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Chronology of Events
Related to the Human Rights
Class Action Suit Against Marcos
(1985 – 2013)
Acknowledgment

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The Samahan ng Ex-Detainees Laban sa Detensyon at Aresto (SELDA) is an organisation of former political prisoners in the Philippines. Founded in early 1985, SELDA was initiated by newly-released political prisoners of the martial law period.

SELDA organises former political prisoners and ensures that they are kept abreast of the economic and political situation in the country and continue to work for social change.

SELDA’s primary task is to work for the release of all political prisoners and to see to it that humane treatment of those who are still in detention are complied with by the Philippine government. SELDA advocates justice for current and former political prisoners. It calls for the mobilisation of resources in support of political prisoners, former detainees and their families. It carries out legislative advocacy for the indemnification and rehabilitation of political prisoners. SELDA goes into partnership and builds solidarity with concerned individuals and groups for the freedom and welfare of political prisoners and all victims of tyranny.

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This documentation pertains only to specific events relevant to the human rights class suit against President Ferdinand E. Marcos. For additional details, please contact: SELDA National Office, 2/F Erythrina Building, No.1 Maaralin St., Central District, Diliman, Quezon City 1100, Philippines; telephone numbers (63 2) 434 2837 or (63 2) 435 4148; email: selda_phil@yahoo.com.ph; web: www.seldapilipinas.wordpress.com

Early 1985

SELDAL was organised by former political detainees of the martial law regime upon the initiative of Fidel Agcaoili, Julieta de Lima-Sison, and Romeo Candazo. Joaquin “Don Chino” Roces was elected as chairperson with Agcaoili as secretary general. The other board members were: Jake Almeda Lopez, Francisco Rodrigo, Jose Mari Velez, Benjamin Guingona, Danilo Vizmanos, de Lima-Sison and Candazo.

February 1986

President Ferdinand Marcos ousted from power in a popular people’s revolt; the euphoria felt by the Filipino people was so overwhelming that SELDA deemed it necessary to institute measures to remind the nation of Marcos’s crimes against humanity by seeking justice for victims of the dictator’s human rights violations. Two projects were approved: a class action suit for human rights violations against Marcos, and the setting up of a monument for the victims, Bantayog ng mga Bayani, to be spearheaded by SELDA in cooperation with FIND (Families of Victims of Involuntary Disappearances) and MARTYR (Mothers and Relatives Against Tyranny). Upon the advice of Justice Jose Yap of FIND, the three organisations approached Jovito Salonga for help in looking for a venue for the monument and soliciting funds for setting it up. FIND and MARTYR were human rights organisations also initiated by SELDA members to seek justice for the families of victims of
disappearances, and for those who were killed or summarily executed for opposing and resisting the US-backed Marcos dictatorship.

Immediately after February 1986, SELDA’s chair and acting legal counsel, Atty. Jose Mari Velez, informed the SELDA Executive Board that an American lawyer named Robert Swift was offering his services to help the victims in filing a class action suit against Marcos in the US. According to Atty. Velez, Swift was a known litigation lawyer and had the endorsement of Atty. Jose Diokno, the newly appointed chairman of the Presidential Committee for Human Rights by President Corazon C. Aquino.

1986-1987

According to compiled public articles and documents of the Basel Institute of Governance/ International Centre for Asset Recovery (ICAR), Swiss bank accounts in the name of Marcos were estimated to contain more than US$ 3 billion stolen from the Philippines. Through a request filed by Swiss lawyers, Salvioni, Fontanat and Leuenberger, it was possible to freeze about US$ 356 million of the Marcos fortune in Switzerland that were discovered based on the documents that Marcos, his family and his staff had lost in the presidential palace during their flight (so-called “Malacañang documents”).

March 1986

Atty. Swift came to Manila to gather initial testimonies from human rights violations victims. SELDA mobilised the victims who would later be the named plaintiffs of the class action suit. The office of Atty. Velez was the venue for the taking of sworn statements. There was a verbal agreement between Atty. Swift and the SELDA National Executive Board that Swift’s law firm – Kohn, Savette, Klein & Graf, P.C. – would shoulder all the litigation expenses up to the time the case would be won. Upon recovery of awards, Atty. Swift would get his lawyer’s fees and the reimbursement of all the litigation expenses he incurred.

