P.D. No. 1606, as amended, provides that the Sandiganbayan has jurisdiction if at least one of the accused (or respondents in cases involving violation of R.A. No. 1379), at the time of the commission of the offense, is a public officer belonging to any of the following five categories, "whether in a permanent, acting[,] or interim capacity:"
- (1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (R.A. [No.] 6758), *specifically including*:
    - (a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads;
    - (b) City mayor, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads;
    - (c) Officials of the diplomatic service occupying the position of consul and higher;
    - (d) Philippine army and air force colonels, naval captains, and all officers of higher rank;
    - (e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;
    - (f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor; or
    - (g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities[,] or educational institutions or foundations.
  - (2) Members of Congress and officials thereof classified as Grade '27' and up under the Compensation and Position Classification Act of 1989;

the petition unless it is alleged that the respondent public officer is one of those officials enumerated in the law *and* that he or she is indicted for having violated R.A. No. 1379 in relation to his or her office. The absence of any of these requirements will divest the Sandiganbayan of its jurisdiction; instead, a petition for forfeiture under R.A. No. 1379 then becomes cognizable by a Regional Trial Court (which is a court of general jurisdiction).

The Supreme Court, in *Garcia v. Sandiganbayan*,<sup>64</sup> underscored the jurisdictional requirements before the Sandiganbayan can take cognizance of a petition for forfeiture under R.A. No. 1379. In *Garcia*, the petition for forfeiture was validly filed before the Sandiganbayan because the respondent was a public officer or employee who occupied a position (i.e., a general of the Armed Forces of the Philippines) which is one of those enumerated in the law and the violation of R.A. No. 1379 was committed during his incumbency and in relation to his office.<sup>65</sup>

#### V. CONTENTS OF THE PETITION AND THE PROCEDURE AFTER FILING THE PETITION

On the one hand, the petition for civil forfeiture under R.A. No. 9160, as amended, shall be verified, and should contain the following allegations:

- (a) The name and address of the respondent;
- (b) A description with reasonable particularity of the monetary instrument, property, or proceeds, and their location;
- (c) The acts or omissions prohibited by and the specific provisions of the Anti-Money Laundering Act, as amended, which are alleged to be the grounds relied upon for the forfeiture of the monetary instrument, property, or proceeds; and
- (d) The reliefs prayed for.<sup>66</sup>

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- (3) Members of the [J]udiciary without prejudice to the provisions of the Constitution;
  - (4) Chairmen and members of Constitutional Commission, without prejudice to the provisions of the Constitution; and
  - (5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

P.D. No. 1606, § 4 (emphasis supplied).

64. *Garcia v. Sandiganbayan*, 460 SCRA 600 (2005).

65. *See Garcia*, 460 SCRA at 619-27.

66. RULES OF PROCEDURE ON CIVIL FORFEITURE, § 4.

Once such petition is filed, “the respondent shall file a verified comment or opposition ... within [15] days from service of notice or within [30] days from the publication in case service of notice was by publication.”<sup>67</sup> In addition, he cannot file a motion to dismiss the petition.<sup>68</sup> The respondent’s answer is expected to “(a) state whether [the] respondent admits the allegations of the petition; (b) specify such inaccuracies or falsities in [the] petitioner’s statement of facts; and (c) state clearly and concisely the respondent’s defense in law and the specific and pertinent provisions of the law and their applicability to respondent.”<sup>69</sup> The rules give the court where the petition is filed, authority to “hear the case *ex parte* and render such judgment as may be warranted by the facts alleged in the petition and its supporting evidence”<sup>70</sup> if the respondent fails to file an answer within the allotted period.

