



**Republic of the Philippines  
Supreme Court  
Manila**

**EN BANC**

**LINCONN UY ONG,**

*Petitioner,*

**G.R. No. 257401**

*- versus -*

**THE SENATE OF THE  
PHILIPPINES, THE SENATE  
COMMITTEE ON  
ACCOUNTABILITY OF  
PUBLIC OFFICERS AND  
INVESTIGATIONS (BLUE  
RIBBON COMMITTEE); HON.  
SENATOR RICHARD J.  
GORDON, in his capacity as the  
Chairman of the Blue Ribbon  
Committee; HON. SENATOR  
VICENTE C. SOTTO III, in his  
capacity as Senate President of the  
Philippines; MGEN RENE C.  
SAMONTE AFP (RET.), in his  
capacity as SENATE  
SERGEANT-AT-ARMS,**

*Respondents.*

X-----X

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**MICHAEL YANG HONG MING,**  
*Petitioner,*

**G.R. No. 257916**

Present:

GESMUNDO, *C.J.*,  
LEONEN,\*  
CAGUIOA,  
HERNANDO,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,  
GAERLAN,  
ROSARIO,  
LOPEZ, J.,  
DIMAAMPAO  
MARQUEZ,  
KHO, JR., and  
SINGH, *JJ.*

- versus -

**SENATE COMMITTEE ON  
ACCOUNTABILITY OF  
PUBLIC OFFICERS AND  
INVESTIGATIONS,**

*Respondent.*

Promulgated:

March 28, 2023

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**DECISION**

**INTING, J.:**

Before the Court are two consolidated petitions for *certiorari* and prohibition under Rule 65 of the Rules of Court which ultimately plead for a clearer definition and delineation of the scope and extent of the Senate’s power of inquiry in aid of legislation.

*G.R. No. 257401: The Ong Petition*

Linconn Uy Ong (Ong), a member of the Board of Directors and the Supply Chain Manager of Pharmally Pharmaceuticals Corporation (Pharmally) filed the first Petition<sup>1</sup> for *Certiorari* and Prohibition with Very Urgent Prayers for *Status Quo Ante* Order/Temporary Restraining Order and Writ of Preliminary Injunction.

\* On official leave.

<sup>1</sup> *Rollo* (G.R. No. 257401), pp. 2-51.

In the main, Ong assails the Order<sup>2</sup> dated September 10, 2021 (Contempt Order), which respondent Senate Committee on Accountability of Public Officers and Investigations (Senate Blue Ribbon Committee, or Committee) issued against him.<sup>3</sup> In particular, the Senate Blue Ribbon Committee cited him in contempt and ordered his arrest for testifying falsely and evasively during the September 10, 2021 hearing conducted relative to the Commission on Audit (COA) Consolidated Annual Audit Report for Fiscal Year 2020<sup>4</sup> (COA Report) relating to the expenditures of the Department of Health (DOH) on the “fight against COVID.”

Ong also challenges the constitutionality of: (1) Section 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation, as amended<sup>5</sup> (Senate Rules on Inquiries); and (2) Section 6, Article 6 of the Rules of the Senate Blue Ribbon Committee<sup>6</sup> (collectively, assailed rules) insofar as they punish for contempt his alleged act of “testifying falsely or evasively” is concerned.

*G.R. No. 257916: The Yang Petition*

Meanwhile, Michael Yang Hong Ming (Yang), a Chinese citizen with permanent residency in the Philippines, a former Presidential Economic Adviser, and member of the Philippine Full Win Group of Companies, Inc., filed the second Petition<sup>7</sup> for *Certiorari* and Prohibition under Rule 65 of the Rules of Court seeking the nullification of the Arrest Orders<sup>8</sup> dated September 7 and 10, 2021. He also seeks for the nullification of the Lookout Bulletin issued by the Bureau of Immigration in accordance with the Committee’s Letter-Request<sup>9</sup> dated September 13, 2021. Further, he prays that the Committee be ordered to desist from compelling him to disclose information involving his properties and business interests, as embodied in the Committee’s Letter-Request<sup>10</sup> dated

<sup>2</sup> Id. at 359. Signed by Senator Richard J. Gordon, Chairman of the Senate Blue Ribbon Committee and approved by Senate President Vicente C. Sotto III.

<sup>3</sup> Id. at 3-4.

<sup>4</sup> Available Commission on Audit official website <<https://www.coa.gov.ph/reports/annual-audit-reports/aar-ngs/#49-3719-department-of-health-1628579484>> (last accessed on April 11, 2023). Adopted via Senate Resolution No. 5 on August 9, 2010, as amended by Senate Resolution No. 145; id. at 4-5.

<sup>6</sup> Adopted by the Senate Blue Ribbon Committee on August 14, 2019; id. at 5.

<sup>7</sup> *Rollo* (G.R. No. 257916), pp. 3-60.

<sup>8</sup> Id. at 69 and 360.

<sup>9</sup> Id. at 361.

<sup>10</sup> Id. at 61.

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November 9, 2021.<sup>11</sup>

### *The Antecedents*

Following the COA Report, the Committee resolved to conduct an investigation in aid of legislation pertaining in particular to DOH's expenditures in relation to the "fight against COVID." Consequently, it sent invitations *via* electronic mail to resource persons, referring to them matters subject of the inquiry and requesting them to attend the hearings.<sup>12</sup>

On August 18, 2021, the Committee conducted its first hearing.<sup>13</sup> In the course thereof, it found out that Pharmally, the incorporators of which were identified to have personal links with Yang, was able to secure a total of ₱8.868 Billion worth of contracts from the Procurement Service of the Department of Budget and Management (PS-DBM).<sup>14</sup>

On August 23, 2021, Senator Risa Hontiveros (Sen. Hontiveros) delivered a privilege speech<sup>15</sup> that was later referred to the Committee. That same day until August 25, 2021, the following were filed: (1) *Proposed Senate Resolution (PSR) No. 858*,<sup>16</sup> by Senate Majority Leader, Juan Miguel F. Zubiri (Sen. Zubiri); (2) *PSR No. 859*,<sup>17</sup> by Sen. Leila M. De Lima (Sen. De Lima); and (3) *PSR No. 880*,<sup>18</sup> by Sen. Hontiveros. These PSRs were all referred to the Committee.<sup>19</sup> The privilege speech and the subject PSRs all pertained to expenditures relative to the government's response to COVID-19 and other health concerns.

<sup>11</sup> Id. at 55-56.

<sup>12</sup> *Rollo* (G.R. No. 257401), p. 384 and 386.

<sup>13</sup> Id. at 386-387.

<sup>14</sup> *Rollo* (G.R. No. 257916), p. 8.

<sup>15</sup> Entitled, "Mandate of the Commission on Audit/Incompetence of the DOH," *rollo* (G.R. No. 257401), pp. 386, 480-481.

<sup>16</sup> Entitled "Resolution Directing the Senate Committee of the Whole on the Vaccination Program to Conduct an Inquiry on the Procurement of Covid-19 Vaccines by Local Government Units and the Private Sector through Multi-Party Agreements, with the End in View Ramping Up Vaccination in the Rural Areas and in the Private Sector and Achieving Herd Immunity against Covid-19 for the Country," id. at 482-483.

<sup>17</sup> Entitled "Resolution Directing the Appropriate Senate Committee to Conduct an Inquiry, In Aid of Legislation on the Findings of the Commission on Audit (COA) Report on the Department of Health (DOH) on the Reported Unspent Funds, Misstatements, Irregularities and Deficiencies, with the End View of Addressing Recurrent Issues that Has Plagued Its Services, as well as the Persistent Faults and Lapses that Give Rise to Wastage Even Amidst Times of Scarcity and Shortage, and Holding Accountable those Responsible for the Same," id. at 484-490.

<sup>18</sup> Entitled "Resolution Directing the Appropriate Senate Committee to Conduct an Investigation In Aid of Legislation on the Payment Claims Issues Between Philhealth and Private Hospitals with the End in View of Ensuring Uninterruptible Health Care and Social Protection for Filipinos," id at 491-492.

<sup>19</sup> Id. at 386-387.

On August 26, 2021, the Committee issued *Subpoena Ad Testificandum* directing the following: Huang Tzu Yen (Huang), Mohit Dargani (Mohit), and Twinkle Dargani (Twinkle), all of Pharmally; and Yang to attend the hearing on August 27, 2021 and testify on the matter under inquiry.<sup>20</sup> However, Huang, Mohit, Twinkle, and Yang failed to attend the hearing set on August 27, 2021.<sup>21</sup>

On August 31, 2021, the Committee sent a *Subpoena Ad Testificandum* directing Yang to attend the September 7, 2021 hearing.<sup>22</sup> Similar *subpoenas* were sent on September 4, 2021 to Ong and Krizle Grace Mago (Mago).<sup>23</sup>

On September 7, 2021, Ong, Mago, Yang, and other Pharmally officials failed and/or refused to appear at the hearing. Accordingly, the Committee issued Orders<sup>24</sup> citing Ong, Mago, Mohit, Twinkle, and Yang in contempt for failure to appear in the scheduled hearings. It ordered their arrest and detention at the Office of the Senate Sergeant-at-Arms (OSAA) until such time that they appear and give their testimony, or otherwise purge themselves of the contempt.<sup>25</sup>

#### *Incidents involving Ong*

According to Ong, he learned from the media reports on September 7, 2021 that he was among those cited in contempt and ordered arrested and detained for “refusing to appear, despite notice” at the Committee hearings of August 27, 2021 and September 7, 2021. He alleged that he did not receive any *subpoena* or invitation from the Committee. Still, he voluntarily attended the online videoconferencing hearing on September 10, 2021.<sup>26</sup>

In the course of his examination during the hearing, the Committee again cited Ong in contempt and ordered his arrest and detention for “testifying falsely and evasively.” The assailed Contempt Order<sup>27</sup> dated

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<sup>20</sup> Id. at 387 and 493-497.

<sup>21</sup> Id. at 387.

<sup>22</sup> Id. at 518-519.

<sup>23</sup> Id. at 514-519.

<sup>24</sup> Id. at 524-525.

<sup>25</sup> Id. at 388.

<sup>26</sup> Id. at 7-8.

<sup>27</sup> Id. at 359. The Contempt Order states:

September 10, 2021 was issued by the Committee,<sup>28</sup> signed by Sen. Richard J. Gordon (Sen. Gordon) as Chairperson and approved by Senate President Vicente C. Sotto III (Sen. Pres. Sotto III).

However, Ong was not immediately taken to the Senate premises because he was then suffering from COVID-19. The Senators allowed him to stay at his residence but ordered the Sergeant-at-Arms to post a guard outside his abode.<sup>29</sup>

Several hearings of the Committee were further conducted on September 13, 17, and 21, 2021, with the attendance and participation of Ong.<sup>30</sup>

On September 21, 2021, the OSAA arrested Ong, who was attending the online Committee hearings remotely at his residence, and detained him under its custody at the Senate Complex, Pasay City on authority of the assailed Contempt Order.<sup>31</sup>

On September 22, 2021, Ong filed a Respectful Manifestation and Motion for House Arrest. However, the Committee did not act on the

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“IN RE: 2020 COA REPORT AND OTHER ISSUES RELATED TO BUDGET UTILIZATION OF THE DEPARTMENT OF HEALTH (DOH), ESPECIALLY ITS EXPENDITURES RELATED TO THE FIGHT AGAINST COVID;

Privilege Speech of Senator Risa Hontiveros entitled, “MANDATE OF THE COMMISSION ON AUDIT/INCOMPETENCE OF THE DOH”;

P.S. RES. NO. 858 xxx by Senator Juan Miguel “Migz” F. Zubiri;

P.S. RES. NO. 859 xxx by Senator Leila M. De Lima;

P.S. RES. NO. 880 xxx by Senator Risa Hontiveros

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ORDER

For testifying falsely and evasively before the Committee on September 10, 2021 and thereby delaying, impeding and obstructing the inquiry into the 2020 COA REPORT AND OTHER ISSUES RELATED TO BUDGET UTILIZATION OF THE DEPARTMENT OF HEALTH (DOH), ESPECIALLY ITS EXPENDITURES RELATED TO THE FIGHT AGAINST COVID, therefore, upon motion of the Senators Panfilo M. Lacson and Franklin M. Drilon and seconded by Senator Risa Hontiveros, the Committee hereby cites MR. LINCONN ONG in contempt and ordered arrested and detained at the Office of the Sergeant-At-Arms until such time that he gives his testimony without evasion, or otherwise purges himself of that contempt.

The Sergeant-At-Arms is hereby directed to carry out and implement this Order and make a return hereof within twenty-four (24) hours from its enforcement.

SO ORDERED.” (Emphases omitted.)

<sup>28</sup> Id. at 8.