7 April 1986

Invoking the Aliens Tort Act of the US, SELDA filed the class action suit against Marcos in the Federal District Court of Pennsylvania as Swift’s firm was located there. The US Federal Court remanded the
case to the Federal District Court of Honolulu in Hawaii (where Marcos and family were brought by the Reagan administration), in the sala of Judge Harry Fong with Atty. Swift as lead counsel and Atty. Jose Mari Velez as co-counsel. The 10 named plaintiffs, all SELDA members, were: Celsa Hilao, Danilo de la Fuente, Renato Pineda, Adora Faye de Vera, Domiciano Amparo, Rodolfo Benosa, Jose Duran, Josefina Forcadilla, Arturo Revilla, and Gerry de Guzman.

25 May 1986

Formal launching of SELDA as an organisation with the election of new officers.

1986-1987

Start of formal peace negotiations between the Philippine government under President Corazon Aquino and the National Democratic Front of the Philippines (NDFP). The NDFP insisted that the rights of the Marcos victims for justice and indemnification should be included in the agenda of the peace talks.

1986 (to 1991)

SELDA received a grant from The Ford Foundation for a documentation project on the human rights violations of Marcos’s martial law, and which data would eventually be used as one of the sources of documentary evidence in the prosecution of the class suit, given that Kohn, Savette, Klein & Graf, P.C., Atty. Swift’s law office, did not have any capability to gather data in the Philippines.

Mid-1986

The Federal District Court of Hawaii dismissed the case, ruling that Marcos had sovereign immunity from suit. SELDA lead counsel Swift and co-counsel Velez appealed to the US Court of Appeals for the Ninth Circuit.

1990

Judge Fong of the Federal District Court of Hawaii was replaced by Judge Manuel Real.
1991

The US Court of Appeals for the Ninth Circuit issued its ruling favoring the Marcos victims, thus reversing the earlier (1986) decision of the Federal District Court.

June 1991

Atty. Velez died from a lingering illness. Atty. Romeo Capulong appointed by the SELDA National Executive Board as lead counsel of SELDA.

Atty. Capulong questioned the lack of a written agreement between SELDA and Atty. Swift especially on lawyer-client relations between the lead lawyer, Atty. Swift, and SELDA which initiated the suit, did all the work in looking for the named plaintiffs, helped in the depositions, secured the documentation and materials for the case, and all necessary work for the lawyers. He pointed out that Atty. Swift should, therefore, be accountable to SELDA as the central organisation which represented the victims so that they could have an organisation representing their interests at any stage of the case. Atty. Capulong also pointed out the lack of a written agreement on the issue of attorney’s fees of Atty. Swift and other lawyers involved in the case.

SELDAs chairperson at that time, Danilo Vizmanos, wrote a letter to Atty. Swift inquiring about Atty. Capulong’s advice regarding the need for a written agreement. Atty. Swift reacted negatively.

Meanwhile, the SELDA National Secretariat continued to actively help Atty. Swift in the preparation for trial even as relations with him and the SELDA Board were starting to sour because of Atty. Swift’s brashness.

9-22 September 1992

Trial of the case against Marcos. There were two other direct-action cases which were consolidated with the original case filed by SELDA. One case was filed by the US Group of 21 (group of political prisoners who migrated to and settled in the US) represented by Atty. Melvin Belli, and by the Group of Three (of Jose Maria Sison, Francisco Sison and Jaime Piopongco) represented by Atty. Paul Hoffman of the American Civil Liberties Union (ACLU) and Atty. Capulong. These three cases
were consolidated into one case docketed as MDL 840 (Multi District Litigation) in the Federal District Court of Hawaii. The case was dealt with in three parts: addressing liability, exemplary damages, and compensatory damages.

22 September 1992

The US Federal Court issued its judgment in favor of the Marcos victims. The decision found Marcos guilty of gross human rights violations and the Estate of Marcos liable to pay damages to the victims.

1993

The Ramos government, through then Presidential Commission on Good Government (PCGG) Chair Magtanggol Gunigundo, entered into a 75%-25% sharing agreement with the Marcoses. SELDA rejected this arrangement as anomalous.

31 July 1993

First deadline for the human rights violations victims to file their claims. SELDA did all necessary work in processing the claims – sending out notices to victims and contacting them; secretariat work for listing down all claimants; helping the lawyers and the victims during this stage.

