

Background paper

Chronology (**draft**¹): Efforts to Recover Assets Looted by Ferdinand Marcos of the Philippines (August 2007)

Sample of overview observations made by commentators

- The Marcos family case clearly illustrates how difficult it is for the successor government of a kleptocrat regime to regain ownership of stolen assets.
- Having unrestricted access to the assets enables the accused to fend off legal proceedings for decades and to deplete the funds by enjoying a lavish lifestyle. The Marcos family (Ferdinand Marcos, who died in 1989, his wife Imelda Marcos, who remains alive and contests all claims to this day, and their children) have skillfully deployed their assets (allegedly between USD 5 and 10 billion) with the aid of attorneys while still living lives of great privilege.
- In the opinion of the Government of the Philippines, it faced a difficult task in recovering the assets on account of the highly intricate and secretive nature of the Marcos network of accounts. It was lucky to have the so-called Malacañang documents² to guide it to at least a part of the stolen Marcos assets. The Swiss Government decided in principle to block Marcos' assets. It mandated the Swiss Banking Commission (EBK) to ask the banks what Marcos assets they were holding. This led to a precise overview of Marcos funds/accounts. When the international mutual legal assistance request arrived, the relevant accounts were effectively blocked. They could then be compared with the information supplied by the EBK.
- The Philippine Government's efforts were hampered by the fact that the Philippine Presidential Commission on Good Government (PCGG), the agency established to recover the Marcos assets, was new to the task and could not draw upon established tools and procedures.
- Newly introduced was also the Swiss Federal Act on International Mutual Assistance in Criminal Matters (Act on International Criminal Assistance, IMAC): the Swiss lawyers Salvioni, Fontanet and Leuenberger, who had been appointed by the PCGG in March 1986, had to apply a new Swiss law, in force as from January 1, 1983, with no guidelines, no case law, and no special instructions. It helped in this situation that the Federal Department of Justice offered much assistance and that the Swiss Federal Supreme Court confirmed, in most cases, the decisions of the lower courts in favour of the Philippines.
- Additional difficulties arose from the fact that there was continued political support for the Marcos family after they fled the Philippines and from various individuals of the Philippines elite who had benefited from their corrupt system and who therefore remained loyal to them. The fact that Imelda Marcos was elected congresswoman, and Ferdinand and Imelda Marcos' son, Ferdinand Jr., was elected congressman, illustrates the support they still had in the Philippines.
- Conflicts of interest arose both within the class of plaintiffs that won damages for human rights abuses from the Marcos family in the USA, concerning how best to actually receive the money, as well as between the

¹ This chronology is work in progress and continues to be open to inputs from experts and other involved and concerned parties. Comments can be submitted by email to icar@baselgovernance.org

² Documents retrieved from the Malacañang Presidential Palace after end of the Marcos regime, detailing financial arrangement between Marcos and Swiss banks.

government and said parties, concerning the use of the repatriated assets. A key problem in this context was that in violation of the national sovereignty of the Philippines the US Courts had decided how and to whom the money blocked in the US should be paid.

- More generally, the competing interests involved - those of the Marcos family, the human rights abuse victims, the Philippine Government - created a degree of complexity for the courts, including issues of national sovereignty and balancing of interests, and resulted in a risk of double liability for financial institutions involved.
- The Swiss authorities involved in the repatriation attempts followed the law by the letter, on the one hand, but on the other hand also arrived at groundbreaking interpretations which brought the case of the Philippine Government forward. Before the introduction of the Swiss Federal Act on International Criminal Assistance, IMAC in 1983, Switzerland could not provide international mutual legal assistance without a mutual legal assistance treaty. In 1986 the Marcos case became the first case under the new law.

Pre-Marcos Philippines

1500 to 1898	Spanish rule, the Philippines named after King Philip II of Spain.
1898-1946	American colonial period.
1946	The Philippines gains its independence from the United States.

Marcos era

11 September 1917	Marcos born in Sarrat, Ilocos Norte Province, Luzon. Studies law.
1939	Marcos arrested in connection with murder of political rival of his father. Found guilty.
1940	Marcos appeals conviction for murder, representing himself. Appeal upheld and conviction overturned. Works as a trial lawyer in Manila.
1941-45	Officer in the Philippine armed forces during the Second World War.
1946	Works in Manila law practice, is also assistant to Philippine President Manuel Roxas y Acuna (1947).
1949	Marcos elected to the Philippine Parliament (Liberal Party). Re-elected 1953. Reported to use political influence for personal enrichment.
1 May 1954	Marries Imelda Romualdez.
1957	Re-elected. Moves to Senate in 1959, becomes opposition leader in Parliament.
1961	Head of Liberal Party. Senate president (1963).
1964	Switches allegiance to Nationalista Party.
1965	Marcos is elected President of the Philippines in November 1965, promising improved living conditions and land reform. Helps found Association of Southeast Asian Nations ASEAN in 1967.
1969	Marcos wins second four-year term as President.
1970	Social unrest. Student demonstrators attempt to storm Malacañang Presidential Palace. Marcos blames leftists and suspends habeas corpus (August 1971) as prelude to martial law.
21 September 1972	Marcos declares martial law, using alleged assassination attempt against defense minister Juan Ponce Enrile as excuse. Later it is revealed that assassination attempt