<sup>29</sup> Id. at 25 and 395.

<sup>30</sup> Id. at 25 and 412-429.

<sup>31</sup> Id. at 25 and 432.

manifestation and motion.<sup>32</sup>

On September 24, 2021, the Committee continued with its hearings with Ong in attendance through videoconference. In the course of Ong's examination, Sen. Franklin M. Drilon (Sen. Drilon) moved, seconded by Sen. Francis Pangilinan (Sen. Pangilinan), to transfer Ong to the Pasay City Jail.<sup>33</sup>

On October 5, 2021, Ong, through counsel, filed the present petition. Thereafter, respondents filed their comment.<sup>34</sup>

On November 12, 2021, Ong filed his Motion to Resolve Prayer for *Status Quo Ante Order* or Temporary Restraining Order.<sup>35</sup>

On November 29, 2021, the Committee transferred Ong, together with Mohit, to the Pasay City Jail.<sup>36</sup>

#### *Incidents involving Yang*

According to Yang, the Committee sent a *subpoena* on August 27, 2021 to his office, PAILI Holdings Corporation (PAILI). While it required his attendance at the hearing scheduled at 1:30 p.m. that day, the receptionist of PAILI received the *subpoena* only at 8:00 a.m. of the same day. Allegedly, Yang's secretary was unable to contact Yang, who was in Subic where the telephone signal was poor, until the next day. The secretary sent an email to the Committee informing it that Yang could not be contacted on such short notice.<sup>37</sup>

Yang also alleged that he was: (1) not informed of and duly served with the *subpoena* served at PAILI on September 2, 2021; (2) not notified that he had to appear before the Committee on September 7, 2021; and (3) also not informed of the *subpoena* served at his residence at 19 Narra St., Forbes Park, Makati City on September 3, 2021 because he was in Davao and there was no one in his Makati City residence duly authorized to

<sup>32</sup> Id. at 433.

<sup>33</sup> However, the Order for Ong's transfer to the Pasay City Jail was not implemented right away due to humanitarian considerations as he had just recovered from Covid-19; id. at 433, 443.

<sup>34</sup> Id. at 382-478.

<sup>35</sup> Id. at 1128-1137.

<sup>36</sup> Ramos, C.M. (November 29, 2021), Senate transfers Pharmally's Dargani, Ong to Pasay City Jail Inquirer News, *Inquirer.Net* <<https://newsinfo.inquirervisited.net>> (last accessed on June 7, 2022).

<sup>37</sup> *Rollo* (G.R. No. 257916), pp. 8-9.

receive court processes in his behalf.<sup>38</sup>

Purportedly, Yang learned of the Committee's order for him to attend the hearing on September 7, 2021 only through friends and online news. He insisted that it was only on September 6, 2021 that he was able to hire a lawyer, who emailed the Director General of the Committee stating that "(a)lthough [Yang] has not received a copy of the *subpoena*, he has expressed his full and complete cooperation to provide information that [the] Committee may need from him in aid of legislation."<sup>39</sup> A hard copy of the letter of appearance was immediately sent to the Chairperson of the Committee.<sup>40</sup>

Nonetheless, the Committee issued a warrant for Yang's arrest in the afternoon of September 7, 2021.<sup>41</sup>

On September 10, 2021, Yang appeared before the Committee for the first time. In the course of the hearing, it issued an Order placing Yang under arrest for allegedly giving evasive answers which amounted to a contempt of the Committee.<sup>42</sup>

Thereafter, Yang attended the hearings on September 17, 21, and 24, 2021.<sup>43</sup> Subsequently, a Look-Out Bulletin was issued against Yang.<sup>44</sup>

On November 9, 2021 the Committee, through its Director-General, issued the letter-request asking Yang to supply documents and information pertaining to his property and business interests.<sup>45</sup>

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<sup>38</sup> Id. at 9.

<sup>39</sup> Id.

<sup>40</sup> Id. at 9-10.

<sup>41</sup> Id. at 10.

<sup>42</sup> Id. at 10-18.

<sup>43</sup> Id. at 20.

<sup>44</sup> Id. at 34, 361.

<sup>45</sup> Id. at 61. Specifically, the Committee required Yang to supply documents and information on:

1. ALL PROPERTY – CARS, REAL ESTATE, CORPORATIONS, TAXES PAID (ALL TAX RECORDS) PERSONAL AND CORPORATE WHICH YOU OWN BENEFICIALLY EVEN IF NOT IN YOUR NAME;
2. DETAILS OF THE LAND, THE BUILDING, EMPLOYEES OF PAI LI, FULL WIN, DCLA, OTHER CORPORATIONS/COMPANIES WHICH YOU OWN OR BENEFICIALLY OWN – INCLUDING THE EMPLOYEES' SSS, PHILHEALTH AND PAG-IBIG RECORDS;
3. INFORMATION ON THE DONATIONS WHICH YOU AND YOUR COMPANY/IES HAVE MADE TO THE PHILIPPINES – PUBLIC OR PRIVATE – WHAT, WHEN, HOW MUCH ETC.; and
4. LOCATION OF MR. JAYSON USON AND MR. GERALD CRUZ."



*The Petitions*

*G.R. No. 257401: The Ong Petition*

As grounds for his petition, Ong alleges:

I. THE RESPONDENT COMMITTEE'S ORDER OF CONTEMPT AGAINST [ONG] HAS NO CONSTITUTIONAL BASIS;

I.A. THE ASSAILED RULES, WHICH ARE MADE THE BASIS FOR THE CONTEMPT ORDER, ARE VAGUE, HAVING NO CLEAR STANDARDS AS TO WHAT CONSTITUTES "TESTIFYING FALSELY OR EVASIVELY;" [and]

I.B. [ONG's] RIGHTS...HA[VE] NOT BEEN RESPECTED, IN VIOLATION OF THE INJUNCTION UNDER SECTION 21, ARTICLE VI OF THE CONSTITUTION.

II. IN RULING ON THE FALSITY OF [ONG]'S TESTIMONY, FINDING HIM GUILTY THEREOF AND PUNISHING HIM THEREFOR, RESPONDENTS ILLEGALLY ENCROACHED UPON THE EXCLUSIVE CONSTITUTIONAL DOMAIN OF THE JUDICIARY.

III. THE RESPONDENT COMMITTEE PROCEEDED AGAINST [ONG] UNDER AN ERRONEOUS CONCEPT AND GRAVELY ABUSIVE EXERCISE OF ITS CONTEMPT POWER.<sup>46</sup>

*Senate's Comment*

The Senate filed its Comment<sup>47</sup> contending that the validity or constitutionality of the Senate Rules on Inquiries may not be looked into by the court because it constitutes a political question. It likewise asserts that Section 18 of the rules is neither vague nor impermissibly broad, and has complied with the requirements of Section 21, Article VI of the 1987 Constitution. Finally, it finds no sufficient ground to justify the grant of status *quo ante* order, TRO or preliminary injunction.<sup>48</sup>

<sup>46</sup> *Rollo* (G.R. No. 257401), pp. 26-27.

<sup>47</sup> *Id.* at 382-478.

<sup>48</sup> *Id.* at 445-446.

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*G.R. No. 257916: The Yang Petition*

Meanwhile, Yang insists that the Committee committed grave abuse of discretion amounting to lack or excess of jurisdiction:

## I.

x x x WHEN IT ISSUED ARREST ORDERS DESPITE LACK OF LEGAL BASIS THEREFOR, AS WELL AS CAUSING THE ISSUANCE OF A LOOKOUT ORDER DESPITE THE ABSENCE OF ANY CRIMINAL CHARGES FILED AGAINST THE PETITIONER IN COURT.

## II.

x x x IN THE ARBITRARY APPLICATION OF ITS INTERNAL RULES THAT HAS EFFECTIVELY DEPRIVED HIM OF HIS CONSTITUTIONAL RIGHT TO COUNSEL.

## III.

x x x BY ITS HIGH-HANDED AND OPPRESSIVE CONDUCT OF PROCEEDINGS IN VIOLATION OF HIS RIGHT TO BE HEARD. SPECIFICALLY, PETITIONER QUESTIONS THE RESPONDENT SENATE COMMITTEE TREATMENT OF RESOURCE PERSONS BEFORE IT, SUCH AS PETITIONER, WORSE THAN AN ACCUSED IN A CRIMINAL PROCEEDING.

## IV.

x x x BY COMPELLING HIM TO ANSWER QUESTIONS AND TO SUBMIT DOCUMENTS AND INFORMATION THAT ARE BEYOND THE SCOPE OF THE LEGISLATIVE INQUIRY AND IN CLEAR VIOLATION OF HIS RIGHTS TO PRIVACY.<sup>49</sup>

*Senate's Comment*

The Senate filed its Comment asserting that: (1) the Committee legally cited Yang in contempt, ordered his arrest and detention, and validly caused the issuance of a lookout order against him; (2) the Committee respected Yang's constitutional rights as required under the Senate rules; (3) the questions propounded to Yang and the documents and information required from him during the proceedings are within the scope of legislative inquiry and in consonance with his right to privacy; and (4) there was a plain, speedy and adequate remedy available to Yang which he should have exhausted before filing the instant suit with the court.<sup>50</sup>

<sup>49</sup> *Rollo* (G.R. No. 257916), pp. 35-36.

<sup>50</sup> *Id.* at 517.

*OSG's Comment on the Petitions*

Invoking the mandate of its office, the Office of the Solicitor General (OSG) deems it necessary to intervene in the case as the present petitions raise the issue of constitutionality of the Senate Rules, as well as a transgression of the Bill of Rights.<sup>51</sup> The participation of the OSG is anchored on Section 35(3), Chapter 12, Title III, Book IV of the Administrative Code of 1987, entitling it to be heard in any action which involves the validity of a statute, executive order or regulation, or any government regulation.<sup>52</sup>

The OSG argues:

- I. Direct resort to this Honorable Court is proper because the instant Petitions present a matter of transcendental importance.<sup>53</sup>
- II. The Petitions fall within this Honorable Court's expanded power of judicial review.<sup>54</sup>
- III. There is grave abuse of discretion when a branch of government has exceeded the exercise of its powers vested under the Constitution.
  - A. The Respondents' powers under Secs. 21 and 22, Article VI of the 1987 Constitution arise from the exercise of the different functions of Congress.<sup>55</sup>
  - B. The Respondents' inquiries are pursuant to the power to conduct question hour, which is exercised as an oversight function against the Executive Department.<sup>56</sup>
  - C. The Senate (i) Rules of Procedure Governing Inquiries in Aid of Legislation, including any amendatory Resolution; and (ii) Rules of the Committee on Accountability of Public Officers and Investigations of the present 18<sup>th</sup> Congress must be duly published.<sup>57</sup>
  - D. The power of contempt does not include the power to

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<sup>51</sup> *Rollo* (G.R. No. 257401), p. 1671.

<sup>52</sup> *Id.* at 1672.

<sup>53</sup> *Id.* at 1677.

<sup>54</sup> *Id.* at 1681.

<sup>55</sup> *Id.* at 1689.

<sup>56</sup> *Id.* at 1706.

<sup>57</sup> *Id.* at 1712.

order arrest during the conduct of legislative investigation.<sup>58</sup>

- IV. The constitutional rights of the resource persons must be respected during Senate Investigations.<sup>59</sup>
  - A. The Senate Rules, in so far as they punish as contempt the act of “testifying falsely or evasively,” are unconstitutional for being vague and lacking clear standards.<sup>60</sup>
  - B. The hearings conducted by Respondents should always uphold the right to due process of the resource persons.<sup>61</sup>
  - C. The hearings conducted by Respondents should respect the right against self-incrimination of the resource persons.<sup>62</sup>
  - D. The Respondents’ power to detain, which is corollary to the power of contempt and compulsory processes, arises only in the conduct of inquiry in aid of legislation.<sup>63</sup>
- V. Respondents encroached upon the exclusive domain of the Executive and Judiciary when they issued the assailed Order.<sup>64</sup>
- VI. Here, there is a basis to state that Ong had complied with requisites for the issuance of injunctive reliefs.<sup>65</sup>

On June 7, 2022, respondents filed a Manifestation and Motion praying that the petitions be dismissed on the ground of mootness, by reason of the voluntary release of Ong pursuant to the Order of Release issued by Sen. Pres. Sotto III, and the termination of the subject legislative inquiry.

### *Issues*

Finding no procedural infirmities in the petitions, the Court narrows down the inquiry to the following substantive issues:

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<sup>58</sup> Id. at 1718.

<sup>59</sup> Id. at 1727.

<sup>60</sup> Id. at 1729.

<sup>61</sup> Id. at 1733.

<sup>62</sup> Id. at 1742.

<sup>63</sup> Id. at 1749.

<sup>64</sup> Id. at 1760.