On the other hand, a petition for forfeiture under R.A. No. 1379 is required to contain the following information:

- (a) The name and address of the respondent;
- (b) The public office or employment he holds and such other public offices or employment which he has previously held;
- (c) The approximate amount of property he has acquired during his incumbency in his past and present offices and employments;
- (d) A description of said property, or such thereof as has been identified by the [Office of the Ombudsman];
- (e) The total amount of his government salary and other proper earnings and incomes from legitimately acquired property; and
- (f) Such other information as may enable the court to determine whether or not the respondent has unlawfully acquired property during his incumbency.<sup>71</sup>

Once the petition is filed, the respondent has 15 days to file an answer.<sup>72</sup> After the answer is filed or after the lapse of 15 days, “the [c]ourt shall set a date for a hearing, which may be open to the public, and during which the respondent shall be given ample opportunity to explain, to the satisfaction of the court, how he has acquired the property in question.”<sup>73</sup> If the court is not satisfied with the respondent’s explanations as to the lawful means by

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67. *Id.* § 9.

68. *Id.*

69. *Id.*

70. *Id.* § 10.

71. R.A. No. 1379, § 3.

72. *Id.* § 4.

73. *Id.* § 5.

which he came to acquire the questioned property, “the court shall declare such property forfeited in favor of the State, and[,] by virtue of such judgment, the property aforesaid shall become property of the State.”<sup>74</sup>

VI. BOTH PETITIONS UNDER R.A. NO. 9160, AS AMENDED, AND R.A. NO. 1379 ARE INDEPENDENT CIVIL ACTIONS

Independent civil actions are those which the law allows to be filed separately from the related criminal action and may proceed independently of the latter.<sup>75</sup> These are petitions whose outcomes are not based on securing the conviction of the responsible individual in a separate criminal proceeding.<sup>76</sup> A petition for civil forfeiture under R.A. No. 9160 is one such independent civil action.<sup>77</sup> Through this process, corruption proceeds can be declared forfeited in favor of the State even though the responsible individual (i.e., the accused in the criminal proceeding) has been acquitted of the charges, or, indeed, even though no criminal action was instituted at all.<sup>78</sup> The independent character of a petition for civil forfeiture under R.A. No. 9160, is highlighted by the following provisions of the Rules of Procedure on Civil Forfeiture, which provide —

*Sec. 27. No prior charge, pendency, or conviction necessary.* — No prior criminal charge, pendency of[,] or conviction for an unlawful activity or money laundering offense is necessary for the commencement or the resolution of a petition for civil forfeiture.

*Sec. 28. Precedence of proceedings.* — Any criminal case relating to an unlawful activity shall be given precedence over the prosecution of any offense or violation under [R.A.] No. 9160, as amended, without prejudice to the filing of a separate petition for civil forfeiture or the issuance of an asset preservation order or a freeze order. Such civil action shall proceed independently of the criminal prosecution.<sup>79</sup>

In *Republic v. Glasgow Credit and Collection Services, Inc.*,<sup>80</sup> the Supreme Court applied the above-quoted Section 27 of the Rules of Procedure on Civil Forfeiture and ruled that

[t]he complaint, however, did not even have to show or allege that Glasgow had been implicated in a conviction for, or the commission of, the

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74. *Id.* § 6.

75. See REVISED RULES OF CRIMINAL PROCEDURE, rule 111, § 3.

76. *Id.*

77. RULES OF PROCEDURE ON CIVIL FORFEITURE, § 28.

78. *Id.* § 27.

79. *Id.* §§ 27 & 28.

80. *Republic v. Glasgow Credit and Collection Services, Inc.*, 542 SCRA 95 (2008).

unlawful activities of estafa and violation of the Securities Regulation Code.

A criminal conviction for an unlawful activity is not a prerequisite for the institution of a civil forfeiture proceeding. Stated otherwise, a finding of guilt for an unlawful activity is not an essential element of civil forfeiture.

...