	was staged by the military.
1973-1985	New constitution allows Marcos to stay in office indefinitely and rule by decree. His wife, Imelda Marcos, made Governor of Manila and Minister of Human Settlements and Ecology. Manufacturing and business enterprises nationalized or handed to Marcos cronies or relatives. Profits siphoned off for personal enrichment and mismanagement rife. Army officers appointed to manage several corporations and military ordered to take control of all public utilities and the media. Civilian courts stripped of power and autonomy. Salaries in real terms half as much as 1956, share of the national income held by the wealthiest 10% increases from 27% to 37%.
17 January 1981	Marcos officially lifts martial law, but government retains power to arrest and detain.
1981	Opposition boycotts presidential elections, Marcos wins.
1983	Opposition leader Benigno Aquino Jr. assassinated at Manila airport upon return to the Philippines from exile.
February 1986	Opposition unites under Corazon Aquino, widow of Benigno Aquino Jr., for snap presidential election. Marcos declared official winner. International observers denounce official result. General Fidel Ramos and defense minister Juan Ponce Enrile withdraw support for Marcos. Peaceful civilian-military uprising (the EDSA Revolution, named after Epifanio de los Santos Avenue in Manila where crucial revolutionary events took place) forces Marcos from office.
25 February 1986	Corazon Aquino is sworn in as President of the Philippines, whereupon Marcos family flees the Philippines on same day. Marcos said to be carrying suitcases containing jewels, 24 gold bricks and certificates for billions of dollars of gold bullion upon arrival in Hawaii (catalogued by United States customs service in an inventory dated 10 March 1986).

Post-Marcos era

1986-1992	Corazon Aquino presidency.
25 February 1986	Swiss bank accounts in Marcos' name estimated to contain more than USD 3 billion stolen from his country. At the same time, the Philippines' foreign debt stands at about USD 28 billion. Through a request filed by Swiss lawyers, Salvioni, Fontanat and Leuenberger (in the following: Salvioni et al.), it is possible to freeze about USD 356 million of the Marcos fortune in Switzerland that have been discovered thanks to the documents that Marcos, his family and his staff had lost in the presidential palace during their flight (so-called Malacañang documents).
28 February 1986	The Philippine Presidential Commission on Good Government (PCGG) formed by Presidential order no. 1 (three days after Marcos fled) ³ to recover Marcos-linked assets in the Philippines and abroad. According to Jovito Salonga, first chairman of the PCGG, Marcos loot came primarily from: <ul style="list-style-type: none"> • diverted foreign economic aid, • US government military aid, including huge discretionary funds at Marcos disposal, as a 'reward' for sending some Filipino troops to Vietnam, and • kickbacks from public works contracts. <p>What is said to have distinguished Marcos from other corrupt Filipino politicians was</p>

³ <http://www.pcg.gov.ph/id28.htm>

his particularly long period in office and the scale of his corruption.

11 March 1986 PCGG letter orders the Central Bank of the Philippines (CBP) to freeze Marcos' and cronies' assets. CBP successor Bangko Sentral ng Pilipinas (BSP) says CBP transmitted PCGG letter to banks, with memorandum asking for their "cooperation". PCGG has power to freeze or "sequester" suspect assets. (cf. 13 May 2003 below.)

12 March 1986 President Corazon Aquino passes Executive Order no. 2, freezing all Marcos assets in the Philippines.⁴

24 March 1986 The Swiss Federal Council imposes an unprecedented unilateral and exceptional freeze order on Marcos assets (executive seizure), after it was informed by a Swiss bank that De Guzman, a Filipino banker with power of attorney from Ferdinand and Imelda Marcos, had requested the transfer of assets out of Switzerland to an Austrian bank belonging to him and to former cronies of Marcos. Swiss Banking Commission is mandated to find out which banks are holding Marcos assets. The Swiss Federal Council states that it acted in anticipation of the Philippine governmental claims.⁵

At this point there is no mutual legal assistance treaty on criminal matters between Switzerland and the Philippines, so Swiss cooperation is based mainly on the Swiss Federal Act on International Mutual Assistance in Criminal Matters (Act on International Criminal Assistance, IMAC).⁶ The fact that the Swiss freeze order precedes the Filipino mutual legal assistance request leads to a controversy in Switzerland concerning the 'rule of law'.⁷

7 April 1986 The Philippine Government requests mutual legal assistance from Swiss authorities under the Swiss Federal Act IMAC on the basis of the "Malacañang documents". The government requests the continuation of the provisional freeze order, which would otherwise lapse.

The Malacañang documents led the Philippine Government to believe that Marcos had accumulated illicit wealth amounting to USD 5 billion, and that USD 1 billion thereof is in Swiss bank accounts.

It is later established by Swiss authorities that the MLA request had a "congenital" deficiency, as it was "indeterminate and generic". In the end the MLA request only succeeds in getting banking documents relating to the Marcos deposits released, and that, too, only under specific conditions.⁸ (See 21 December 1990 below.)

The Malacañang documents also lead the Philippine Government to press criminal

⁴ <http://www.pcg.gov.ph/id29.htm>

⁵ See Communiqué as reproduced in NZZ, a Swiss newspaper, Fernausgabe Nr. 71 of 27.3.1986, p. 13 stating that "Der Bundesrat hat beschlossen, in der Schweiz liegende Vermögenswerte irgendwelcher Art, welche von der Familie Marcos, von ihr nahestehenden Personen oder Gesellschaften u.ä. gehalten werden, vorsorglich bis auf weiteres zu sperren. Am Montag [24.3.1986] hat der Bundesrat Hinweise erhalten, dass von Seiten des philippinischen Ex-Präsidenten Marcos versucht wird, Gelder aus der Schweiz abzuziehen. Am Mittwoch [26.3.1986] wird ein Beauftragter der neuen philippinischen Regierung in Bern erwartet, welcher sich nach deren rechtlichen Möglichkeiten erkundigen will, ihre Ansprüche geltend zu machen. In dieser Situation hat der Bundesrat bereits am Montag [24.3.1986] an sechs Banken eine Verfügung erlassen, wonach allenfalls in der Schweiz liegende Vermögenswerte vorsorglich zu sperren sind, und dies auch der Bankiervereinigung mitgeteilt. Er wird das weitere Vorgehen in seiner nächsten Sitzung festlegen." See also Communiqué, "Vorsorgliche Blockierung der Marcos-Gelder in der Schweiz", as reprinted in Dagmar Richter, "Potentatengelder in der Schweiz: Rechtshilfe im Spannungsfeld der Menschenrechte von Tätern und Opfern", *The Heidelberg Journal of International Law 1998*, p. 18, available at http://www.zaoerv.de/58_1998/58_1998_1_a_541_610.pdf.