<sup>65</sup> Id. at 1763.

(A) In the Ong Petition (G.R. No. 257401):

- (1) Whether the assailed rules should be declared unconstitutional; and
- (2) Whether the Contempt Order dated September 10, 2021 against Ong should be nullified; and

(B) In the Yang Petition (G.R. No. 257916):

- (1) Whether the Arrest Orders dated September 7, 2021 and September 10, 2021 and the Request for Issuance of Lookout Bulletin were issued without legal bases;
- (2) Whether Yang was deprived of his rights to counsel and to be heard; and
- (3) Whether Yang was compelled to answer questions and submit documents and information that are beyond the scope of the legislative inquiry, in violation of his right to privacy.

*The Court's Ruling*

Both petitions are partly meritorious.

Preliminarily, it bears noting that on June 30, 2022, the 18th Congress of the Philippines conducted its final session which in effect terminated all proceedings of the House of Representatives and the Senate, including the Senate Committee's inquiry pertinent to the case. In their Manifestation and Motion, respondents aver that the petitions had been rendered moot by the voluntary release of Ong pursuant to the Order of Release issued by Sen. Pres. Sotto III and the termination of the subject legislative inquiry.

“A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no

practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition.”<sup>66</sup> “Without any legal relief that may be granted, courts generally decline to resolve moot cases, lest the ruling result in a mere advisory opinion.”<sup>67</sup> In *Balag v. Senate of the Philippines*,<sup>68</sup> the Court explained:

The existence of an actual case or controversy is a necessary condition precedent to the court’s exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. In the negative, a justiciable controversy must neither be conjectural nor moot and academic. There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts.<sup>69</sup>

However, the moot and academic principle does not automatically dissuade the courts from resolving a case,<sup>70</sup> under the following instances: (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review.<sup>71</sup> The Court finds that the issues raised in the petitions fall under the exceptions.

## I

In resolving the issues raised, the Court deems it necessary to discuss the nature and incidents of the Senate’s power to conduct inquiries in aid of legislation and its contempt power.

### *Power of the Legislature to Conduct Inquiries in Aid of Legislation*

<sup>66</sup> *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, 728 Phil. 535, 540 (2014).

<sup>67</sup> *Express Telecommunications Co., Inc. v. AZ Communications, Inc.*, G.R. No. 196902, July 13, 2020, citing *Republic v. Moldex Realty, Inc.*, 780 Phil. 553, 560 (2016).

<sup>68</sup> 835 Phil. 451 (2018).

<sup>69</sup> *Id.* at 461, citing *Lim Bio Hian v. Lim Eng Tian*, 823 Phil. 12, 16-17 (2018).

<sup>70</sup> *Id.* at 462.

<sup>71</sup> *Lim Bio Hian v. Lim Eng Tian*, *supra* at 17 (2018), citing *Rep. of the Phils. v. Moldex Realty, Inc.*, 780 Phil. 553, 561 (2016).

Time and again, the Court has affirmed the power of the Legislature to conduct investigation. The Legislature's power of inquiry, being broad, encompasses everything that concerns the administration of existing laws as well as proposed or possibly needed statutes.<sup>72</sup>

In *Arnault v. Nazareno*<sup>73</sup> (*Arnault*), which was decided when the 1935 Constitution was in effect, the Court recognized an implied legislative power to conduct investigations with the necessary process to enforce it; this is to the end that it may legislate wisely or effectively by being able to compel the availability of information which will serve as basis for legislation. The Court discussed:

Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislations is intended to effect or change; and where the legislative body does not itself possess the requisite information—which is not infrequently true—recourse must be had to others who do possess it. *Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed.* The fact that the Constitution expressly gives to Congress the power to punish its Members for disorderly behaviour, does not by necessary implication exclude the power to punish for contempt any other person.<sup>74</sup> (Italics supplied; citations omitted.)

While the power of legislative investigation was only implicit under the 1935 Constitution, the 1973 Constitution and the 1987 Constitution are explicit as to the existence of such power.<sup>75</sup>

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<sup>72</sup> *In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Sabio v. Senator Gordon*, 535 Phil. 687, 705 (2006), citing *Watkins v. United States*, 354 U.S. 178 (1957), pp. 194-195.

<sup>73</sup> 87 Phil. 29 (1950).

<sup>74</sup> *Id.* at 45.

<sup>75</sup> Bernas S.J., *The 1987 Constitution of the Republic of the Philippines*, 2003 Ed. at p. 737.

See also Section 12, Article VIII of the 1973 Constitution provides:

SEC. 12. (1) There shall be a question hour at least once a month or as often as the Rules of the Batasang Pambansa may provide, which shall be included in its agenda, during which the Prime Minister, the Deputy Prime Minister or any Minister may be required to appear and answer questions and interpellation by Members of the Batasang Pambansa. Written questions shall be submitted to the Speaker at least three days before a scheduled question hour. Interpellations shall not be limited to the written questions, but may cover

Section 21, Article VI of the 1987 Constitution provides:

Section 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

The power of the Legislature and its committees to conduct inquiries in aid of legislation has been upheld in *The Senate Blue Ribbon Committee v. Hon. Majaducum*,<sup>76</sup> *Senate of the Philippines v. Exec. Sec. Ermita*<sup>77</sup> (*Ermita*), *In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Sabio v. Senator Gordon*<sup>78</sup> (*Sabio*), *Standard Chartered Bank v. Senate Committee on Banks*<sup>79</sup> (*Standard Chartered Bank*), *Neri v. Senate Committee on Accountability of Public Officers and Investigations*<sup>80</sup> (*Neri*), and *Romero II v. Senator Estrada*.<sup>81</sup> This means that the mechanisms available to both the Senate and the House of Representatives, in order that they may effectively perform their legislative functions, are also available to their respective committees.<sup>82</sup>

### *Senate's concomitant Power of Contempt*

Concomitant to the power of the Legislature to conduct inquiries in aid of legislation is its power of contempt *impliedly* provided under the 1987 Constitution. Unlike the Legislature's power to make investigations in aid of legislation, there is no provision in the 1987 Constitution expressly granting either the Senate or the House of Representatives with the authority or process *to enforce* this power of inquiry. Nevertheless, it must be emphasized that the Legislature's power of contempt is inherent

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matters related thereto. The agenda shall specify the subjects of the question hour. When the security of the State so requires and the President so states in writing, the question hour shall be conducted in executive session.

(2) The Batasang Pambansa or any of its committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

<sup>76</sup> 455 Phil. 61 (2003).

<sup>77</sup> 522 Phil. 1 (2006).

<sup>78</sup> *In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Sabio v. Senator Gordon*, supra note 72.

<sup>79</sup> 565 Phil. 744 (2007).

<sup>80</sup> 586 Phil. 135 (2008).

<sup>81</sup> 602 Phil. 312 (2009).

<sup>82</sup> *In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Sabio v. Senator Gordon*, supra note 72 at 704-705, citing Bernas S.J., *The 1987 Constitution of the Republic of the Philippines*, 2003 Ed., p. 739.



and arises by implication.<sup>83</sup> This coercive process is essential to the Legislature's discharge of its functions. This power permits either House of the Legislature to perform its duties without impediment<sup>84</sup> as it enables the Senate or the House of Representatives to legislate wisely or effectively because they have the power to compel the availability of information necessary in shaping legislation.<sup>85</sup>

Indeed, the exercise of the contempt power by the Legislature is anchored on the principle of *self-preservation*.<sup>86</sup> As that branch of the government vested with the legislative power, it can assert its authority and punish contumacious acts against it *independently* of the Judicial Branch.<sup>87</sup> Such power of the Legislature is *sui generis* as it "attaches not to the discharge of legislative functions *per se* but to the character of the Legislature as one of the three independent and coordinate branches of government."<sup>88</sup>

#### *Power to Arrest Concomitant to the Senate's Contempt Power*

Strictly speaking, the power to arrest a witness is not specified under the Senate Rules of Procedure. Such Rules only cite the explicit power of the Senate to detain a witness. The Court, however, views that an arrest is necessary to carry out the coercive process of compelling attendance, testimony, and production of documents relevant and material in a legislative inquiry.

As observed in *Arnault*, "[e]xperience has shown that mere requests for [relevant] information are often unavailing, and also that information which is volunteered is not always accurate or complete; *so some means of compulsion is essential to obtain what is needed*."<sup>89</sup> Indeed, the power of the Legislature to conduct inquiries in aid of legislation is intended to

<sup>83</sup> *Lopez v. De los Reyes*, 55 Phil. 170, 185 (1930).

<sup>84</sup> *Id.* at 180.

<sup>85</sup> See *Arnault v. Nazareno*, supra note 73 at 45.

<sup>86</sup> *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panglungsod of Dumaguete*, 239 Phil. 403 (1987); see also *Standard Chartered Bank v. Senate Committee on Banks*, 565 Phil. 744, 761 (2007).

<sup>87</sup> *Standard Chartered Bank v. Senate Committee on Banks*, supra note 79 at 761 (2007), citing *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panglungsod of Dumaguete*, supra at 412, further citing *Arnault v. Balagtas*, 97 Phil. 358, 370 (1955).

<sup>88</sup> *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panglungsod of Dumaguete*, supra at 412; See also *Standard Chartered Bank v. Senate Committee on Banks*, supra note 79 at 761.

<sup>89</sup> *Arnault v. Nazareno*, supra note 73 at 45, citing *McGrain v. Daugherty*, 273 U.S., 135; 71 L. ed., 580; 50 A.L.R., 1.

be full and complete,<sup>90</sup> according it the processes necessary to carry out its core function of legislation. The Senate, or the Congress as a whole, may effectively and wisely legislate *for as long as it may compel the availability of information which in turn will be basis of a proposed law emanating from the proceedings in aid of legislation*. The Congress is not precluded from causing the appearance of a resource person who is not before it. As long as the testimony of a resource person is primordial in the Legislature's inquiry in aid of legislation, then any House of Congress or its committees may compel, by way of an arrest, his or her appearance in the inquiry proceedings. Necessarily, compelled testimony connotes truthful declaration by a resource person subject of the legislative inquiry.

In *Arnault*, the Court stressed the power of the Senate to conduct investigations along with necessary processes to enforce it. Being inherent and necessary for it to effectively perform its function of inquiry in aid of legislation,<sup>91</sup> this power to compel attendance, testimony, and production of documents relevant and necessary in a legislative inquiry need not find textual basis in the Senate Rules of Procedure Governing Inquiries in Aid of Legislation. As the grant of legislative power which includes the power to conduct inquiries in aid of legislation is intended to be complete, *i.e.*, without need to resort to judicial process in order that the Legislature may be able to perform its function, it follows that the Legislature likewise has the power to resort to mechanisms to obey its processes. Indeed, depriving the Senate of this inherent and necessary power to compel a witness to appear, give a truthful testimony and produce documents before it will amount to a serious handicap to its Constitutional function to gather information relevant and material to its legislative inquiries.

*Limitations on the Powers of  
Legislative Investigation and  
Contempt*

As provided in Section 21, Article VI of the 1987 Constitution, however, the power of legislative investigation is subject to three limitations: (1) the inquiry must be "in aid of legislation;" (2) the inquiry must be conducted in accordance with its duly published rules of procedure; and (3) "[t]he rights of persons appearing in or affected by such inquiries shall be respected."<sup>92</sup> Also, where there is factual basis for the contempt, the resource person's detention should only last until the

<sup>90</sup> *Arnault v. Balagtas*, 97 Phil. 358, 370 (1955).

<sup>91</sup> *Id.*

<sup>92</sup> Bernas S.J., *The 1987 Constitution of the Republic of the Philippines*, 2003 Ed., p. 737.

termination of the legislative inquiry.<sup>93</sup>

Here, the Court finds that while satisfying the first two limitations, *the Committee failed to accord petitioners their rights* relative to the conduct of its proceedings. The scope and nature of these rights, as well as the Committee's violation thereof, is thoroughly addressed following the discussion of the first two limitations.

*First Limitation: The subject hearings were conducted in aid of legislation.*

As earlier mentioned, PSR Nos. 858, 859, and 880, together with the privilege speech of Sen. Hontiveros,<sup>94</sup> were filed and referred to the Committee which called for the conduct of an inquiry in aid of legislation.<sup>95</sup> Notably, all these Senate Resolutions underscored that they are proposed *precisely to conduct an inquiry in aid of legislation* as regards the vaccination program and procurement of COVID-19 Vaccines (PSR No. 858), COA findings on unspent and/or misused government funds (PSR No. 859), and payment claims issues between the Philhealth and private hospitals (PSR No. 880). The *Subpoenae Ad Testificandum*<sup>96</sup> referred not only to the COA Report but also to PSR Nos. 858, 859 and 880, together with the privilege speech of Sen. Hontiveros.<sup>97</sup>

The Court has also held that Senate investigations of government transactions are proper exercises of the power of inquiry. Being related to the expenditure of public funds of which the Legislature is the guardian, such transactions involve government agencies created by the Legislature and officers, whose positions are within the power of Legislature to regulate or even abolish.<sup>98</sup>

The Court finds proper the Senate's explanation that because the National Expenditure Program (NEP) for 2022 had not yet been released by the DBM to the Legislature when the subject COA Report came out in July 2021, it was fitting that the Committee hear and investigate the findings in the COA Report on the DOH, as early as August 18, 2021. This was necessary to determine if the funds appropriated under Republic

<sup>93</sup> *Balag v. Senate of the Philippines*, supra note 68 at 475.