In subsequent moves, given the customary standard that the necessity of lawyer-client consultation be respected at all times, given the expectation that Atty. Swift was ethically bound to this standard by having close coordination and relations with his clients, and given that it was near-impossible for him to coordinate with all his clients all the time; SELDA, in the spirit of seeing to efficient lawyer-client communications, and asserting the prerogative of the client vis-a-vis the engagement of a lawyer, tried to seek recognition from the Federal District Court as the organisation to represent the victims so that the victims would have a voice in every stage of the case, giving guidelines to the lead lawyer in any negotiation he might make, and thereby making the victims the real decision-makers in the case. Swift vehemently opposed his own clients’ motion in court. This laid bare Swift’s design of taking sole control of the case, making moves on his own without consulting the victims.
23 February 1994

The Federal District Court of Hawaii awarded exemplary damages of US$ 1.2B to the victims. The decision was based on the Alien Tort Claims Act or Alien Tort Statute (originally an anti-pirate law of 1789 which allowed suits against people living in and businesses registered in the USA for crimes committed abroad), and on the UN convention against Torture. The ruling on exemplary damages served as warning to any person who would do acts similar to Marcos’s crimes against humanity. Also, the court had allowed the victims a second deadline of 24 February 1994 for filing of claim forms (the first deadline was 31 July 1993).

September-October 1994

The Federal Court sent “Special Masters” to the Philippines to interview 135 randomly selected claimants from the 1992 originally verified 10,059 list of victims so as to validate the Class and to determine the amount of compensation to be given to each victim-claimant. SELDA continued to give staff support in looking for and accompanying the selected 135 claimants for their interviews with the Special Masters. Atty. Capulong and lawyers from the Public Interest Law Center (PILC) rendered the necessary legal assistance and guidance to the victims.

Meanwhile, Atty. Swift’s relation with SELDA further soured when he demanded that SELDA sever its ties with Atty. Capulong, claiming that Atty. Capulong was “becoming a problem” in his (Swift) early recovery of monies for the victims.

22 October 1994

A number of martial law human rights victims formed a breakaway group Claimants 1081 led by Etta Rosales, and ingratiated themselves to Atty. Swift purportedly to support his every move so that the victims could have immediate compensation. Claimants 1081’s action came after pledging to SELDA that they would support SELDA’s stand that the victims’ strong voice on the case would be the principal consideration in any organisational action.
It was clear to all concerned that Claimants 1081 established themselves only after the Federal Court issued monetary awards on the case. Atty. Swift became more emboldened to do his own actions using Claimants 1081 as his base. His relations with SELDA completely deteriorated.

Claimants 1081 used their supposed “blessing” from Atty. Swift, and in utter disregard of the victims’ rights, aggressively started writing to many of the class members, issued statements “on behalf of the victims”, and even parlayed Claimants 1081 as the organisation representing the victims with Atty. Swift. This resulted in some confusion among the victims about Claimants 1081’s existence as another group which they did not know of. Then without informing the victims, Atty. Swift gave out to Claimants 1081 the addresses of the victim-claimants, who were surprised to receive letters from them soliciting the victims’ membership in Claimants 1081.

18 January 1995

The Federal Court determined the compensatory damages for 9,539 victims amounting to US$ 776 million, in addition to the separate judgment that was concluded in February 1994 in which US$ 1.2 billion were awarded in exemplary damages. Imelda Marcos appealed the decision of the Federal Court in the US Court of Appeals for the Ninth Circuit which upheld the judgments.

13 September 1995

While the case was on appeal, by virtue of a Memorandum of Agreement signed by PCGG Chair Magtanggol Gunigundo and Atty. Swift, he (Atty. Swift) unilaterally and without adequate and genuine consultation with the victims, entered into a sweeping and wholesale compromise agreement with the Ramos government, accepting a US$ 100 million monetary settlement (of which, US$ 50 million would come from the Marcoses and another US$ 50 million from the Philippine government’s claim in the Swiss deposits), in exchange for the dropping of the entire class action suit (“...dismissing with prejudice, all execution proceedings, commenced by plaintiffs in the
continental United States, or outside the US”), and possibly granting the Marcoses immunity from future suits and dropping all criminal and civil suits against them.

SELDAA vehemently condemned such illegal and immoral Swift-Gunigundo agreement. President Ramos was then forced not to sign the said agreement.