⁶ Bundesgesetz über internationale Rechtshilfe in Strafsachen (Rechtshilfegesetz, IRSG), adopted 20 March 1981, www.admin.ch/ch/d/sr/351_1/index.html (German); www.admin.ch/ch/f/rs/351_1/index.html (French).

⁷ See 86.482 - Interpellation, Marcos-Gelder in der Schweiz, eingerichtet von Fisher Theo, http://www.parlament.ch/afs/data/d/gesch/1986/d_gesch_19860482_002.htm (in German or French).

⁸ See the Republic of the Philippines' statement on asset recovery, delivered by Tanodbayan Ma. Merceditas N. Gutierrez, Ombudsman of the Republic of the Philippines, at the First Session of the Conference of the States Parties to the United Nations Convention against Corruption (UNCAC), Jordan, 10-14 December 2006.

	charges against Marcos.
7 April 1986	Invoking Alien Tort Act, a Filipino "Society of Ex-Detainees for Liberation from Detention and for Amnesty" (SELDA), representing around 10'000 Filipinos, files a case against Marcos in the United States District Court of Hawaii for human rights violations committed against them or their relatives.
1986	Hawaii District Court dismisses case, arguing that Marcos has privilege of immunity. SELDA lead counsel Robert Swift and his cp-counsel Jose Mari Velez appeal to US Court of Appeals for the Ninth Circuit.
18 April 1986	The Philippine Government makes informal request for continuation of freeze order in Switzerland.
23 April 1986	Exceptional freeze order rescinded.
25 April 1986	The Philippine Government formally requests continuation of freeze order through a diplomatic note.
7 July 1986	Swiss Federal Office of Police Matters (FOPM) defreezes Marcos deposits.
20 July 1986	FOPM refreezes Marcos deposits.

1987

1 July 1987	Judgement by Swiss Federal Supreme Court in Lausanne allows MLA to the Philippines. This was preceded by massive opposition by Marcos and others (incl. Swiss Banks) to this provision of MLA. ⁹
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1988

21 October 1988	A US federal grand jury in New York indicts Ferdinand and Imelda Marcos for a USD 268 million racketeering scheme, including looting the Philippine treasury of USD 103 million and defrauding US banks of USD 165 million.
31 October 1988	Imelda Marcos arraigned in court by US federal grand jury for offences including mail fraud, fraudulent misappropriation of property and obstruction of justice; pleads not guilty. Ferdinand Marcos excused for health reasons.
3 November 1988	Imelda Marcos allowed to return to Honolulu after American millionairess Doris Duke puts up more than USD 5 million in bail.

1989

1989	The Government of the Philippines brings court cases against Marcos in the United States District Court for the Central District of California and the United States District Court for the District of Hawaii. These civil cases were dropped by the government when the Marcos family agreed to transfer to the Philippine Government certain assets held in the US. ¹⁰
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⁹ The Swiss Federal Supreme Court judgment, ATF 113 Ib 257, 1 July 1987 (done in French, synopsis in German).

¹⁰ See David Chaikin, "Tracking the proceeds of organized crime – the Marcos case", Paper presented at a conference on transnational crime, convened by the Australian Institute of Criminology in association with the Australian Federal Police and the Australian Customs Service, Canberra (Australia), 9-10 March 2000, *supra* note 2, p. 5, footnote 11.

28 September 1989	Marcos dies of a heart attack in exile in Honolulu, Hawaii.
December 1989	PCGG enters into finder's fee contract (for 10%) with Australian investigator Reiner Jacobi to search for suspected Marcos accounts in Switzerland.

1990

March 1990	Imelda Marcos brought to trial by US federal grand jury in New York but acquitted on all counts in July. Faces further trials in the Philippines for misappropriation of public funds, but is not convicted.
10 December 1990	Swiss Federal Supreme Court judgment on the request of assistance filed by Swiss lawyers Salvioni et al.
20 December 1990	Swiss Federal Supreme Court accepts that in principle the frozen assets should be returned to the Philippines.
21 December 1990	Swiss Federal Supreme Court orders transmission of Swiss banking documents pertaining to Marcos deposits to the Philippine Government, under the following conditions over which PCGG expresses disappointment ¹¹ : <ul style="list-style-type: none"> • The transfer would take place without an exequatur-proceeding but delayed until an executory decision of the Sandiganbayan¹² or of another court having jurisdiction over criminal matters will have been submitted. • The transmission is deferred until an executory decision of the Sandiganbayan or another Philippine Court legally competent in criminal matters concerning their restitution to those entitled or their restitution or their confiscation is presented within one year, failing which the attachment of the assets shall be lifted on the request of the interested parties. • Imelda Marcos would be accorded due process of law, and that the proceedings comply with the Swiss federal constitution and the European Convention on Human Rights and Fundamental Freedoms.

(See also 10 August 1995 below.)