Thus, regardless of the absence, pendency or outcome of a criminal prosecution for the unlawful activity or for money laundering, an action for civil forfeiture may be separately and independently prosecuted and resolved.<sup>81</sup>

Similarly, a forfeiture case under R.A. No. 1379 is also an independent civil action. Section 3 of Executive Order (E.O.) No. 14<sup>82</sup> describes forfeiture cases filed under R.A. No. 1379 as independent civil actions. It provides —

Section 3. Civil suits for restitution, reparation of damages, or indemnification for consequential damages, *forfeiture proceedings provided for under [R.A.] No. 1379*, or any other civil actions under the Civil Code or other existing laws, in connection with [E.O.] No. 1 dated 28 February 1986 and [E.O.] No. 2 dated 12 March 1986, *may be filed separately from and proceed independently of any criminal proceedings and may be proved by a preponderance of evidence.*<sup>83</sup>

In the 1989 case of *Republic v. Sandiganbayan*,<sup>84</sup> the Supreme Court construed the above provision as granting the Presidential Commission on Good Government the authority to file an independent civil action which is separate and distinct from, and regardless of the result of, a criminal action for the purpose of recovering the ill-gotten wealth allegedly taken by former President Ferdinand E. Marcos, his family, and his cronies.<sup>85</sup>

To illustrate the legal implication of characterizing a forfeiture case under R.A. No. 1379 as an independent civil action, a hypothetical example is apropos. Suppose a petition for forfeiture under R.A. No. 1379 was filed against General X before the Sandiganbayan for having acquired an amount of property which is manifestly out of proportion to his salary and to his other lawful income. A criminal case for plunder was subsequently filed

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81. *Id.* at 108–09.

82. Office of the President, Defining the Jurisdiction over Cases Involving the Ill-Gotten Wealth of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members of their Immediate Family, Close Relatives, Subordinates, Close and/or Business Associates, Dummies, Agents, and Nominees, Executive Order No. 14 [E.O. No. 14], § 3 (May 7, 1986)

83. *Id.* § 3 (emphases supplied).

84. *Republic v. Sandiganbayan*, 173 SCRA 72 (1989).

85. *Id.* at 81–82.



against him before the same court because he allegedly amassed, accumulated, or acquired ill-gotten wealth amounting to at least 50 million pesos. General X filed a motion asking the Sandiganbayan to consolidate the forfeiture proceeding with the plunder case for joint determination. As basis for his motion, he cited the last paragraph of Section 4 of P.D. No. 1606, as amended (which is the charter of the Sandiganbayan), which provides that

the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action.<sup>86</sup>

In the above hypothetical example, the motion should not be granted. A forfeiture proceeding under R.A. No. 1379 is an independent civil action. The law allows it to “be filed separately from, and proceed independently of, any criminal proceedings and may be proved by a preponderance of evidence”<sup>87</sup> only. The aim of the civil action referred to in the last paragraph of Section 4 of P.D. No. 1606, as amended, is the recovery of the accused’s civil liability that arose from his criminal act. In contrast, the aim of a forfeiture proceeding is that the unlawfully acquired property be declared *forfeited in favor of the State* without adjudging the respondent’s criminal act, if any. The former is directed to the accused himself while the latter is directed to the unlawfully acquired property (i.e., it is an action *in rem*).

#### VII. WEIGHING THE QUANTUM OF EVIDENCE: WHERE THE EVIDENCE PREPONDERATES

As earlier pointed out, a petition for forfeiture under R.A. No. 1379 and a petition for civil forfeiture under R.A. No. 9160 are both civil actions. A civil action is defined as “one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.”<sup>88</sup> In rendering judgments in civil actions, trial courts determine where the evidence “preponderates” between the complainant and the respondent.<sup>89</sup> In other words, trial courts compare the relative weight of the evidence presented by the parties and rule in favor of the party who has the “preponderance of evidence.”<sup>90</sup>

In a petition for civil forfeiture under R.A. No. 9160, the trial court “shall grant the petition if there is preponderance of evidence in favor of the petitioner and declare the monetary instrument, property, or proceeds

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86. P.D. No. 1606, § 4.

87. E.O. No. 14, § 3.

88. 1997 RULES OF CIVIL PROCEDURE, rule 1, § 3, ¶ a.