1995

Due to Atty. Swift’s less than candid and shrewd manipulation and even gross misrepresentation of the case (he then attempted to enter with Imelda Marcos into a US$ 35 million settlement as originally proposed in 1992 by then Secretary of Justice Teopisto Guingona; and for a US$ 1.5 million settlement with the Tantocos [known Marcos cronies] – both of which SELDA opposed), SELDA sent a letter to the US court asking the said court to issue a desist order for Atty. Swift to stop any negotiation with the Marcoses and with the Philippine government without genuine and transparent consultation with the victims. Atty. Swift insisted that he remained the legal representative of the victims in any negotiation and that he represented the victims individually.

January 1996

In his overzealous attempt to manipulate the case for early recovery of the Swiss-held money from Marcos’s loot, Atty. Swift filed a motion in the Federal Court in Los Angeles insisting that the two local branches of Swiss Bank in L.A. should be compelled to release documents on Marcos’s ill-gotten wealth, and that the US$ 356 million (by 1997 had totaled to US$ 540 million due to interest earnings) placed in the Philippine National Bank (PNB) as an escrow account should be transferred to his name (he used the “Chinn assignment” argument wherein a clerk named Chinn of the Hawaii Court who was assigned to be “safekeeper” of the fund in Judge Real’s court, had purportedly assigned Marcos Estate assets held in Swiss banks not to the HRVVs directly but to their counsel of record).
However, the two local branches of the Swiss Bank replied that they were under the legal processes of the Swiss government, hence, US courts had no jurisdiction over them. This forced the Swiss banks to conduct so-called mediation talks in Hong Kong among the lawyers of the banks, the Philippine government, and Atty. Swift. Without the victims’ consent, Atty. Swift participated in these talks even as SELDA cautioned him not to pursue negotiations at this time while the case was still on appeal.

SELDA’s position was for the case to have a final ruling by the US Supreme Court before any negotiations could be discussed, so that the case could be registered as a landmark case which could not be erased even if negotiations took place. This way, this would be a legacy for future generations who could invoke the case if confronted with a similar situation as that of the human rights victims of Marcos’s martial law.

**December 1996**

Imelda Marcos’s appeal was denied by the US Court of Appeals for the Ninth Circuit and instead, the said court affirmed the earlier decision of the lower court on the judgments for nearly US$ 2 billion in exemplary and compensatory damages to the 9,539 duly validated victims as per the 1994 Special Masters’ review.

**March 1997**

The US Supreme Court upheld the decision of the Ninth Circuit and the Federal courts, making the class action suit for the 9,539 victims a landmark case on the issue of human rights jurisprudence. This final decision rendered the class action suit as a legal precedent in the history of international human rights jurisprudence which could be invoked by human rights victims the world over.

SELDA’s position against Atty. Swift’s settlement machinations with the Marcoses was thus vindicated.
May 1997

Atty. Swift, through his Filipino lawyers, Atty. Rod Domingo, Rene Saguisag and Ruben Fruto, filed a motion in the Makati Regional Trial Court branch # 137 at the sala of Judge Santiago Ranada for court enforcement of a foreign judgment. In this immoral and scheming attempt to oust and bypass SELDA from the class action suit, Atty. Swift engaged five new plaintiffs; namely, Etta Rosales, Sr. Mariani Dimaranan, Joel Lamangan, Judge Priscilla Mijares, and Hilda Narciso to represent the class, ignoring the existence of the ten original named plaintiffs in the April 7, 1986 class action suit in Hawaii.

January-September 1998

As commensurate to the contested Marcos money, the said court asked for a filing fee from the five plaintiffs since they (five plaintiffs) were known to have properties. Meanwhile, in the interest of the Class, the ten named original plaintiffs (all of whom were SELDA members) signed a motion supporting Atty. Swift and Rosales’ motion so as to avoid further legal questions on the validity of the claimants. Marcos’s lawyer, former Justice Serafin Cuevas (who at this time was President Joseph Estrada’s Secretary of Justice) later on filed a case in the Supreme Court questioning said action before the lower court.

1999-September 2012

This case for court enforcement of a foreign judgment continued to be heard in the Makati Regional Trial Court (RTC) regarding the issue of the legal personality of Atty. Swift’s chosen plaintiffs to represent the Class, given that they were not the ones who filed the complaint for compensatory and exemplary damages before the US District Court of Hawaii in 1986.

Atty. Swift went to Judge Real and succeeded in getting an order on May 4, 2010 stating “the plaintiffs are certified by the Court to represent the Class in enforcement and collection proceedings in the Republic of the Philippines and the Republic of Singapore. As class representatives they are
authorized to respond to discovery and assert positions on behalf of the entire class.” This move of Atty. Swift was a confirmation of the malice that he harbored against SELDA by his deliberate marginalisation of SELDA’s 1986 original named plaintiffs.