<sup>94</sup> See Senate Journal, Session 6, August 4 & 23, 2021, *rollo* (G.R. No. 257401), pp. 479-481.

<sup>95</sup> *Id.* at 386-387, 459.

<sup>96</sup> *Id.* at 493-497.

<sup>97</sup> *Id.* at 459.

<sup>98</sup> *Senate of the Philippines v. Exec. Sec. Ermita*, supra note 77 at 35.

Act Nos. (RA) 11469<sup>99</sup> and 11494<sup>100</sup> for the COVID-19 pandemic were properly utilized. The inquiry of the Committee was necessary as the COA Report seemed to point out severe underutilization of funds, malfeasance, misfeasance and nonfeasance by government officials in the use of the DOH funds. Given this factual milieu, the hearings of the Committee, which began on August 18, 2021, were in aid of legislation because it investigated the use of funds appropriated in RAs 11469 and 11494, *not only* as part of its oversight function, but also to look into the proposed budget of the DOH for Fiscal Year (FY) 2021 which will eventually be contained in the General Appropriations Act (GAA) that will be enacted by the Legislature.<sup>101</sup>

*Second Limitation: The assailed rules are compliant with the publication requirement of Section 21, Article VI of the 1987 Constitution.*

Section 21, Article VI of the 1987 Constitution requires that the inquiry be done in accordance with the duly published rules of procedure of the Senate or the House of Representatives, necessarily implying the constitutional infirmity of an inquiry conducted without duly published rules of procedure.<sup>102</sup>

As a rule, the Legislature is given a wide latitude to enact its own rules in view of Section 16(3),<sup>103</sup> Article VI of the 1987 Constitution.

*In Spouses Dela Paz (Ret.) v. Senate Committee on Foreign Relations,*<sup>104</sup> the Court said:

<sup>99</sup> Entitled, "An Act Declaring the Existence of a National Emergency Arising from the Coronavirus Disease 2019 (Covid-19) Situation and a National Policy in Connection Therewith, and Authorizing the President of the Republic of the Philippines for a Limited Period and Subject to Restrictions, to Exercise Powers Necessary and Proper to Carry Out the Decided National Policy and For Other Purposes, approved on March 24, 2020. Also known as the "*Bayanihan to Heal as One Act.*"

<sup>100</sup> Entitled, "An Act Providing for Covid-19 Response and Recovery Interventions and Providing Mechanisms to Accelerate the Recovery and Bolster the Resiliency of the Philippine Economy, Providing Funds Therefor, and For Other Purposes," approved on September 11, 2020.

<sup>101</sup> *Rollo* (G.R. No. 257401), p. 459.

<sup>102</sup> *Senate of the Phils. v. Exec. Sec. Ermita*, supra note 77 at 36.

<sup>103</sup> Section 16(3), Article VI of the 1987 Constitution provides:

Section 16. x x x

x x x

(3) Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days.

<sup>104</sup> 598 Phil. 981 (2009).

This provision has been traditionally construed as a grant of full discretionary authority to the Houses of Congress in the formulation, adoption and promulgation of its own rules. *As such, the exercise of this power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process.*

x x x Further, pursuant to this constitutional grant of virtually unrestricted authority to determine its own rules, the Senate is at liberty to alter or modify these rules at any time it may see fit, subject only to the imperatives of quorum, voting and publication.<sup>105</sup> (Italics supplied.)

The rule, however, does not divest the Court of its expanded jurisdiction, *i.e.*, the power to intervene whenever grave abuse of discretion amounting to lack or excess of jurisdiction is committed by any branch—the Legislature or any of its Houses in this case, or instrumentality of government.<sup>106</sup> The expanded *certiorari* jurisdiction of the Court is encapsulated in the second paragraph of Section 1, Article VIII of the 1987 Constitution which provides:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and *to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.* (Italics supplied.)

In *Neri*, the Court nullified the Senate Order, which cited Romulo L. Neri in contempt and directed his arrest and detention, after finding that the Senate Blue Ribbon Committee committed grave abuse of discretion in issuing such order. In that case, the Court noted that: (1) then Senate Blue Ribbon Committee violated the voting requirements under Section 18 of the Senate Rules on Inquiries because only a minority of the members were present during the deliberation; and (2) the Committee violated the publication requirement under the 1987 Constitution which requires that the inquiry be in accordance with the duly published rules of procedure.

<sup>105</sup> *Id.* at 986, citing *Morero v. Bocar*, 37 O.G. 445.

<sup>106</sup> *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 136-140 (2016).

The Court finds that the circumstances in the instant case are different from those in the *Neri* case. Here, Section 18<sup>107</sup> of the Senate Rules on Inquiries is compliant with the requirement under Section 21, Article VI of the 1987 Constitution: that the rules governing the conduct of inquiries in aid of legislation by the Senate or the House of Representatives *be duly published*.

In the present case, the Senate Rules on Inquiries was unanimously adopted by the Senate as Resolution (Reso.) No. 5 on August 9, 2010 at a session where a quorum was present.<sup>108</sup> Section 24 of Reso. No. 5, on Effectivity, states:

SEC 24. *Effectivity*. – These Rules shall take effect after seven (7) days following complete publication in two (2) newspapers of general circulation and shall remain in force until amended or repealed. A copy of these Rules shall be posted in the official website of the Senate of the Philippines.

The Senate Rules on Inquiries was then published in the August 11, 2010 issues of *Malaya* and *Manila Bulletin*, two (2) newspapers of general circulation.<sup>109</sup> It was also posted in the Senate's website: *www.senate.gov.ph*. The rules took effect on August 18, 2010 and remained in force until amended.<sup>110</sup>

Section 18 of the Senate Rules on Inquiries was subsequently amended by Reso. No. 145 which was unanimously adopted by the Senate on February 6, 2013 at a session where a quorum was present.<sup>111</sup> Reso. No. 145, states that the amendment to the Senate Rules on Inquiries “shall take effect immediately upon publication in two (2) newspapers of general circulation and shall remain in force *until amended or repealed*.”<sup>112</sup>

<sup>107</sup> Section 18 of the Senate Rules on Inquiries provides: “The Committee, by a vote of majority of all its members, may punish for contempt any witness before it who disobey any order of the Committee or refuses to be sworn or to testify or to answer proper questions by the Committee or any of its members.”

<sup>108</sup> *Rollo* (G.R. No. 257401), pp. 59 and 448.

<sup>109</sup> *Id.* at 448.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 62.

Resolution No. 145 states:

“*Resolved, further*, That this Resolution shall take effect immediately upon publication in two (2) newspapers of general circulation and shall remain in force until amended or repealed. A copy of this Resolution shall be posted in the official website of the Senate of the Philippines.”

Reso. No. 145 was published in the February 18, 2013 issues of the Manila Bulletin and Daily Tribune, two (2) newspapers of general circulation. It was also posted in the Senate's website.<sup>113</sup>

Simply stated, the adoption and amendment of the Senate Rules on Inquiries complied with the requirements of quorum, voting, and publication as stated in Reso. Nos. 5 and 145.

It bears emphasis that unlike the scenario in *Neri*, here, the *Senate Rules on Inquiries and its amendments* state that the rules “shall remain in force until amended or repealed.”<sup>114</sup> Thus, the Senate Rules on Inquiries remain effective although Reso. No. 5<sup>115</sup> and Reso. No. 145, which amended Section 18, were adopted not by the present Senate 18<sup>th</sup> Congress but by its earlier counterparts.

Following the assailed rules, there was a quorum at the

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<sup>113</sup> Id. at 448-449.

<sup>114</sup> In *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, supra note 80 at 198-199, the Court ruled:

However, it is evident that the Senate has determined that its main rules are intended to be valid from the date of their adoption until they are amended or repealed. Such language is conspicuously absent from the *Rules*. The *Rules* simply state “(t)hese Rules shall take effect seven (7) days after publication in two (2) newspapers of general circulation.” The latter does not explicitly provide for the continued effectivity of such rules until they are amended or repealed. In view of the difference in the language of the two sets of Senate rules, it cannot be presumed that the Rules (on legislative inquiries) would continue into the next Congress. The Senate of the next Congress may easily adopt different rules for its legislative inquiries which come within the rule on unfinished business.

The language of Section 21, Article VI of the Constitution requiring that the inquiry be conducted in accordance with the duly published rules of procedure is categorical. It is incumbent upon the Senate to publish the rules for its legislative inquiries in each Congress or otherwise make the published rules clearly state that the same shall be effective in subsequent Congresses or until they are amended or repealed to sufficiently put public on notice.

If it was the intention of the Senate for its present rules on legislative inquiries to be effective even in the next Congress, it could have easily adopted the same language it had used in its main rules regarding effectivity.

Lest the Court be misconstrued, it should likewise be stressed that not all orders issued or proceedings conducted pursuant to the subject *Rules* are null and void. Only those that result in violation of the rights of witnesses should be considered null and void, considering that the rationale for the publication is to protect the rights of witnesses as expressed in Section 21, Article VI of the Constitution. *Sans* such violation, orders and proceedings are considered valid and effective.

<sup>115</sup> Section 24 of Resolution No. 5 on Effectivity states:

“These Rules shall take effect after seven (7) days following complete publication in two (2) newspapers of general circulation and shall remain in force until amended or repealed. A copy of these Rules shall be posted in the official website of the Senate of the Philippines.”

commencement of the hearings and acting throughout. On September 10, 2021, in particular, when the assailed Contempt Order was issued, those present at the start and throughout the proceedings were Sen. Pres. Sotto III, Senators Gordon, Villanueva, Lacson, Marcos, Hontiveros, Revilla, Pangilinan, Zubiri, Villar, Tolentino, Pacquiao, and Drilon.<sup>116</sup> There were therefore more than seven Senators present. Such attendance was more than 1/3 of all the regular members plus its *ex officio* members as required under Section 4 of the Senate Rules.<sup>117</sup>

## II

### *The Committee's Grave Abuse of Discretion*

*Third Limitation: The Committee failed to accord petitioners their Constitutional right to due process relative to the conduct of its proceedings. The Contempt Order dated September 10, 2021 finding that Ong and Yang testified falsely and evasively lacks factual basis.*

As stated earlier, while the Committee satisfied the first and second constitutional limitations of its power to conduct the subject inquiry in aid of legislation, *it failed to accord petitioners their rights* in the conduct of its proceedings, more in the exercise of its contempt power. These rights refer to no other than those enshrined under the Bill of Rights, more particularly to the right to due process and the right against unreasonable seizures under Sections 1 and 2, Article III of the 1987 Constitution, *viz.:*

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

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under

<sup>116</sup> *Rollo* (G.R. No. 257401), p. 578.

<sup>117</sup> *Id.* at 53. Section 4 of Resolution No. 5, Rules of Procedure Governing Inquiries in Aid of Legislation, as amended, provides:

Section 4. *Quorum.* – One third of all the regular members of the Committee shall constitute a quorum but in no case shall it be less than two. The presence of *ex officio* members may be considered in determining the existence of a quorum.”



oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The violation and disregard of petitioners' rights were brought about by the Senate's exercise of its power of contempt *punishing* the act of "*testifying falsely or evasively*," under the assailed rules, the pertinent provisions of which read:

[Section 18 of Senate Rules on Inquiries]

"SEC. 18. *Contempt.* —

(a) The Chairman with the concurrence of at least one (1) member of the *Committee*, may punish or *cite in contempt any witness before the Committee* who disobeys any order of the Committee or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, *testifies falsely or evasively*, or who unduly refuses to appear or bring before the Committee certain documents and/or object evidence required by the Committee notwithstanding the issuance of the appropriate subpoena therefor. x x x.

"A contempt of the Committee shall be deemed a contempt of the Senate. *Such witness may be ordered by the Committee to be detained* in such place as it may designate *under the custody of the Sergeant-at-Arms* until he/she agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself/herself of that contempt.