89. See REVISED RULES ON EVIDENCE, rule 133, § 1.

90. *Id.*

forfeited in favor of the State or, in appropriate cases, order the respondent to pay an amount equal to the value of the monetary instrument or property.”<sup>91</sup> The court is guided by the following factors in locating where the preponderance of evidence lies:

- (1) [i]f the value or amount involved is not commensurate with the business, financial[,] or earning capacity of the person;
- (2) [i]f any transaction indicates a clear deviation from the profile or previous transactions of the person;
- (3) [i]f a person opens, maintains[,] or controls an account with a covered institution not in his own name or registered business name unless authorized under existing law;
- (4) [i]f a person has structured transactions in order to avoid being the subject of reporting requirements under [R.A.] No. 9160, as amended; or
- (5) [i]f any transaction exists that has no apparent underlying legal or trade obligation, purpose or economic justification.<sup>92</sup>

Meanwhile, in a petition for forfeiture under R.A. No. 1379, the primary issue before the court is whether or not the properties in question are unlawfully acquired, thus, warranting their return to the public coffers (that is, forfeiture in favor of the State). In rendering judgment, the trial court ascertains where the preponderance of evidence lies, just like in a petition for civil forfeiture under R.A. No. 9160, as amended. However, unlike the former, R.A. No. 1379 has created a legal presumption by virtue of which the subject properties are deemed unlawfully acquired if they are shown to be manifestly out of proportion to a public official’s lawful income. Section 2 of the law explicitly states —

[W]henever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired.<sup>93</sup>

It must be noted that a “presumption is *prima facie* proof of the fact presumed and, unless the fact thus *prima facie* established by legal presumption is disproved, it must stand as proved.”<sup>94</sup> The role of a presumption in the law of evidence is to relieve the party enjoying the presumption of the

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91. RULES OF PROCEDURE ON CIVIL FORFEITURE, § 32.

92. *Id.* § 31.

93. R.A. No. 1379, § 2.

94. Republic v. Sandiganbayan, 406 SCRA 190, 268 (2003) (citing MIRIAM DEFENSOR SANTIAGO, RULES OF COURT ANNOTATED 857 (1999 ed.)).

evidential burden to prove the proposition that he contends for, and to shift the burden of evidence to the adverse party.<sup>95</sup>

Therefore, the Office of the Ombudsman, in a petition for forfeiture under R.A. No. 1379, must convince the trial court that all the elements of this legal presumption are present in a case. When it has established the presence of all these elements, there is no longer any need to present evidence that the subject properties were acquired by unlawful means. The law itself draws that conclusion *ipso facto*. In another 2003 case, similarly entitled *Republic v. Sandiganbayan*,<sup>96</sup> the Supreme Court explained that the elements which must concur in order that this legal presumption shall arise are the following:

- (1) The offender is a public officer or employee;
- (2) He must have acquired a considerable amount of money or property during his incumbency; and
- (3) [The] [s]aid amount is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property.<sup>97</sup>

In the aforementioned case, the Supreme Court ruled that it is undisputed that the Marcos spouses were former public officers.<sup>98</sup> The second element deals with the amount of money or property acquired by the public officer during his incumbency. The Marcos couple indubitably acquired and owned properties during their term of office.<sup>99</sup> In fact, the five groups of Swiss accounts were admittedly owned by them. There is proof of the existence and ownership of these assets and properties, and it suffices to comply with the second element.<sup>100</sup> Regarding the last element, the Court noted that it would be satisfied if “it [could] be shown that such assets, money or property [was] manifestly out of proportion to the public officer’s salary and his other lawful income.”<sup>101</sup> Fulfilling the requirements of the last element was “crucial in determining whether a *prima facie* presumption [had] been established”<sup>102</sup> in the case against the Marcos family.

The petitioner presented not only a schedule indicating the lawful income of the Marcos spouses during their incumbency but also evidence

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95. *People v. De Guzman*, 229 SCRA 795, 799 (1994).

96. *Sandiganbayan*, 406 SCRA at 190.