In spite of this so-called order from Judge Real, the Marcos Estate filed a motion to dismiss on the grounds that the plaintiffs were not the proper representatives of the claimants.

12 December 2012
The Makati RTC issued an Order Denying the Petition in Intervention of the Commission of Human Rights or CHR (filed July 1, 1997), the Office of the Solicitor General or OSG (filed November 17, 1997), and Imelda Marcos (filed February 13, 1998). The Court ruled that –

- CHR failed to establish that it had legal interest as to be adversely affected by the distribution of the property of defendant.
- OSG hinged its claim on deficiency estate and income taxes. Such action could be decided in a separate proceeding (probate court as required by Sec. 86, Rules of Court)
- Imelda Marcos’s rights were amply protected by the representation of the defendant. She actually acted for the defendant, being one of the special co-administrators of the Estate.

January 2013
Hearing on the Motion for Reconsideration (MR) filed by the OSG. Parties (class plaintiffs, defendant) and movant OSG did not appear. The case was called and the Honourable Judge issued an order requiring OSG to submit proof of service of their motion to the parties. Counsels of class plaintiffs and counsels of defendant Estate were given 15 days to comment on the MR, after which period the motion should be submitted for resolution with or without comment by the parties.
3 December 1997

The US Court of Appeals for the Ninth Circuit issued its decision favoring the Swiss Banks and denying Atty. Swift’s earlier motion for reconsideration of its original ruling. The decision also inhibited Atty. Swift and Judge Real from taking any further action on the disposition of the Marcos Swiss deposits. Moreover, the said court advised the victims that in pursuing their right for indemnification, they (the victims) must proceed to the Swiss Judicial system to have their concerns/issues heard.

10 December 1997

The Swiss Supreme Court stated that the money the Swiss banks were in custody of was of illegal provenance and issued its decision transferring the contested US$ 356 million (actually US$ 540 million by 1997) of the Marcos loot to an escrow account at the Philippine National Bank (PNB) which would be bound by the terms of the Escrow Agreement, in accordance with the requirements of the Swiss court order. The Swiss Supreme Court order was in favor of the Philippine government; and as the Swiss government’s response to Swiss NGOs’ lobby to return ill-gotten wealth to rightful owners because “we don’t want to be a haven for dictators’ money.”

On receipt of those assets, PNB deposited them in various banks, one of which was in Singapore. The said court released an order that the US$ 540 million escrow account could only be distributed to and used by the Philippine government, only if the following two conditions were satisfied: (1) if Imelda Marcos would be proven guilty in the forfeiture case filed in the Sandiganbayan (Sandiganbayan case #0141); and (2) the government must consider the victims who filed a case against the Marcoses in Hawaii.

February 1998

Marie Hilao-Enriquez, then secretary-general of SELDA and Atty. Capulong went to Switzerland and sought the Ministry of Interior wherein they argued on the merits of seeking intervention with the Swiss Supreme Court to modify its decision and to outrightly allocate 1/3 of the Marcos ill-gotten wealth that was turned over to the Philippine government to the victims of martial law. However, the minister said that the government could not amend the order of the Court.
16 March 1998

Formal signing at The Hague, The Netherlands of the peace agreement *Comprehensive Agreement on Respect for Human Rights and International Humanitarian law* (CARHRIHL) between the negotiating panels of the Government of the Republic of the Philippines and the National Democratic Front of the Philippines (NDFP), making the CARHRIHL binding and effective. Article 5, Part III of the Agreement stipulated the responsibility of the Philippine government to recognise and respect the rights of the victims for justice and indemnification.

April 1998

Marcos funds confiscated in Switzerland arrived in the Philippines and placed in the PNB escrow account (custody of the Sandiganbayan), pending final ownership decision.

May 1998

Joseph Ejercito “Erap” Estrada elected President of the Republic of the Philippines. The new president was known as a protégé of the late dictator Marcos. Even before he formally entered his presidential office, he already announced that he would agree to the Marcos family’s request to give the late dictator a ‘decent’ burial at the *Libingan ng mga Bayani* (Heroes Cemetery). Imee Marcos, daughter of the late dictator, was acquitted of the graft charges filed against her. Within 15 days of Estrada’s presidency, Marcos crony Danding Cojuangco was able to regain his position in the San Miguel Corporation and in the United Coconut Planters Bank. Lucio Tan, another crony of the Marcoses, was later acquitted for the tax evasion charges filed against him.