"[(b) A report of the detention of any person for contempt shall be submitted by the Sergeant-at-Arms to the Committee and the Senate."<sup>118</sup> (Italics supplied)

[Section 6, Article 6 of the Rules of the Senate Blue Ribbon Committee]

SECTION 6. *Contempt.* — (a) The Committee, by a vote of a majority of all its members, may punish for contempt any witness before it who disobeys any order of the Committee, including refusal to produce documents pursuant to a *subpoena duces tecum*, or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, *testifies falsely or evasively*.

A contempt of the Committee shall be deemed a contempt of the Senate. Such witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the

<sup>118</sup> Id. at 61.

Sergeant-at-Arms until he agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself on that contempt.

(b) A report of the detention of any person for contempt shall be submitted by the Sergeant-at-Arms to the Committee and the Senate.<sup>119</sup> (*Italics supplied and in the original; underscoring in the original.*)

*First*, the Committee ascribed *evasiveness* to Ong in answering its queries relating to the following: the agreement between him and/or Pharmally, on the one hand, and Yang, on the other; and the payment made to the suppliers of PPEs and the nature of the agreement with said suppliers. The Committee referred to the excerpts of the September 10, 2021 Transcript of Stenographic Notes (TSN), as follows:

SEN. LACSON. Linconn, naririnig mo lahat iyong sinabi ni Mr. Yang? Maliwanag?

MR. ONG. Yes po. Yes po. Opo, opo.

SEN. LACSON. Ano ang masasabi mo doon sa kanyang pahayag na ang role lang niya in-introduce ka niya doon sa apat na Chinese suppliers, wala na siyang kinalaman at all? Ikaw na lahat ang nakipagdeal. Ikaw nakipag-transact x x x.

MR. ONG. Mr. Chairman, totoo po iyon na may ipinapakilala si Mr. Michael Yang na mga suppliers at iyong mga friends na tumulong para dito sa PPE project. Totoo po iyon.

SEN. LACSON. Iyong lang ang role niya, hindi na siya nakialam pagkatapos ka maipakilala sa mga suppliers?

MR. ONG. *I am not privy what's their discussion, pero may ipinapakilala talaga siya. Kung ano iyong discussion nila, hindi ko alam.*

SEN. LACSON. Hindi maliwanag, ano? Okay.

Ang sabi ni Mr. Yang, ang role niya lang ipinakilala sa iyo iyong mga tao sa China na kakilala niya. Pagkatapos, wala na siyang kinalaman, ikaw na lahat ang nakipag-deal doon sa mga suppliers. Is that true?

MR. ONG. Mr. Chair, nakikipag-usap talaga kami isa mga supplier na ipinakilala niya. Yes po.

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<sup>119</sup> Id. at 67-68.

SEN. LACSON. Hindi. Ang tinatanong ko, wala na ba siyang kinalaman? Umalis na siya, kayo na lang ang nagtuloy-tuloy na nagusap at hindi na nakialam si Mr. Yang?

MR. ONG. Hind ko—well, paano itong hindi—

SEN. LACSON. Iyong diretsong sagot lang, Mr. Linconn.

MR. ONG. Sige po, Mr. Chairman. Ano po ulit iyong tanong ninyo para maintindihan ko nang maayos at masagot ko nang maayos?

SEN. LACSON. Ganito ang flow. Sabi ni Mr. Yang, ang papel lang niya, ipinakilala ka sa apat na suppliers from China...

MR. ONG. Opo, opo.

SEN. LACSON. ...at wala na siyang ginawang iba pa. Ikaw na lahat ang nagpatuloy kung papaano makipagtransaksyon, kung papaano tumanggap ng supplies at makipag-deal doon sa mga suppliers na sinasabi niyang pinakilala lamang sa iyo.

MR. ONG. In addition to that, Mr. Chair, *he also guarantees for us. Nagga-guarantee sila para sa amin* kasi totoo po iyong analysis ni Mr. Chairman na medyo challenging talaga pagdating sa financial.

x x x x

SEN. LACSON. Thank you, Mr. Chairman.

Dahil sinabi mo na wala nang kinalaman si Mr. Yang kundi maggarantiya, *papaano mo binabayaran iyong mga Chinese suppliers? LC, money transfer or cash? Papaano mo binayaran sila? Kasi malaking halaga ito.*

MR. ONG. Yes po, Mr. Chair. May mga portion na kami na nagdiretso nagbayad sa mga suppliers dahil mayroon po naman kaming mga pondo sa amin, at siyempre, *mga savings ng mga incorporators and partners. And then there are certain items that we don't have enough funds to settle. So, Mr. Michael Yang guarantees for us.*

SEN. LACSON. So, hindi totoo na pinakilala ka lang at tapos na. Tuloy-tuloy ang kanyang participation by way of continuously guaranteeing sa mga suppliers na babayaran sila. Parang utang. Sabihin na natin na credit.

MR. ONG. Mr. Chairman, I think medyo may na-miss si Interpreter kanina na *I think Mr. Michael Yang also mentioned that he guaranteed for us.*

SEN. LACSON. No, guarantee, meaning salita lamang, laway lang na, "Ito si Mr. Ong, kaya kayong bayaran nito." Iyon lang. Ikaw

lahat ang nagbabayad. *Ang tanong ko sa iyo, how did you pay the suppliers? Money transfer, LC?*

MR. ONG. Iyong mga ibang supplier namin talaga nagta-transfer talaga kami. Wala pa naman pong LC noong time na iyan. Tapos may mga ibang supplier na hindi namin kayang bayaran, *humihingi na po kami ng tulong kay Mr. Michael Yang, which he guaranteed with the supplier na pag nakatanggap po kami ng bayad from the government and then that is the time we pay na lang.*

X X X X

MR. ONG. Mr. Chairman, noong time na iyon, actually we are expecting the project to be very quick. So, iyon po, humingi talaga kami ng tulong kay Mr. Michael Yang.

X X X X

SEN. LACSON. Hindi. Hindi talaga madali.

Alam mo, Linconn, hindi nga kapani-paniwala na ganoon kadali ang transaksyon involving billions of pesos Iyon ang sinabi ko. Na garantiya lang ni Mr. Yang darating iyong supply ninyo at sigurado na kayong makakasingil. Ngayon, paano magagarantiyahan ni Mr. Yang na makakasingil kayo kaagad para mabayaran iyong mga sinu-supply ng mga Chinese firms, iyong apat na Chinese firms?

MR. ONG. Mr. Chair, I cannot answer for Mr. Michael Yang.

SEN. LACSON. Iyon nga, nagtuturuan na kayong dalawa ngayon. Sabi ni Mr. Yang ikaw ang diretsong nakipagtransaksyon diyan sa mga Chinese firms at siya lang ang nagpakilala. Ngayon, hindi ka privy sa pag-uusap ni Michael Yang doon sa mga Chinese suppliers. Ang sinasabi naman ni Mr. Yang, hindi sya privy sa pakikipag-usap mo sa mga Chinese suppliers. Now, which is the truth?

MR. ONG. The truth is talagang, Mr. Chairman, *tumulong talaga po si Mr. Michael Yang, and then I think he is really connected with—in China. Tapos po, mayroon naman po kaming MOA noong time na iyan, so I think it is also a good proof and boost of confidence to these suppliers.*

SEN. LACSON. Yes, I know that. But this is a government transaction. Hindi ito yung bilihan, nagkita tayo sa isang lugar, sa isang restaurant, pinakilala ko sa iyo iyong supplier at naniwala iyong supplier, sinuplyan ka ng kung anoman iyong pinag-uusapan ninyong bilihan. This involves billions of pesos. Sabi ko nga, hindi ganoon kasimple na isang garantiya pagbibigyan ka ng suppliers. Ang sabi ni Mr. Yang, hindi niya na alam kung papaano kayo nag-usap noong suppliers. Ang sinasabi mo ngayon, hindi mo na alam kung papaano

nakipag-usap si Mr. Yang sa mga suppliers. Ang tanong ko, alin ang totoo sa dalawa?

MR. ONG. Totoo po iyon na pagdating sa negotiation ng mga delivery at pricing, kami na po talaga ni supplier ang nagpa-finalize. Totoo po iyon. *At inaamin ko rin po na pagdating sa mga bayaran, we also need Mr. Michael Yang's guarantee.*

SEN. LACSON. Parang... paniwalaan iyan, Linconn, ano. Kasi napakalaking halaga nito at government transaction pa ito para isimplify ninyo ng ganoon ang inyong pakikipag-usap.

So, wala kayong LC?

MR. ONG. Ano po? LC po? Wala po.

x x x x

SEN. LACSON. Do you have documents to show your proof of payment doon sa mga suppliers?

MR. ONG. *We have all those documents as long as it's--wala naman pong rights or—maba-violate sa amin, we are more than willing to cooperate.*

SEN. LACSON. Okay. How much in total did you pay the four suppliers? Doon sa mga dumating, iyong na-procure ninyo and supplied to the PS-DBM, magkano iyong binayaran ninyo sa mga suppliers?

MR. ONG. *Mr. Chairman, wala po kasi sa amin iyong mga --sa akin, wala talaga sa akin ang record. I think I have to access our accounting records.*

SEN. LACSON. *No. But ikaw ang nakikipag-usap sa mga suppliers, may idea ka kung magkano iyong presyo na binayaran mo doon, hindi ba?*

MR. ONG. *Mr. Chairman, kasi medyo ano po iyon, trade secret na iyon. Parang hindi po kami komportable na ibulgar na po sa publiko.*

x x x x

SEN. DRILON. x x x these are public funds. These are subject to audit by the COA. And even if you do not testify, COA has the power to inquire. x x x

x x x x

THE CHAIRPERSON. Kaya nga, di sabihin mo na. Makikipagcooperate, tinatanong ka na, hindi mo naman sinasagot.

MR. ONG. *Mr. Chair, I myself alone cannot answer that question kasi kumpanya po kami. Allow us to have a meeting on it, tapos pag-usapan namin and we need guidance with our accountants and lawyers. Definitely, pag kinakailangan naming makipag-cooperate sa COA, gagawin po namin iyon.*

SEN. LACSON. Mr. Linconn Ong x x x x

Did you have any document x x x mayroon kayong parang joint venture agreement with Mr. Yang?

MR. ONG. We do have agreement po.

SEN. LACSON. Yes. Do you have a copy of that agreement?

MR. ONG. I don't have it with me, Mr. Chairman.

SEN. LACSON. What kind of agreement do you have with Mr. Yang?

MR. ONG. Hindi ko po talaga maalala noong, noong mga—specific content na iyan, Mr. Chairman, but sana po maintindihan ninyo na kami po, sa community naming minsan—totoo po iyan. Pagka-minsan may mga transaksyon kami na minsan verbal-verbal talaga-negosyante lang po.

SEN. LACSON. No. But in this particular case, iyong supplies ng mga PPEs, sinabi mo, mayroon kayong pinirmahan na agreement with Mr. Yang. Ang tanong ko, anong klaseng agreement? Anong klase iyong pinirmahan ninyong dokumento? Anong form? Is it a joint venture agreement?

x x x x

MR. ONG. *Mr. Chairman, I'm not really privy or hindi ko talaga ma-recall ngayon kung ano iyong content, but we have—we do have kasulatan po.*

SEN. LACSON. A very important document, hindi mo matandaan kung anong form? Joint venture ba? Contract ba? Hindi mo man lang maalala kung ano iyon?

MR. ONG. Mayroon po talagang ganoon.

SEN. LACSON. Anong klase nga?

*MR. ONG. Mr. Chair, hindi ko po maka—hindi ako maka-ano, hindi maka-kasi baka po mali iyong masabi ko ngayon, tapos iyong iba naman iyong nakita ko.*

*SEN. LACSON. Can you produce that and submit it to this Committee?*

*MR. ONG: Hanapin ko po, sir. Yes po, yes po.*<sup>120</sup> (Italics supplied; emphases omitted.)

The Committee observed that Ong confessed that he and/or Pharmally had an agreement with Yang, but he could not remember the terms thereof. When asked to produce a copy of the agreement, he said that he would look for it.<sup>121</sup>

The Committee also concluded that Ong testified *falsely* in the course of the hearing of September 10, 2021, when he stated that Pharmally used its corporate funds to pay its suppliers before it was able to secure a loan. Sen. Drilon pointed out that Pharmally had no capacity to pay the initial order from its suppliers in the amount of ₱54 Million considering that Pharmally only had ₱625,000.00 as paid-up capital at the beginning of the year 2020; thus:

SEN. LACSON. Yes, Mr. Chairman, thank you.

Ang sunod na tanong ko, dahil sinabi nila, binabayaran nila ng money transfer or cash iyong suppliers. So saan kayo bumibili ng foreign exchange? Kasi hindi naman ninyo pwedeng bayaran ng pesos, hindi ba?

THE CHAIRPERSON. Tama.

SEN. LACSON. So, how did you do it? Where do you buy your foreign exchange? In this case, renminbi, how do you secure the foreign currency to pay your suppliers?