1991

1991	The US Court of Appeals for the Ninth Circuit issues a ruling in favor of the Marcos victims in the SELDA case submitted on 7 April 1986, reversing earlier Federal Court decision.
June-July 1991	Co-counsel Velez dies, replaced by Romeo Capulong, who questions lack of written agreement between SELDA and Robert Swift. Different interpretations of input required and rewards to be reaped (fees, compensation for victims) leads to relations between SELDA and Swift starting to go sour.
1991	PCGG chairman David Castro lends support to Jacobi's covert "Operation Domino", which seeks to locate undocumented Marcos accounts. Operation continues for

¹¹ See the Swiss Federal Supreme Court judgment, ATF 116 Ib 452, 21 December 1990 (done in French, synopsis in German). See also the Philippines asset recovery statement, *supra* note 7.

¹² The Sandiganbayan is a special Filipino court with "jurisdiction over criminal and civil cases involving graft and corrupt practices and other offenses committed by public officers and employees, including those in government-owned or controlled corporations". (See also <http://sandigan.supremecourt.gov.ph/index.html>)

years before being abandoned.

However results in a criminal investigation by the Zurich district attorney into Jacobi's and an associated informant's activities. The district attorney requests Jacobi's extradition from Germany on charges of economic espionage. The Munich Higher Regional Court rejects the request on 17 July 1991.¹³ (See note at 17 December 1991 below.)

- 19 July 1991 The Zurich district attorney suspends international legal assistance in relation to the Marcos case on account of "serious violation of the sovereignty of the canton of Zurich, and of the contempt of the provisions governing letters rogatory". The Philippine Government thereupon cancels Jacobi's official appointment.
- 17 December 1991 PCGG files civil case no. 141 in Sandiganbayan seeking to recover Marcos properties and assets, just four days before the 21 December 1991 deadline imposed by Swiss Federal Supreme Court judgment of 21 December 1990. Delay was partially caused by Swiss review of banking documents, in order to protect "non-participatory third parties", which resulted in editing and initial non-transmission of some documents. Furthermore, Swiss lawyers are not permitted to gather evidence on behalf of foreign clients, so the three lawyers the PCGG hired (Salvioni et al.) were handicapped. Finally, the PCGG itself apparently did not carry out the requisite international tracing exercises.

1992

- 11 May 1992 Defense secretary Fidel V. Ramos, endorsed by Aquino, wins presidential elections, declares "national reconciliation" highest priority. Imelda Marcos also ran for the presidency, came fifth in a seven-way race.
- 9 September 1992 The SELDA class action suit filed on 7 April 1986 comes to trial in the Hawaii District Court, having been consolidated with two direct-action cases. The case is dealt with in three parts, addressing liability, exemplary damages and compensatory damages.
- 22 September 1992 Hawaii District Court issues judgment in favor of Marcos victims, finding Marcos committed gross human rights violations and the estate of Marcos liable to pay damages to the victims.
- 24 September 1992 Plaintiffs win a favorable liability verdict. (See 23 February 1994 and January 1995 below for further judgments.)

1993

- 1993 Marcos' embalmed body returned to the Philippines and placed on permanent display in a home town mausoleum.
- SELDA seeks recognition from Hawaii District Court as organization to represent victims and guide lead lawyer in negotiations. SELDA Counsel Robert Swift opposes his own clients' motion in court.
- 8 March 1993 Swiss Federal Supreme Court passes judgment on the admissibility of an appeal to the Federal Administrative Court against a decision of the Federal Police Office

¹³ An English version of the German extradition judgment of 17 July 1991 is available at http://www.zoominfo.com/people/Jacobi_Reiner_27063081.aspx

establishing a "leading canton" in the Marcos case.¹⁴

28 December 1993 Ramos government enters into 75%/25% sharing agreement with Marcos family through PCGG chairman Magtanggol Gunigundo. (See 9 December 1998 below.)

1994

23 February 1994 The jury in the SELDA case in Hawaiï awards USD 1.2 billion in exemplary damages. (See January 1995 below for further judgments.) The decision is based on UN Convention against Torture and on Alien Tort Claims Act or Alien Tort Statute (anti-pirate law of 1789, allows suits against people living in and businesses registered in USA for crimes committed abroad).

22 October 1994 Some SELDA members form Claimants 1081, a breakaway claimants group led by Etta Rosales. Many claimants became confused, as rival groups issued contradictory statements, all "on behalf of the victims".

1995

1995 Imelda Marcos elected congresswoman and son Ferdinand Jr. elected congressman.

18 January 1995 The jury in the Hawaii case, in addition to a separate judgment that was concluded in February 1994 and in which USD 1.2 billion were awarded in exemplary damages, awards approximately USD 750 million in compensatory damages.

On appeal by Imelda Marcos, the United States Court of Appeals for the Ninth Circuit upholds the judgments for (together) nearly USD 2 billion in exemplary and compensatory damages to thousands of surviving victims. As there are no funds available to fulfill the award, the court attempts to fulfill it with Marcos funds frozen in Swiss bank accounts via the California branches of Swiss banks - a violation of Swiss sovereignty.

Victims later enter into a compromise agreement with the Marcos family for a USD 150 million settlement, with the Philippine government undertaking to allow the release of said amount from the Philippine National Bank (PNB) escrow account, but the Sandiganbayan finds the agreement to be contrary to public policy and the proposed funding to be without any legal basis.

The Hawaii court terminates the settlement in 2001.

Based on the reparations judgment in Hawaii, SELDA Counsel Robert Swift claimed USD 500 million share of the total damages payable to Filipino torture victims. Attempts to get hold of funds (blocked in Schweizerischer Bankverein (now UBS) and Schweizerische Kreditanstalt (now Credit Suisse) since Marcos' fall) prove difficult.