8 July 1998

SELDAs wrote to President Estrada to register its vehement protest regarding the moves of his administration to enter into a compromise 75%-25% settlement with the Marcoses concerning the latter’s ill-gotten wealth. SELDA reiterated the principles formulated in the beginning of the human rights class action suit and which should,
therefore, guide all legal proceedings and all related activities of the case, hereto:

1. The Human Rights Litigation against Marcos must be pursued and litigated up to final judgment in the highest court of the US Federal Court System so that it would serve as a judicial precedent which could be invoked as such in all future similar cases in all parts of the world against dictators, present and future;

2. Any out-of-court settlement must not compromise foregoing principles and must not involve the victims of human rights violations in any immoral or illegal agreement such as absolving the Marcoses and Marcos cronies of criminal and forfeiture liabilities or granting them immunity from future suits;

3. The pursuit and payment of damages and indemnification as an indispensable component of justice is compatible with the principled positions as stated above, and the handling of any settlement negotiations must uphold both the principles and reasonable amount of indemnification.

SELDIA proposed to install a Watchdog Committee, which could continuously check or monitor official actions being undertaken by the Department of Justice, PCGG, Malacañang, Sandiganbayan, and other courts of administrative agencies to respect the preservation and disposition of said escrow accounts and to continue the civil and criminal cases against the Marcoses. This committee would have been headed by then SELDA chairperson Danilo Vizmanos and composed of Hilao-Enriquez, and Atty. Edre Olalia as members. Atty. Capulong of the PILC would be co-chair and legal consultant of the committee. The Sandiganbayan did not convene this committee, hence, SELDA, continued this watchdog role on its own. Over the years, SELDA and its legal counsel, Atty. Capulong, kept watch over the developments in the case, issuing statements, holding press conferences, advising and informing victims of the developments in the case.
1998

In two separate meetings with NDFP Peace Negotiating Panel Chair Luis Jalandoni and counsel Atty. Capulong, Executive Secretary Ronaldo Zamora agreed that the victims could first be given 30% of the US$ 540 million PNB escrow deposit.

Mid-1998

Akbayan Partylist filed an indemnification bill for human rights victims in the House of Representatives of the Philippine Congress, but was not followed through.

9 December 1998

The Philippine Supreme Court declared the December 28, 1993 agreement invalid, under which the PCGG had agreed with the Marcos family on a 75%-25% split of the money held in the escrow account.

25 February 1999

The announcement of the Hawaii Court approval of the US$ 150 million settlement and compromise agreement between President Estrada, Atty. Swift and the Marcos family, was hailed as a “final victory” by Atty. Swift and Claimants 1081.

SELDÁ rejected the agreement, stating that there had been no consultation with victims nor transparency in the negotiations, furthermore, the agreement virtually granted immunity to the Marcos family and the Marcos administration, and even exonerated Marcos. SELDÁ also questioned the process of payments, that, while the process for lawyers to get their fees was clearly determined, it remained vague as to how the victims would be indemnified.

According to internationally acclaimed legal scholar, Professor Catharine MacKinnon of the University of Michigan, it was detailed in the Sandiganbayan’s judgment that, of lawyer’s fees amounting to a total of US$ 40 million envisaged, approximately US$ 34 million alone would go to the law offices of Atty. Swift.
April 1999

SELDAs secretary general Hilao-Enriquez, and legal counsel Atty. Capulong went to the US to present before the Honolulu court SELDAs position opposing the said compromise settlement agreement. Petitions signed by regional and provincial chapters of SELDA reflecting the organisation’s position were also brought before the Court.

Judge Manuel Real finally nullified the February 1999 US$ 150 million compromise settlement agreement.

September 2000

Sandiganbayan’s First Division handed a decision ruling that the entire US$ 627 million of Marcos funds that had been repatriated from Switzerland were to be considered prima facie property of the Philippines. It rejected any agreement for human rights victims to receive a share “for lack of legal basis”. Thus the blocked monies were ordered to be used only for agrarian reform. The decision was contested by the Marcos family, but it was to get hold of the monies for themselves that they contested the Sandiganbayan’s decision.