MR. ONG. Proper bank transaction po iyon, Mr. Chairman. Hindi po siya renminbi Mr. Chairman, US dollar, Mr. Chairman.

THE CHAIRPERSON. Hindi tinatanong kung renminbi. Ang tinatanong sa iyo, saan ka kumukuha ng foreign exchange para bayaran iyong mga tao doon?

MR. ONG. Mr. Chair.

<sup>120</sup> *Rollo* (G.R. No. 257916), pp. 237-249; TSN, September 10, 2021.

<sup>121</sup> *Id.* at 246-248.

THE CHAIRPERSON. Siyempre kung magre-remit ka—magreremit ka, hindi ba? So, saan kayo kumukuha ng pera pambayad doon?

MR. ONG. Pag dito po sa Philippines side, we transact with our bank.

THE CHAIRPERSON. Sinong bank?

SEN. DRILON. UnionBank.

MR. ONG. UnionBank.

THE CHAIRPERSON. So, kalian, kailan kayo unang nagtransact?

MR. ONG. We have to check the record pero continuous naman iyong transaction namin dito.

THE CHAIRPERSON. Sinabi nga ni Huang na ang unang transaksyon ninyo sa Union Bank ay November, that is a full seven months, pitong buwan magmula noong nakakuha kayo ng malalaking kontrata na sunod-sunod na linggo... Abril. Nasa record iyan, binasa ko na kanina.

MR. ONG. Yes po.

THE CHAIRPERSON. So, it took you seven months bago kayo...

Ang hiniram ninyo doon 500 million. Samakatuwid, nagbabayad kayo between that time ng pera. Saka lang kayo umutang noong nagkaroon na kayo ng pera, kuno, kuno ha, kuho. Hindi ako naniniwala dahil ang tingin ko nagbabayad kayo pero hindi ninyo masabi kung saan ninyo kinukuha iyong pera. Galing ba iyan sa ibang sources na illicit.

MR. ONG. Hindi po, Mr. Chair. *Mayroon po kaming mga sariling pondo rin at...*

THE CHAIRPERSON: *O, biglang may sariling pondo na naman. O, sige.*

MR. ONG. Opo.

SEN. DRILON. Specifically, Senator Gordon, kaninong pera, bank accounts kung saan nanggaling iyong ni-remit ninyo sa mga supplier?

MR. ONG. If ever magre-remit kami sa mga supplier, dapat po talaga manggagaling sa ano namin, sa bank account namin.



SEN. DRILON. Kaya nga. So aling bank--sino ang may-ari nitong mga bank accounts at magkano ang ni-remit ninyo?

MR. ONG. Corporation po namin, iyong Pharmally Pharmaceutical po.

SEN. DRILON. Iyong korporasyon ninyo, Mr. Ong, ang pera is 625,000 lang.

SEN. LACSON. Pesos.

SEN. DRILON. Ikaw naman. Oo, pesos, 625,000 pesos lang. Kaya hindi pwedeng manggagaling sa korporasyon ninyo kung milyonmilyon ang binabayad ninyo sa Chinese suppliers. Sabi mo galing sa bangko. Tanong ngayon, sino ba may-ari ng mga account na iyon?

MR. ONG. Corporate account po, Mr. Chairman.

SEN. DRILON. Mr. Chairman, talagang nagsisinungaling ito. How can it be a corporate account when the account--

SEN. LACSON. Mr. Chairman.

SEN. DRILON. Yes. Sorry, Senator, Ping.

THE CHAIRPERSON. Senator Lacson, go ahead.

SEN. LACSON. ...establish very clearly na ang pera ninyo ₱625. Ang tanong ni Senator Drilon--

SEN. DRILON. Thousand.

SEN. LACSON. Six hundred twenty-five thousand pesos. Ang tanong ni Senator Drilon, ₱625,000, tapos ang nire-remit ninyo, sabi mo, galing din sa corporation ninyo, sa Pharmally. Maliwanag iyan, hindi sa ibang corporation, hindi kayo nangutang at lahat. Saan nanggaling iyong perang nire-remit ninyo sa China. Sabihin na nating galing sa bangko rito--

MR. ONG. Opo, opo.

SEN. LACSON. Ang sagot ninyo po, galing sa corporation ninyo. Ang liit ng capital ng corporation ninyo, 625. That's the question. How do you reconcile that?

MR. ONG. Okay, Mr. Chairman, can I—pwede na po ba akong magpaliwanang?

SEN. LACSON. All right. Go ahead.

THE CHAIRPERSON. Kanina ka pa nagpapaliwanag, hindi naman kita pinipigilan.

MR. ONG. Thank you, Mr. Chairman. Thank you, Mr. Chairman, Marami po kasing series of transaction iyon. *So, mayroon naman po kaming naiipon na pera.* So, that's our pondo. And then at the same time, sa mga series of transactions, pagka medyo malaki na po iyong project, *kinakailangan din po namin mangutang sa mga kaibigan.* So, *hindi ko po dine-deny na mayroon kaming mga utang sa labas.*

THE CHAIRPERSON. Hindi naman iyon ang problema. Bilyonbilyon ang tina-transact ninyo, marami kayong kaibigan. *Kailangan ring ipaliwanag kung saan rin kinuha noong mga kaibigan ninyo iyang perang iyan.* Magpapaliwanag kayo sa Money Laundering Council.

MR. ONG. Definitely, we—sige po, sige po.

THE CHAIRPERSON. Sige, sagutin mo.

MR. ONG. Definitely po. *Kinakailangan po naming makipagcooperate sa Anti-money Laundering Council.*

THE CHAIRPERSON. Talagang magko-cooperate kayo.

SEN. DRILON. Senator Dick.

THE CHAIRPERSON. Senator Drilon, you have questions.

x x x x

SEN. DRILON. Yes. Just to go back to Mr. Lincoln Ong. *Here is a resource person who is clearly lying on the record because he says the funds were corporate funds, corporate funds of Pharmally. But the audited financial statement indicates that beginning of 2020, they had only 625,000 which is the paid-up capital. Clearly, the corporation had no capacity to pay the initial order of 54 million. So, it is not true at all and there is a deliberate effort to mislead the Committee by saying these are corporate funds. We asked him, "Who advanced this payment?" He said it was from bank accounts of Union Bank or something. "Who owns the bank accounts?" He is already evasive.*

*This witness, Mr. Chairman, is clearly lying—is clearly lying. And in the case of Arnault, which is a 1950 case, this Senate has the power to detain, as we have detained, people until they tell us the truth. This witness is both evasive and refuses to answer or telling a lie. And, therefore, he has been declared in contempt earlier. We move that the contempt order be now executed and we send our sheriffs, our security*

*people, to arrest Mr. Ong right now.*<sup>122</sup> (Italics and underscoring supplied; emphases omitted.)

Evidently, the Committee was fixated on the fact that Pharmally had no capacity to pay the initial order of ₱54 Million, it having a paid-up capital of ₱625,000.00 only at the beginning of the year 2020. As can be gleaned from his testimony, however, Ong was able to subsequently aver that they had other funds sourced from the savings of the incorporators, and that they also borrowed money from friends. He even manifested his willingness to cooperate with the Anti-Money Laundering Council to explain where his friends got the funds.

Further, that Ong may have shown hesitancy in giving direct answers as regards the documents pertaining to the supplies of PPEs does not conclusively establish that he was evasive. The totality of his responses evince that he was mindful of his right against self-incrimination. Again, he manifested his willingness to cooperate in the investigation by committing to produce and submit documents required by the Committee.

As regards Yang, the Committee pointed out in its Comment dated February 19, 2022, his alleged questionable, incomplete, evasive and inconsistent answers or replies specifically as to his knowledge of Pharmally, thus:

For example, when asked as to when, how and why he became involved with Pharmally, he answered that he knows nothing about Pharmally and had nothing to do with it and that he came to know Pharmally only through the news. He replied that he had nothing to do with the registration, formation or operations of Pharmally Pharmaceuticals. He said that he did not have business dealings with Mr. Linconn Ong, either in his personal capacity or as incorporator of Pharmally Pharmaceuticals. But as the questioning went on, he later admitted that Pharmally people like Mr. Ong and Mr. Garrick Hung approached him for assistance and that he introduced them to at least four (4) suppliers and helped them with the funding of their deal with the government. It was revealed that he acted as the financier or creditor of Pharmally and/or guarantor to the Chinese suppliers and also as the middleman or go-between the government and Pharmally. x x x.<sup>123</sup>

The pertinent excerpts from the September 10, 2021 TSN read:

<sup>122</sup> Id. at 257-270; TSN, September 10, 2021.

<sup>123</sup> Id. at 487.

SEN. LACSON. Twenty-two years. Okay.

*My next question is, when, how and why did you become involved with Pharmally?*

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] *Mr. Chairman, Mr. Yang said that he doesn't know and he has no relation to Pharmally.*

SEN. LACSON. I would like to remind Mr. Yang that he is under oath, Mr. Interpreter.

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] *Yes, Mr. Chairman. Mr. Yang is aware that he is under oath. And it is only through the news that he found out about the existence of Pharmally Pharmaceutical.*

SEN. LACSON. So, he maintains that he has nothing to do, nothing to do at all with Pharmally. Is that correct?

x x x x

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG, [interpreting for Mr. Yang] *Okay. Mr. Chairman, what Mr. Yang said is that, initially, he doesn't know of the existence or the whereabouts or anything about Pharmally Pharmaceutical. Later they did approach him for some assistance.*

SEN. LACSON. So, it is not true that he has nothing to do or he had nothing to do with Pharmally?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] *Mr. Chairman, your question pertains to the corporation or on the operations? We just like to clarify on that part.*

SEN. LACSON. First, the corporation, Pharmally Pharmaceuticals.

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG, [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Okay. Mr. Chairman, we'd like to clarify in terms of the registration or setup of Pharmally Pharmaceutical, Mr. Yang has nothing to do with it.

SEN. LACSON. That is correct. *But does he have anything to do with the operations of Pharmally Pharmaceuticals at any point?*

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] *Mr. Chairman, in terms of operations, Mr. Yang has not been involved or he has no idea.*

SEN. LACSON. Does he know Huang Tzu Yen, the chairman of Pharmally?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] During that 2017, he met Mr Huang Tzu Yen, together with his father. And after that, they have no any communications.

SEN. LACSON. Does he know a certain Linconn Ong?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Yes. He knows Mr. Linconn Ong, Mr. Chairman.

x x x x

SEN. LACSON. *Did he have any business dealings with Mr. Linconn Ong whether in his personal capacity or in his capacity as one of the incorporators of Pharmally Pharmaceuticals?*

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] *Mr. Chairman, no.*

SEN. LACSON. No business dealings with Mr. Linconn Ong?

MR. HUNG. Mr. Chairman, can you just be more—sorry, can you just repeat the question?

SEN. LACSON. Did they have any business dealings with Linconn Ong, whether in his personal capacity or as a stockholder incorporator of Pharmally Pharmaceuticals?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Okay, Mr. Chairman, Mr. Yang would like to ask in terms of what specific period you were pertaining to?

SEN. LACSON. In the supply of PPEs, medical supplies like face masks, shields, *et cetera, et cetera* in relation to the transaction dealings of Pharmally with the PS-DBM, to be specific.

MR. HUNG. So, Mr. Chair. just to clarify. Your question is, if he has any dealing or anything to do with the transactions pertaining to PS-DBM and Pharmally Pharmaceuticals?

SEN. LACSON. Yes, PPEs—supply of PPEs. supply of surgical masks, face shields, face masks.

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] Mr. Chairman, Mr. Yang would like to say that when Pharmally did get their contracts, he has nothing to do with any of those contracts or awards.

MR. YANG. [speaking in Chinese]

MR. HUNG. *Then, eventually, Mr. Linconn did approach Mr. Yang and then he helped him—them—or Mr. Yang introduced friends to Linconn who could help them with their supplies.*

SEN. LACSON. That is correct. That is the point I was trying to point out, Mr. Chairman, that Mr. Michael Yang was the one who acted as a go-between or middleman between Linconn Ong or Pharmally Pharmaceuticals and the suppliers from China. Is that correct?

MR. HUNG. So, Mr. Chair. Your question, again, that Linconn and—

SEN. LACSON. No. Mr. Michael Yang acted as a middleman between Pharmally Pharmaceuticals through Mr. Linconn Ong and the Chinese suppliers of the medical supplies in relation to the procurement.

MR. HUNG. [interpreting Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] *Mr. Chairman, Mr. Yang said that he only introduced and let them discuss things on their own.*

SEN. LACSON. *So that was his only role? He introduced the suppliers to Mr. Linconn Ong and then he had nothing do with the supplies anymore?*

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] *So, Mr. Chairman, Mr. Yang said that he only introduced them and then they discussed things on their own.*

SEN. LACSON. And he stopped all his participation?