97. *Id.* at 267.

98. *Id.* at 255.

99. *Id.* at 255-56.

100. *Id.* at 237-41.

101. *Id.* at 267.

102. *Sandiganbayan*, 406 SCRA at 267.

that they had huge deposits beyond such lawful income in Swiss banks under the names of five different foundations.<sup>103</sup> The Supreme Court ruled that the petitioner was able to establish the *prima facie* presumption that the assets and properties acquired by the Marcoses were manifestly and patently disproportionate to their aggregate salaries as public officials.<sup>104</sup> According to the Court, considering that “the total amount of the Swiss deposits was considerably out of proportion to the known lawful income of the Marcoses, the presumption that said dollar deposits were unlawfully acquired was duly established.”<sup>105</sup>

In *Republic v. Intermediate Appellate Court*,<sup>106</sup> the Supreme Court held that, while Section 2 of R.A. No. 1379 creates a presumption against the public officer who acquires property grossly disproportionate to his income (i.e., that the property was unlawfully acquired), “this presumption is *juris tantum* [and] may be rebutted ... by showing to the satisfaction of the court that the acquisition of the property was lawful.”<sup>107</sup> The Court also stated that the determination of whether wealth was illegally acquired was not limited to making a comparison between the actual property found and the statement of assets, liabilities, and networth (SALN) filed by a certain public officer.<sup>108</sup> R.A. No. 1379 “affords the respondent every opportunity to explain, to the satisfaction of the court, how he had acquired the property in question,”<sup>109</sup> allowing him to justify what may or may not be found in his SALN. In the abovementioned case, the presumption under Section 2 of R.A. No. 1379 that the subject properties were unlawfully acquired was successfully rebutted by the Berdon family, who were the accused, by presenting “competent evidence.”<sup>110</sup>

Similarly, in *Pleyto v. PNP-CIDG*,<sup>111</sup> the Supreme Court stated —

A *prima facie* presumption, also referred to as disputable, rebuttable or *juris tantum*, is satisfactory if [not contradicted], but may be contradicted and overcome by other evidence. The presumption in Section 2 of R.A. [No.] 1379 is merely *prima facie* and may still be overcome by evidence to the contrary. In fact, Section 5 of the same statute requires the court, before which the petition for forfeiture is filed, to set public hearings during which

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103. *Id.* at 222-30.

104. *Id.* at 255-57.

105. *Id.* at 268.

106. *Republic v. Intermediate Appellate Court*, 172 SCRA 296 (1989).

107. *Id.* at 302.

108. *Id.* at 303.

109. *Id.* at 297.

110. *Id.* at 304.

111. *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*, 538 SCRA 534 (2007).

the public officer or employee may be given ample opportunity to explain to the satisfaction of the court how he had acquired the property in question.<sup>112</sup>

#### VIII. CONCLUSION

The forfeiture proceedings under R.A. No. 1379 and R.A. No. 9160, as amended, are meant to achieve the State's interest in recovering what has been stolen from its coffers. That interest is compelling because corruption diverts public resources away from social services and into private interests. Corruption distorts the primacy of social services as reflected in the allocation of public funds. Stolen asset recovery statutes, like R.A. No. 1379 and R.A. No. 9160, as amended, are meant to rectify that diversion and distortion.

The foregoing comparison between the salient features of both forfeiture proceedings reveals no inherent inconsistency between the two remedies, such that any concurrent application is well-founded and should not give rise to any jurisdictional conflict between the institutions mandated to enforce R.A. No. 1379 and R.A. No. 9160, as amended. The main advantage of both statutes is the fact that the forfeiture of illegally acquired wealth has been severed or disassociated from the need to obtain a criminal conviction, thereby lowering the evidentiary threshold in securing a favourable court ruling. It remains to be seen, however, how the institutions mandated to enforce them can maximize that advantage in the recovery of illegally acquired wealth. At least, in theory, both laws are effective anti-corruption tools available in the State's legal arsenal.

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112. *Id.* at 559.