10 August 1995 Petition for "anticipatory restitution" pursuant to the exception under paragraph 74a of the Swiss Federal Act on International Criminal Assistance, IMAC submitted by the Philippine Government to a Zurich district attorney, seeking modification of the Swiss Federal Supreme Court judgment of 21 December 1990. The aim was to enable the assets to be transferred under escrow before the rendering of a final judgment in the Philippines.¹⁵

¹⁴ The Swiss Federal Supreme Court judgment ATF 119 Ib 56, 8 March 1993 (done in French, synopsis in German).

¹⁵ See Philippines asset recovery statement, Jordan 2006, *supra* note 7.

- 21 August 1995 Zurich district attorney issues unprecedented order partially modifying 21 December 1990 judgment and ordering "anticipatory transfer" of assets.¹⁶
- 1995 End 1995 Robert Swift obtains court order for confiscation of funds held in US branches of the Swiss banks involved equal to amount of Marcos wealth blocked in Switzerland. UBS and Credit Suisse are thus at risk of having to pay the money out twice, once in context of international legal assistance to Philippine Government (in Switzerland) and a second time in favor of the Filipino torture victims (in the USA).
- 13 September 1995 PCGG chairman Gunigundo and Robert Swift sign a memorandum of agreement for compromise with Ramos government, accepting a USD 100 million (USD 50 million from Marcoses and USD 50 million from government's claim on Swiss deposits) in exchange for dropping class action ("...dismissing with prejudice, all execution proceedings, commenced by plaintiffs"), possibly granting the Marcos family immunity from future suits, and dropping all criminal and civil suits against them. SELDA condemned the Swift-Gunigundo agreement as illegal and immoral, leading to Ramos not signing the agreement.¹⁷

1996

- 1996 Swift's request for release of Swiss deposits denied because the civil attachment he obtained can not prevail over the Republic's criminal attachment over stolen assets.
- All Filipino torture victims' claims to share of the Marcos funds categorically repudiated until 1996 by banks and Swiss Government, as funds blocked on account of international legal assistance by Switzerland to the Philippines. The Philippine Government was making efforts to repatriate funds to the Philippines. It assumed - in contrast to the Marcos family - that it was dealing with wealth Marcos had diverted from the Philippine exchequer and deposited abroad. The two opposing parties' divergent demands led to legal and political negotiations progressing slowly over many years.
- January 1996 Banks invited representatives of the Philippine and Swiss governments, Marcos family and torture victims to mediation in Hong Kong to arrive at an out-of-court settlement. No result was achieved.
- December 1996 Imelda Marcos' appeal denied by US Court of Appeals for the Ninth Circuit. Court affirms earlier decision favoring 10,000 victims.

1997

- March 1997 US Supreme Court lets Appeal Court decision stand. This final decision rendered the class action suit a legal precedent in the history of international human rights jurisprudence which can be invoked by human rights victims the world over.
- 25 May 1997 Robert Swift files motion through Filipino lawyers in Makati Regional Trial Court for court enforcement of a foreign judgment, as attempt to oust SELDA from the class action suit.
- 10 December 1997 Swiss Federal Supreme Court takes a decisive step out of stale-

¹⁶ See fn 19 supra.

¹⁷ According to the Society of Ex-Detainees for Liberation from Detention and for Amnesty SELDA. See <http://www.phionline.com.ph/~krptrn/Campaigns/mdl840/mdl840.html>

to January 1998¹⁸

mate by issuing decision to transfer contested USD 540 million of Marcos loot to custody of Sandiganbayan. These are the funds originally frozen in Switzerland as a consequence of the Philippine Government's asset recovery efforts that resulted from the Malacañang documents. The original USD 540 million later grew to USD 658 million on account of interest when they finally reach the Philippines in 2003 and are placed in a PNB escrow account.

The Philippine Government request for anticipatory restitution of frozen assets was possible under the Swiss Federal Act on International Criminal Assistance, IMAC. This revised law makes it in principle essential for the country to which the funds are to be restituted to prove the illegal origin and the legal owner of the funds with a legally binding judgment. In its judgment of 10 December 1997, the Swiss Federal Supreme Court fully exploited room for maneuver available in the revised law, in order to make the transfer of the Marcos wealth to the Philippines possible even without a binding legal judgment, under the condition that the Philippine Government "inform the Swiss authorities of the current status and to regularly inform it of substantive developments [...] concerning provisions and procedures for the payment of reparations to the victims of human rights violations under the Marcos regime"¹⁹, amongst other things.²⁰

The Republic of the Philippines guarantees that the decision about the seizure or restitution of the assets to the entitled parties would be taken in judicial proceedings which satisfy the procedural guarantees as established in art. 14 of the International Covenant on Civil and Political Rights of December 16, 1966 (ICCPR).

New aspect: Swiss Federal Supreme Court ascertained that the Philippines proceedings satisfied relevant human rights principles, and based its decision not solely on Swiss legislation and on the Swiss Federal Act on International Criminal Assistance, IMAC. , but also gave similar weight, if not more, to Switzerland's and the Philippines' international obligations. In this respect, the Swiss government stated that "respecting human rights specifically belongs [to these obligations], and the civil service and the courts, as the executive bodies of the international legal system, are called upon to implement it".²¹ This decision closed gap in interpretation of national and international legal norms which had blocked Marcos case for years.