MR. HUNG. I'm sorry, come again, Mr. Chairman?

SEN. LACSON. And he stopped all his participation in the dealings between the Chinese suppliers of the medical supplies that mentioned and Mr. Linconn Ong? He just left them on their own?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] *Okay Mr. Chairman, Mr. Yang said that he only introduced as to where or who they close their dealings. He does not know who or where did he actually purchase those stocks.*

SEN. LACSON. *And he never guaranteed with his Chinese suppliers the credibility or the ability of Mr. Linconn Ong to pay them?*

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding in Chinese]

MR. HUNG. [interpreting for Mr. Yang] *Okay. So, Mr. Yang only introduced and then they negotiated on their own. And then probably, he first initially introduced friends, introduced some other friends for them to negotiate all of their dealings.*

SEN LACSON. How many suppliers did he introduce to Mr. Ong.

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding Chinese]

MR. HUNG, [interpreting for Mr. Yang] Around four suppliers, Mr. Chairman.

SEN. LACSON. These are individuals or these are companies in China?

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding Chinese]

MR. HUNG. [interpreting for Mr. Yang] Okay. So, he introduced friends, individuals, and then probably these people could have introduced some other friends or companies directly to them.

SEN. LACSON. *That's it? That's his participation? Introduced, then left them alone?*

MR. HUNG. [interpreting in Chinese for Mr. Yang]

MR. YANG. [responding Chinese]

MR. HUNG. [interpreting for Mr. Yang] Yes. Mr. Chairman.<sup>124</sup> (Italics supplied; emphases omitted.)

Sen. Pangilinan observed that Yang gave inconsistent answers, thus:

SEN. PANGILINAN. *The questions raised earlier by Senator Lacson, first, Mr. Yang said, he had no connection with Pharmally and learned only about Pharmally in the news. That's on record. And then, after which, he changed his position. He said he only met Pharmally in 2017 and never met them again. And then, later on, Mr. Yang admits to knowing Mr. Linconn Ong of Pharmally. And then he says, he introduced Linconn Ong to the suppliers. So, just like the virus, his answers are mutating.*<sup>125</sup> (Italics supplied; emphases omitted.)

<sup>124</sup> Id. at 228-237.

<sup>125</sup> Id. at 274.



As keenly observed by Senior Associate Justice Marvic M.V.F. Leonen, even inconsistent answers were equated by the Committee with “testifying evasively.”<sup>126</sup> As he aptly pointed out, “[w]hether a witness genuinely did not know or did not recall the answer, or was evasive in answering a question is largely a matter of judgment or opinion.”<sup>127</sup> He further pointed out that “falsely or evasively” should be understood as “false” which means “not genuine, intentionally untrue, adjusted or made so as to deceive, intended or tending to mislead, not true, based on mistaken ideas, inconsistent with the facts.”<sup>128</sup> This determination requires “an assessment of the totality of the evidence presented to determine whether a witness speaks truthfully or merely trying to evade answering the question directly.”<sup>129</sup> Surely, this determination could not have been made on the basis of his testimony given in the hearing of September 10, 2021 alone.<sup>130</sup>

Evidently, Sen. Lacson’s series of repetitive questions as regards Yang’s knowledge of Pharmally evoked different answers. However, the fact that Yang made inconsistent or incomplete answers in the course of his testimony does not conclusively establish that he was evasive within the context of contempt, that is, there was *refusal or unwillingness to testify* on his part. While Yang initially tried to avoid giving any leading information as regards his connection with Pharmally, he was able to subsequently aver in the course of the proceedings that he introduced the suppliers of facemasks and PPEs to Ong. Again, the Committee immediately surmised on the incredulity of his testimony, thus citing him in contempt and ordering his arrest on the ground that he gave inconsistent or incomplete answers.

In *Bro. Oca v. Custodio*,<sup>131</sup> the Court classified punishment for contempt in judicial proceedings into civil and criminal. This is anchored on the two-fold aspect of contempt which seeks to (1) compel the party to do an act or duty which it refuses to perform; and (2) punish the party for disrespecting the court or its orders.<sup>132</sup> The characterization of the proceedings is “determined by the relief sought, or the dominant

<sup>126</sup> See Concurring Opinion of Senior Associate Justice Marvic M.V.F. Leonen, pp. 17 and 21.

<sup>127</sup> *Id.* at 21

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> 814 Phil. 641 (2017).

<sup>132</sup> *Id.* at 678, citing *Halili v. Court of Industrial Relations*, 220 Phil. 507, 527 (1985).

purpose.”<sup>133</sup> Under the second aspect, judicial contempt proceedings are characterized as criminal or punitive:

Criminal contempt proceedings are generally held to be in the nature of criminal or quasi-criminal actions. They are punitive in nature, and the Government, the courts, and the people are interested in their prosecution. Their purpose is to preserve the power and vindicate the authority and dignity of the court, and to punish for disobedience of its orders. Strictly speaking, however, they are not criminal proceedings or prosecutions, even though the contemptuous act involved is also a crime. The proceeding has been characterized as *sui generis*, partaking of some of the elements of both a civil and criminal proceeding, but really constituting neither. In general, criminal contempt proceedings should be conducted in accordance with the principles and rules applicable to criminal cases, in so far as such procedure is consistent with the summary nature of contempt proceedings. So it has been held that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt, that the accused is to be afforded many of the protections provided in regular criminal cases, and that proceedings under statutes governing them are to be strictly construed. However, criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved.<sup>134</sup> (Emphases and underscoring supplied.)

Following the above characterization, a legislative contempt is essentially criminal or punitive in nature. Notably, the contumacious act of testifying falsely or evasively finds criminal definition under Article 183<sup>135</sup> of the Revised Penal Code (RPC) penalizing false testimony and perjury. In the case, the Committee’s treatment of petitioners’ supposed contumacious acts as criminal in nature is even bolstered when it ordered their arrest and, worse, the subsequent transfer of Ong to the Pasay City Jail. Indeed, the power to punish crimes is punitive in nature as it involves a proceeding brought by the State before the courts to punish offenders.<sup>136</sup>

<sup>133</sup> Id. at 679, citing *People v. Godoy*, 312 Phil. 977 (1995).

<sup>134</sup> *People v. Godoy*, 312 Phil. 977, 1000-1001 (1995).

<sup>135</sup> Article 183 of the Revised Penal Code provides:

Article 183. *False testimony in other cases and perjury in solemn affirmation.* – The penalty of *arresto mayor* in its maximum period to prison correccional in its minimum period shall be imposed upon any person, who knowingly makes untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

<sup>136</sup> See *Lopez v. De los Reyes*, 55 Phil. 170, 180 (1930).

It bears underscoring that the purpose of the Committee's proceedings is to conduct an *inquiry* or *investigation* to aid the Senate in crafting relevant legislation, and not to conduct a trial or make an adjudication. Legislative inquiries do not share the same goals as the criminal trial process,<sup>137</sup> and "cannot be punitive in the sense that they cannot result in legally binding deprivation of a person's life, liberty or property."<sup>138</sup> Thus, punishment for legislative contempt, albeit *sui generis* in character, must similarly observe the minimum requirements of due process.

As succinctly pointed out by Chief Justice Alexander G. Gesmundo, witnesses who are charged by Congress with "giving false or evasive testimony" must be accorded stricter due process requirements, such as the opportunity to explain one's side before being penalized, consistent with the due process safeguards used in criminal proceedings. Considering the broad definition of "giving false or evasive testimony," the witness must, at the very least, given a chance to explain why his or her testimony is not false or evasive.<sup>139</sup>

In the case, the Committee's grave abuse of discretion lay in its precipitate act of citing petitioners Ong and Yang in contempt and ordering their arrests without giving them the opportunity to be heard.

### III

*The assailed rules are not vague.*

Let it be clarified that the Court's finding of grave abuse of discretion in the case—the Committee's failure to accord petitioners their Constitutional right to due process relative to the conduct of its proceedings—does *not* lead to an invalidation of the Legislature's implicit authority to make a determination whether a person is "testifying falsely or evasively."

Ong argues that the Senate Rules of Procedure on Inquiries is vague for having no clear standards as to what constitutes "testifying falsely or evasively."<sup>140</sup> He insists that the phrase "testifying falsely or evasively" is

<sup>137</sup> See Concurring Opinion of Associate Justice Dante O. Tinga in *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, supra note 80 at 687 (2008).

<sup>138</sup> *Id.*

<sup>139</sup> See Concurring Opinion of Chief Justice Alexander G. Gesmundo, pp. 14-16.

<sup>140</sup> *Rollo* (G.R. No. 257401), pp. 30-31.

utterly vague as it does not fairly notify the witness of how it can be committed, nor does it restrict in any manner the discretion of the Senate Committee to adjudge an act as falling within its ambit.<sup>141</sup>

Further, Ong maintains that the determination of whether a witness *testifies falsely or evasively* falls exclusively within the ambit of judicial power. For Ong, the question of falsity of an utterance is a highly evidentiary matter and its determination requires the stringent application of the rules on evidence.

Ong's arguments fail to persuade.

Implicit in the Legislature's power to punish recalcitrant witnesses by declaring them in contempt is the power to determine whether the witness is recalcitrant or is guilty of contumacious acts. As the grant of legislative power which includes the power to conduct inquiries in aid of legislation is intended to be complete—*i.e.*, without need to resort to judicial process in order that the Legislature may be able to perform its function—it follows that the Legislature likewise has the power to resort to mechanisms to obey its processes. As in the case, the Legislature has the power to determine whether a witness is testifying falsely or evasively and, consequently, declare a witness in contempt with the end that the witness may be compelled to purge his or her contempt by giving a truthful testimony.

It must be emphasized that the Legislature, considering the statements as well as the actuations of the witness, is by no means helpless in determining whether a witness is testifying falsely or evasively. The varying levels of ease or difficulty by which the Legislature may make such determination on a case-to-case basis does not lead to the conclusion that it should solely belong to the courts. When a witness' testimony is glaringly false or when his/her answers are evasive, the Court will not prevent the Legislature from exercising its power just because the courts may also punish false testimony as a violation of penal laws. If at all, the Court in certain instances can only consider the Legislature to have ruled whimsically or arbitrarily if its finding that a witness testified falsely or evasively is evidently without basis. It does not, however, lead to an invalidation of the Legislature's implicit authority to make such determination.

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<sup>141</sup> Id. at 32.

Contrary to Ong's proposition, the phrase "testifying falsely or evasively" is not vague.

A statute or act is vague when it lacks comprehensible standards that persons of common intelligence must necessarily guess at its meaning and differ as to its application.<sup>142</sup> In such instance, it is unconstitutional based on two grounds: "(1) it violates due process for failure to accord persons, especially the parties targetted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle."<sup>143</sup>

However, the Court has stressed that the "vagueness" doctrine merely requires a reasonable degree of certainty for the statute to be upheld, *i.e.*, not absolute precision or mathematical exactitude.<sup>144</sup> "Flexibility, rather than meticulous specificity, is permissible as long as the metes and bounds of the statute are clearly delineated. An act will not be held invalid merely because it might have been more explicit in its wordings or detailed in its provisions."<sup>145</sup>

*In the case, the Court finds that the phrase "testifies falsely or evasively" in Section 18 of the Senate Rules on Inquiries is not vague.*

False testimony has been defined in several provisions of the RPC.<sup>146</sup> It is committed by any person who, being under oath, and required to testify as to the truth of certain matter at a hearing before a competent authority, shall deny the truth or say something contrary to it.<sup>147</sup>

A false statement is a statement that is known or believed by its maker to be incorrect or untrue and is made especially with intent to deceive or mislead.<sup>148</sup> It is also defined as one made knowingly false or made recklessly without honest belief in its truth, and within the purpose

<sup>142</sup> *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 488 (2010).

<sup>143</sup> *Id.*, citing *People v. Nazario*, 247-A Phil. 276, 286 (1988).

<sup>144</sup> *See Garcia v. Judge Drilon*, 712 Phil 44, 103 (2013).

<sup>145</sup> *Id.*, citing *Estrada v. Sandiganbayan*, 421 Phil. 290, 353 (2001).

<sup>146</sup> Articles 180-183 of the Revised Penal Code.

<sup>147</sup> Reyes, Luis B, *The Revised Penal Code, Criminal Law, Book II*, (13<sup>th</sup> Ed.), p. 235.