However, obstacles to implementing these court decisions remained: According to Hawaiian judgment, Filipino torture victims are to be compensated from Marcos estate. Legitimate claim contained formal dilemma: funds in Switzerland are not part of the Marcos heirs' private estate, but have been stolen from the Philippines. The Swiss Federal Supreme Court circumvented dilemma by reminding the Philippine Government (with reference to the UN Convention against Torture) of the rights of the victims of human rights violations to seek redress before a court. This led to substantial legal and political battles in the Philippines concerning reconciliation of the liability of the Marcos estate for payment of the judgment of the Hawaii case and the compliance obligations under the ICCPR.

Question concerning who should pay the 10'000 plaintiffs in the SELDA case very closely linked to question of how the funds transferred from Switzerland to an escrow account in the Philippines should be used. In this regard, two substantial

¹⁸ Two judgments on 10 December 1997, six judgments on 7 January and two judgments on 15 January 1998.

¹⁹ The Swiss Federal Supreme Court judgments: BGE 123 II 595, 10 December 1997, as well as of the 19th and 22nd of December 1997 (done in German, synopsis is in French), also available from ICAR - Auszug aus dem Marcos Urteil, 10 December 1997.

²⁰ The Swiss Federal Supreme Court judgment, BGE 123 II 595, 10 December 1997 (done in German, synopsis in French).

²¹ Ibid. In this context the Swiss Federal Supreme Court referred, amongst other things, to an interesting article by Daniel Thürer, «Internationales "Rule of Law" - innerstaatliche Demokratie» ["International 'Rule of Law' - National Democracy"], in the Swiss Journal for International and European Law [Schweizerische Zeitschrift für internationales and europäisches Recht], no. 4/1995, at p. 455-478, and p. 471 in particular.

positions were held:

First position held, amongst others, by the Government of the Philippines, is that recovered funds belong to state in their entirety (tied to agricultural reform by a law passed precisely for this purpose). Hawaii judgment obliges Marcos family to pay reparations.

Second position demands USD 150 million of blocked funds for reparation payments. This position was held primarily by representatives of torture victims, based on (controversial) agreement between the US torture victims' lawyer, Robert Swift, Marcos family and the Philippine Government, and on commitments made by the Philippine Government to the Swiss Federal Supreme Court.)

1998

11 May 1998	Joseph Estrada elected President of the Philippines. Imelda Marcos' presidential bid previously withdrawn in favor of friend and ally Estrada. Election of Estrada signals start of re-ascendance of the Marcos family and cronies. Estrada's governance considered wayward. Popularity soon declines amid allegations of cronyism and corruption.
April/June/July 1998	Marcos funds confiscated in Switzerland arrive in the Philippines and are placed in PNB escrow account (custody of Sandiganbayan), pending final ownership decision.
29 June 1998	Sandiganbayan finds Imelda Marcos guilty of charge of "entering into an agreement disadvantageous to the government". Supreme Court reverses decision on appeal, reasoning that Sandiganbayan Justice Francis Gatchitorea was biased.
7 August 1998	Article 5, Part III of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law, signed by President Estrada, stipulates responsibility of government to recognize and respect rights of victims for justice and indemnification. Victims to be given the first 30% of the PNB escrow deposit.
14 September 1998	President Estrada promises a USD 171 million "Christmas gift" for 9,539 victims of human rights violations during the Marcos regime.
28 September 1998	Settlement conference in US regarding indemnification of Marcos' victims, attended by Robert Swift but not by SELDA.
October 1998	Imelda Marcos acquitted of graft charges in the Philippines.
9 December 1998	Philippine Supreme Court declares agreement of 28 December 1993 invalid, under which the PCGG had agreed with the Marcos family on a 75%-25% split of the money held on the escrow account.
December 1998/ January 1999	President Estrada still studying "possibility of giving immunity to Marcos family".

1999

25 February 1999	Announcement of settlement and compromise between Estrada, Swift and the Marcos family, hailed as "final victory" by Swift and Claimants 1081. SELDA rejects agreement; states that there has been no consultation with victims, nor transparency in negotiations; that the agreement virtually grants the Marcos family and the government immunity and exonerates the Marcos family; and that, while the process for lawyers to get their fees is clearly determined, it remains vague as to how the victims will be indemnified.
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- June 1999 Philippine Senate Committee on Accountability of Public Officers and Investigations ("Blue Ribbon committee") inquires into "alleged existence of PCGG-Swiss bankers' conspiracy to hide and divide the Marcos wealth".
- November 1999 From 1986 to November 1999, PCGG files a total of 852 cases before various courts and enters into 33 compromise settlements with various Marcos cronies, in exchange for either information or the surrender of ill-gotten property.

2000

- May 2000 Salonga alleges that President Joseph Estrada "had been peddling the myth" that nothing has been recovered even before taking office in 1998, "in the desire to convince the nation that it would be better to reach a compromise agreement with the Marcos family rather than incur more litigation expenses."
- September 2000 Filipino anti-corruption court Sandiganbayan's first division makes prima facie decision that entire USD 627 million of Marcos funds that had been repatriated from Switzerland were to be considered property of the Philippines. Rejects any agreement for torture victims to receive a share "for lack of legal basis". Thus blocked monies have to be used for agricultural reform. Decision contested by Marcos family. (cf. also 1 February 2002 below)
- Filipino human rights organizations are split into two factions, some (supported by Swift) want to reach settlement with all parties concerned, including Marcos family, in order to obtain reparation payments. Vehemently opposed by other side as a betrayal of the rights of the victims and of the principles involved.²²
- September 2000 Class of human rights victims files a case against Merrill Lynch in Hawaii, alleging that it is holding Marcos assets in the name of Arelma Inc, a Panamanian corporation.
- 21 September 2000 Merrill Lynch files interpleader action covering assets of Arelma (now approximately USD 35 million), to avoid having to defend itself against the class lawsuit, for which human rights victims were impleaded, together with the Philippines, the PCGG, the estate of Roger Roxas, Golden Budha (sic) Corp, the Estate of Ferdinand E. Marcos, among other defendants.
- October 2000 Estrada accused of taking millions of pesos in illegal gambling business payoffs. Impeached but trial in senate breaks down when senate votes to block examination of president's bank records. Massive street protests for Estrada's resignation.