<sup>148</sup> Available at <<https://www.merriam-webster.com/legal/false%20statement>> (last accessed on April 10, 2023).

to mislead or deceive.<sup>149</sup>

On the other hand, an evasive answer refers to a response that is given, which does not directly answer the question posed.<sup>150</sup> Evasive answers are often seen in the legal world when a party refuses to confirm or deny allegation(s) against him or her.<sup>151</sup> An evasive answer is likewise defined as “one which consists in refusing either to admit or to deny a matter in a direct, straightforward manner as to which a person is necessarily presumed to have knowledge.”<sup>152</sup>

As early as 1950, the Court, in *Arnault*, already pronounced that a testimony which is obviously false or evasive is equivalent to a refusal to testify and is punishable as contempt, assuming that a refusal to testify would be so punishable.<sup>153</sup> Thus, in *Arnault*, the Court recognized the power of the Senate and its committees to cite a witness in contempt for testifying falsely and evasively during an inquiry.

In *People v. Saure*,<sup>154</sup> the Court considered a testimony of a witness as evasive when he did not remember the facts which he ought to know because they were related to his own self-serving allegation.

There is no doubt that the phrase “testifies falsely or evasively” can be understood by any person of common knowledge or intelligence.

#### IV

*No Grave Abuse of Discretion on the Part of the Senate  
Committee in Requesting for the Issuance of a Lookout  
Bulletin*

In a Letter<sup>155</sup> dated September 13, 2021 addressed to the Department of Justice (DOJ), the Committee, through Sen. Gordon, requests that Yang be “*placed on the Bureau of Immigration Hold Departure Order, Watch List, or Lookout Bulletin, whichever is appropriate, and that the Committee be informed whenever he is about to leave, or whenever he arrives from without the country.*”<sup>156</sup>

<sup>149</sup> Black’s Law Dictionary with Pronunciations (16<sup>th</sup> Ed.), p. 602.

<sup>150</sup> Available at <<http://legaldictionary.net/evasive-answer/>> (last accessed on April 10, 2023).

<sup>151</sup> Available at <<http://legaldictionary.net/evasive-answer/>> (last accessed on April 10, 2023).

<sup>152</sup> Black’s Law Dictionary with Pronunciation (16<sup>th</sup> Ed.), p. 554.

<sup>153</sup> *Arnault v. Nazareno*, supra note 73 at 65, citing *Mason vs. U. S.*, 61 L. ed., 1198.

<sup>154</sup> 428 Phil. 916 (2002).

<sup>155</sup> *Rollo* (G.R. No. 257916), p. 361.

<sup>156</sup> *Id.*

Yang ascribes grave abuse of discretion to the Committee in “*causing the issuance of a lookout order*,” invoking the absence of any criminal charge filed in court against him. Characterizing the letter-request as a *directive* to Immigration Commissioner Jaime H. Morente, Yang contended that the *Senate Rules of Procedure Governing Inquiries in Aid of Legislation* does not grant the Senate or any of its Committees the power to request for a Hold Departure Order, Watch List, or Lookout Bulletin. Thus, Yang questions the legality of the request.

Yang’s argument is misplaced.

In its comment, the OSG confirms that Justice Secretary Menardo Guevarra acted on the request and issued an immigration lookout bulletin order (ILBO) against Yang on or about September 14, 2021. As correctly pointed out by the OSG, the Senate Committee only made a request. It bears underscoring that the DOJ and the Bureau of Immigration (BI) are not impleaded in this case. Indeed, the Court cannot pass upon the propriety of the ILBO issued by Secretary Guevarra without violating the requirements of fair play and due process.<sup>157</sup> Suffice it to state that the questioned act of the Senate Committee pertains to a mere request, which cannot be legally considered as the authority or basis for the issuance by the DOJ of the ILBO. Being a mere request, the same may or may not be heeded by the DOJ. Contrary to Yang’s proposition, the request does not partake of a directive or order mandating the DOJ to issue the ILBO, from which grave abuse of discretion may be imputed to the Senate.

In any event, the Court had the occasion of addressing a similar invocation against requests for assistance of the BI made by the Senate in the conduct of legislative investigations. In *Standard Chartered Bank*, the Court held:

[I]t is axiomatic that the power of legislative investigation includes the power to compel the attendance of witnesses. Corollary to the power to compel the attendance of witnesses is the power to ensure that said witnesses would be available to testify in the legislative investigation. In the case at bench, considering that most of the officers of SCB-Philippines are not Filipino nationals who may easily evade the compulsive character of respondent’s summons by leaving the country, *it was reasonable for the respondent to request the assistance of the Bureau of Immigration and Deportation to prevent said witnesses from*

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<sup>157</sup> See *Civil Service Commission v. Rasuman*, G.R. No. 239011, June 17, 2019.

*evading the inquiry and defeating its purpose.* In any event, no HDO was issued by a court. The BID instead included them only in the Watch List, which had the effect of merely delaying petitioners' intended travel abroad for five (5) days, provided no HDO is issued against them.<sup>158</sup> (Italics supplied; citation omitted.)

Thus, far from acting with grave abuse of discretion, the Senate has legal and factual reasons to request for the DOJ to place Yang under a lookout bulletin.

## V

*No Grave Abuse of Discretion on the Part of the Senate Committee in Compelling Yang to Answer Questions and to Submit Documents and Information Pertaining to Him, His Property and Business Interests*

Yang admits that the Senate certainly has the right to investigate the possible abuse or misuse of government funds in relation to the enactment of RA 11469. However, he posits that the Senate Committee is engaged in a fishing expedition by asking for documents about his properties and business dealings.<sup>159</sup>

More particularly, Yang argues that the Senate Committee committed grave abuse of discretion as it compelled him to answer questions and submit documents that are beyond the scope of the legislative inquiry and in clear violation of his right to privacy.<sup>160</sup> He asserts that the Senate Committee directed him to provide information on his non-filing of income tax return, studies, and length of stay in the Philippines.<sup>161</sup> He also contends that questions regarding his past are outside the scope of the Senate investigation, and that he, nonetheless, complied with the order to bring the documents to avoid being cited in contempt under the misguided notion that he was being evasive.<sup>162</sup>

It is settled that in the absence of information pertinent to a contemplated legislation, the Congress will not be able to fully and effectively perform its function to conduct inquiries in aid of legislation.

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<sup>158</sup> *Standard Chartered Bank v. Senate Committee on Banks*, supra note 79 at 762.

<sup>159</sup> *Rollo* (G.R. No. 257916), pp. 52-54.

<sup>160</sup> *Id.* at 5.

<sup>161</sup> *Id.* at 51.

<sup>162</sup> *Id.*



In this regard, the Congress makes use of compulsory process to gather material information for its inquiry but such exercise must be in accordance with its rules of procedure and must take into account the rights of those affected or appearing during inquiries in aid of legislation.

In the case of Yang, the Court is unconvinced that his right to privacy was violated when the Senate Committee directed him to produce the subject documents.

*First*, in *Standard Chartered Bank*, the Court stressed that the right to privacy is *not* an absolute right. While the Constitution guarantees the respect of persons affected by a legislative inquiry under Section 21, Article VI of the Constitution, not every assertion of one's right to privacy must be allowed to prevent a legitimate legislative inquiry.

Too, in *Sabio*, the Court elucidated that the right to privacy is recognized and protected by laws. Any intrusion to one's right to privacy is not allowed *unless* it is excused by law and in accordance with established legal process. Definitely, "no one shall be subjected to *arbitrary* interference with his [or her] privacy' and 'everyone has the right to the protection of the law against such interference or attacks.'"<sup>163</sup> In that case, the Court explained that in resolving whether a person's right to privacy was violated, a court must determine two important questions: (1) did the concerned person exhibit a reasonable expectation of privacy; and (2) did the government violate such expectation?

In the case of Yang, the foregoing questions are answered in the negative as there is absence of an arbitrary intrusion to his right to privacy.

To underscore, central to the inquiry in aid of legislation and of which Yang was invited by the Senate is his alleged participation in the Pharmally controversy. In this regard, the Senate Committee's inquiry covers the acts of Yang related to the contemplated legislation to improve government procurement procedure and processes in relation to RA 11494. It follows that the presentation of documents with regard to Yang's properties and business interests is allowed as it is intimately related to the issue of whether he acquired and/or accumulated wealth in connection with the subject government funds.

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<sup>163</sup> *In the Matter of the Petition for Issuance of Writ of Habeas Corpus of Sabio v. Senator Gordon*, supra note 72 at 715, citing Article 12 of the Universal Declaration of Human Rights. See also Article 17 (1) and (2) of the International Covenant on Civil and Political Rights.

Yang therefore had no reasonable expectations of privacy over matters relating to Pharmally and his business interests therein as the government itself has an interest insofar as the Congress contemplates the enactment and/or amendment of a law relating government procurement law. While there must be ideally a balance between the interest of resource persons and the demand by the Congress for information, *the right to privacy cannot prevail where there is an overriding compelling state interest*, as in the present case.

In other words, the right to privacy of Yang cannot prevail over the compelling state interest as the Senate Committee conducts inquiries anent a contemplated legislation relating to RA No. 11494. The purpose of the inquiry of the Senate to resolve the misuse of government funds in connection with the pandemic response of the government is a compelling state reason for it to proceed with its inquiry and require Yang to produce the subject documents.

*Second*, pieces of information which relate to personal circumstances are not by themselves beyond the scope of legislative inquiry especially so where, as above stated, a contemplated legislation is being considered by the Congress. Verily, in the absence of showing that the production of the subject documents will in any way prejudice Yang, his contention that his right to privacy was violated remains as a bare allegation without proof supporting the claim.

*Third*, Yang failed to convince the Court of any recognized public interest in the confidentiality of the information asked by the Senate Committee. In fact, he did not assail at the outset and before the Senate the obligatory force of the *subpoena duces tecum* it issued against him. In contrast, Yang himself admitted having complied with the *subpoena* and brought the subject documents when he appeared before the Senate Committee. In the absence of a formal and proper invocation by Yang of his right to privacy before the Senate, stating the specific reasons for the preservation of the confidentiality of the information being asked from him as a resource person, no grave abuse of discretion can be imputed against the Senate in directing him to produce the subject documents.<sup>164</sup>

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<sup>164</sup> See *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, supra note 137.

All told, the Court finds that the Senate Committee committed grave abuse of discretion amounting to lack or excess of jurisdiction only insofar as it issued the assailed Contempt Order dated September 10, 2021, citing Ong and Yang in contempt for testifying falsely or evasively and ordering their arrest.

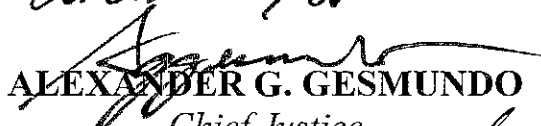
**WHEREFORE**, the petitions are **PARTLY GRANTED**. The Order dated September 10, 2021, citing petitioners Linconn Uy Ong and Michael Yang Hong Ming in contempt of the Senate Blue Ribbon Committee and directing their arrest, is **NULLIFIED** for having been issued with grave abuse of discretion.

The phrase “*testifies falsely or evasively*” both under Section 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation, as amended, and Section 6, Article 6 of the Rules of the Senate Blue Ribbon Committee, on the basis of the challenges raised in these petitions, is **NOT UNCONSTITUTIONAL**.


**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*


WE CONCUR:

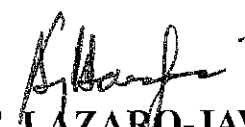
*See separate concurring opinion*  
  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*


*See separate concurring opinion*  
  
(On official leave but left a vote)  
**MARVIC M.V.F. LEONEN**  
*Senior Associate Justice*

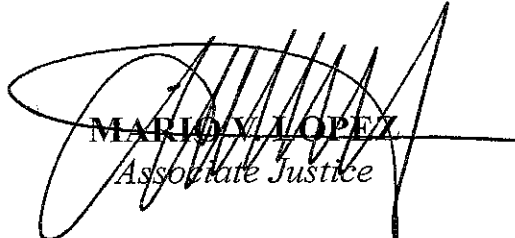
  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*


*See Concurring + Dissenting*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

*Pls. See Concurrence + Dissent*  
  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

  
**RODIL V. ZALAMEDA**  
*Associate Justice*

  
**MARIJOY LOPEZ**  
*Associate Justice*

  
**SAMUEL H. GAERLAN**  
*Associate Justice*


  
**RICARDO R. ROSARIO**  
*Associate Justice*

  
**JHOSEP Y. LOPEZ**  
*Associate Justice*

  
**JAPAR B. DIMAAMPAO**  
*Associate Justice*

  
**JOSE MIDAS P. MARQUEZ**  
*Associate Justice*

  
**ANTONIO T. KHO, JR.**  
*Associate Justice*

  
**MARIA FILOMENA D. SINGH**  
*Associate Justice*




**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

CERTIFIED TRUE COPY

  
**MARIA LUISA M. SANTILLA**  
Deputy Clerk of Court  
OCC-En Banc, Supreme Court