2001

- 20 January 2001 Armed forces withdraw support for Estrada; he is forced from office. Vice-president Gloria Macapagal-Arroyo (daughter of late president Diosdado Macapagal) sworn in as successor on day of Estrada's departure.

2002

- 1 February 2002 Five Sandiganbayan special division justices reverse ruling of first division of

²² According to Catharine MacKinnon, it is detailed in the Sandiganbayan's judgment that, of lawyers fees amounting to a total of USD 40 million envisaged, approx. USD 34 million alone would go to the law offices of US lawyer Robert Swift.

September 2000, contested by Marcos family. The court said the government had not complied with the rules on authentication of documents. PCGG represents government.

Recovery of other funds (if any) remains in question.

August 2002

Haydee Yorac, 11th chair of PCGG, reported to have said that government has recovered about USD 2 billion.²³

Yorac said that when she assumed office, records at the commission were in disarray and many documents missing. She also said she suspected corruption of former lawyers and officials was another reason for the slow pace of recovery.

31 December 2002

PNB reports escrow account of Marcos family at the PNB now contains USD 676 million (on account of interest).

2003

2003

West LB, a Singapore Bank confronted with competing claims for money originally hidden by Marcos, deposits money to the Singapore High Court. The Philippine Government asserts that it was awarded the money by the Philippine Supreme Court in July 2003.

13 May 2003

Bangko Sentral ng Pilipinas (BSP) has no authority to freeze or even examine bank accounts of the Marcos family and his cronies. PCGG has to secure prior order from Sandiganbayan anti-graft court to freeze or "sequester" suspect assets. (Cf. 11 March 1986 above).

11 July 2003

Marcos deposits held in escrow by the PNB cannot be used for anything other than the Comprehensive Agrarian Reform Programme in 2004 budget, as repatriated Marcos monies have been earmarked for agrarian reform under the Comprehensive Agrarian Reform Law (CARL). Should the need arise to use the funds for a different purpose, then this could only be achieved through an amendment of the CARL.

15 July 2003

Philippine Supreme Court rules that the funds transferred from Switzerland are ill-gotten and must therefore be handed over to the Philippine Government, confirming the Swiss Federal Supreme Court's decision concerning the illegitimate origin of the funds. The money is to be used to buy land for distribution to poor farmers. Marcos family immediately appeals the decision.

5 August 2003

Swiss and Filipino authorities express their satisfaction over the positive conclusion of the Marcos case. No more decisions are expected from the Swiss authorities in this matter now²⁴. Both governments are of the opinion that following the Philippine Supreme Court ruling of the 15th of July 2003, the funds transferred from Switzerland and located in a PNB escrow account since 1998 can now be transferred into the care of the government of the Philippines.

In a parliamentary query to the Swiss government submitted on 18 March 2004, Swiss member of parliament Remo Gysin questions this in light of the fact that no provision was taken to compensate the victims of the Marcos regime's human rights abuses. In response to this parliamentary query, the Swiss Government answers that national regulations are national governments' business, and that a law addressing compensation for the victims of the Marcos regime's human rights abuses is in preparation in the Philippine parliament.

²³ According to Asia Week, 11 August 2000 and Manila Times, 02 August 2002.

²⁴ See http://www.ejpd.admin.ch/ejpd/en/home/dokumentation/mi/2003/ref_2003-08-05.html or ICAR - Swiss Federal Office of Justice, Press Release, 5 August 2003. Marcos case closed.

PCGG Commissioner Vyva Aguirre says government is now "not waiting for anything anymore", and Rod Domingo, lead lawyer for human rights victims, says release of the Swiss funds "draws 9,539 victims of Marcos' martial rule nearer to their compensation. Congress has yet to pass a valid and constitutional law which can withstand legal scrutiny though".

September 2003

Ongoing fight over the Marcos millions is further complicated when district court of Hawaii places global freeze order on the Marcos assets. The Philippine Government appeals the freeze order to the Ninth Circuit in California. The appeal is dismissed on 28 December 2004 - see below.

18 November 2003

Philippine Supreme Court upholds its July ruling and criticizes Hawaii court for overstepping its jurisdiction.

2004

4 February 2004

Funds held in PNB escrow account are remitted to Philippine treasury by PCGG as a result of the Philippine Supreme Court decision of 15 July 2003.²⁵

16 February 2004

West LB commenced interpleader proceedings in the Singapore High Court and was granted interpleader relief on 24 March 2004. The Funds hidden by Marcos and for which multiple ownership claims have been issued were ordered to be held in a bank account in Singapore for the credit of the interpleader proceedings. All the other banks had earlier released the full amounts held by them to PNB escrow account in compliance with the Philippine Supreme Court decision of 15 July 2003, affirmed by the full court on 18 November 2003 forfeiting the Swiss deposits in favor of the Philippine Government.

30 June 2004

Macapagal-Arroyo re-elected to six-year term as president.

8 July 2004

Sandiganbayan issues warrant of arrest for Marcos crony Herminio Disini for allegedly taking bribes for securing a government con in the 1970s to build the long-mothballed Bataan nuclear power plant. Disini was indicted by state prosecutors for allegedly using his influence to win the bid for the nuclear plant project for two American companies, Burns and Roe and Westinghouse Electrical Corp., in exchange for USD 18 million in bribes. Marcos allegedly also received kickbacks. Disini's whereabouts are unknown, however.

15 July 2004

US district Judge Manual Real in Hawaii orders that USD 40 million held by finance company Arelma Inc set up by Marcos be used to start paying victims of his regime who were awarded damages in 1994. The Arelma Inc appeals the ruling.

The Philippine Government, though it "welcomes the spirit of the US court decision" says that the Federal Court ruling handed down by a US district Judge Real cannot be enforced on the Philippines as a sovereign state outside the jurisdiction of the US court, and victims will be compensated under national laws of the Philippines. A spokesperson adds that the government is "committed to the compensation of human rights victims".

28 December 2004

The Ninth Circuit in California finds the Philippine Government to be a non-party to a global freeze order placed on the Marcos assets by the district court of Hawaii. The government lacks standing to challenge the order and the court dismisses the appeal.

²⁵ See Philippines asset recovery statement, Jordan 2006, *supra* note 7.

2005

- 4 February 2005 The Philippine National Bank petition to US Ninth Circuit Court of Appeals for a writ of mandamus to prevent the district court from pursuing contempt and discovery proceedings against the bank because of the bank's transfer of funds to the Republic of the Philippines pursuant to a judgment of the Philippine Supreme Court. Ninth Circuit Court concludes that the district court's orders violated the act of state doctrine, and it accordingly issues the writ.
- 11 February 2005 President Arroyo says spending of recovered Marcos wealth transferred to the national treasury was legal. Law states that all alleged ill-gotten wealth recovered from the Marcos family must first be earmarked for land reform. Bill pending to amend law, to use some of the wealth to compensate Marcos human rights victims.
- July 2005 Filipinos rate Marcos as best of country's last five presidents in a poll. Out-polls his successor 'People's Power' leader Corazon Aquino.

2006

- 4 May 2006 Philippine Government said to be considering compromise with Imelda Marcos, seeking an out-of-court settlement to end a global hunt and litigation over the Marcos family's fortune. PCGG said "exploratory talks" with the Marcos lawyer Robert Sison had been held and it had asked Sison to submit a list of assets held by the Marcos family.
- 4 May 2006 US Ninth Circuit Court of Appeals rules that the Republic of the Philippines is not an indispensable party to an interpleader action in which victims of human rights violations claimed compensation. The Court of Appeals previously held that the Republic was a necessary party, but was protected by sovereign immunity. Thus, a ruling that it was an indispensable party would have compelled dismissal of the suit. Court now concludes that "equity and good conscience" can allow suit to continue. Human rights abuse victims can thus recover about USD 35 million being held by Merrill Lynch, Pierce, Fenner and Smith, Inc. in an account set up by a Marcos corporation, Arelma, Inc. Senior Judge John T. Noonan Jr., writing for the court, noted that the account is in the United States and cannot be finally disposed of except by the judgment of a court in the US. The case is Merrill Lynch, Pierce, Fenner and Smith, Inc. v. Arelma, Inc., 04-16401.
- 18 August 2006 Swiss Federal Supreme Court countermands freezing of accounts relating to Disini, as the Philippines has not presented confiscation judgment.²⁶
- 29 December 2006 On 8 March 2006, the Philippine Government applies for and is granted leave to join in the interpleader proceedings solely to assert state immunity to the Funds. On 27 December 2006, the Singapore High Court dismisses an application filed by the Philippine Government pursuant to the Singapore State Immunity Act to, inter alia, stay the claims of all other claimants to the Funds which comprise of USD 23 million Marcos funds of money originally hidden by Marcos in a Swiss bank before being transferred to Singapore. The Philippine Government appealed this decision to the Singapore Court of Appeal and the appeal is pending. Swift says it is a significant victory on the way to obtaining a final verdict for the entire USD 23 million of Marcos funds. Singapore is not a signatory to the UN Convention Against Corruption.

²⁶ The Swiss Federal Supreme Court judgments: 1A.335/2005, 23 March 2007, 1A.27/2006, 21 February 2007.

2007

7 February 2007

Bicameral Committee of the Congress of the Philippines approves consolidated bill, providing compensation to human rights victims under the Marcos regime. The Senate thereafter approved the consolidated bill before it went into recess. The bill has been certified as a priority bill by President Gloria Macapagal Arroyo and will become law after the House formally approves it.

2007

The legacy of the Marcos dictatorship is an economy struggling to pay interest on its foreign debt and a seriously compromised democracy, struggling to shake off corruption.

The existence and whereabouts of the Marcos billions remains unconfirmed, despite detailed international investigations.

Just over 17 years after the Marcoses' flight from the Philippines, a part (USD 658 million) of the alleged Marcos billions was returned to the government. More than 20 years after the end of the Marcos presidency, many of the assets believed stolen from the Philippines by the Marcos family have still not been returned to the government. The latter is again said to be open to an out-of-court settlement to finally lay the Marcos era to rest.

Compiled from public articles and documents by the Basel Institute on Governance/International Centre for Asset Recovery ICAR (Gyan Sharan Bitterli). Statements do not necessarily reflect the opinion of the Basel Institute on Governance or ICAR. Comments from several participants at the May 15-16 Workshop at Asset Recovery held in Basel, Switzerland, including from the Philippine Presidential Commission on Good Government (PCGG) have been incorporated. This document is intended to be used for instructional purposes and is not an exhaustive listing of all events in the Marcos proceedings. It remains work in progress and amendments and comments are welcome and will be reviewed and inserted as appropriate.