SELDAs vehemently opposed this decision by the Sandiganbayan as a betrayal of the rights of the victims and of the principles involved (refer to July 8, 1998 entry above).

Late 2000

Atty. Swift, in the name of the class action suit victims, filed a case against Merrill Lynch in Hawaii, alleging that it was holding Marcos assets in the name of Arelma Inc., a Panamanian corporation.

The US$ 35 million Marcos assets held by Merrill Lynch in New York began from an original US$ 2 million registered in the name of Arelma Foundation. Purportedly for securities trading, the late dictator Ferdinand Marcos, his close business crony Jose Yao Campos and a Swiss banker named Jean Luis Sunier set up
the Arelma account in September 1972. The portfolio was placed in the name of Arelma, a dummy company established to hide ill-gotten wealth and the real owners of the account, which when discovered by PCGG in 2000, had already grown to more or less about US$ 40 million.

**July 2004**

Even without any money releases or transfers, US district Judge Manuel Real in Hawaii ordered that US$ 40 million held by Arelma be used to start paying victims of the Marcos regime who were awarded damages in 1994. The Arelma Inc. appealed the ruling.

The Philippine government, though it “welcomes the spirit of the US court decision” said that the Federal Court ruling handed down through a US district Judge (i.e., Real) could not be enforced in the Philippines as a sovereign state outside the jurisdiction of the US court, and victims would be compensated under national laws of the Philippines.

**2006**

US Ninth Circuit Court of Appeals upheld the rights of the class action suit victims to the Marcos-Arelma funds held by the Merrill Lynch brokerage house.

**13 June 2008**

The US Supreme Court denied recovery of compensation to human rights victims from the assets of Ferdinand E. Marcos hidden in a brokerage account at Merrill Lynch’s New York office in the name of Arelma. The US Supreme Court ruled that the Philippine government’s declared sovereign immunity prevented United States courts from adjudicating entitlement to funds which had been in the US for 35 years. The Court opted to give Philippine courts a chance to rule – even in the absence of evidence – that the money belonged to the Philippine government.

**August 2009**

Sandiganbayan junked with finality the appeals of the Marcoses regarding their claim to the Arelma account, affirming sovereign claim of the Republic of the Philippines over the assets, properties and funds belonging to Arelma.
June 2011
The Appellate Division of the New York Supreme Court dismissed the petition filed by Atty. Swift to award the US$ 40 million Arelma deposit as partial payment to the US$ 2 billion indemnity awarded to human rights violations victims in 1995.

May 2012
The Supreme Court of the Philippines upheld the 2009 Sandiganbayan decision that the Arelma assets worth US$ 40 million were owned by the Republic of the Philippines and not by the heirs or estate of the late Ferdinand E. Marcos.

July 2012
The New York State’s highest court dismissed the claim submitted by Atty. Swift in the name of the human rights violations victims against the US$ 40 million Marcos assets deposited with Merrill Lynch in New York.

2001
In January 2001, President Estrada was forced out from office through people power and Vice-President Gloria Macapagal-Arroyo was sworn in as successor.

Mid-2001
Bayan Muna partylist filed its version of the indemnification bill for human rights violations victims.

August 2002
Haydee Yorac, 11th Chair of the PCGG reported that the Philippine government had, by this time, recovered about US$ 2 billion of the Marcos loot.
31 December 2002

The PNB reported that the escrow account of Marcos recovered monies now contained US$ 676M on account of interest.

July-August 2003

The Philippine Supreme Court ruled the funds transferred from Switzerland were 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 would be used for agrarian reform. The Marcos family immediately appealed the decision.

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

January 2004

In a meeting with PCGG Chair Haydee Yorac with SELDA represented by Hilao-Enriquez, Trinidad Herrera-Reposo, Rodolfo del Rosario and other staff members of the SELDA, Yorac explained that the Swiss account monies in the PNB escrow account were already allocated and transferred: US$ 22 million remained in a Singapore bank, some US$ 30 million remained with the PNB, and around US$ 30 million more or less, went to paying the finders’ fees of the Dutch lawyers who located and identified the Marcos account. The rest of the monies would be allocated by government to CARP and to the human rights violations victims.

Later on, it was bruited about that the CARP allocation was used by President Arroyo’s Department of Agriculture fertiliser programme to the detriment of legitimate and deserving farmers who could have benefitted from the funds. The fertiliser programme was exposed as a scam, and a formal investigation was started upon the prodding of
KMP (Peasant Movement in the Philippines) and of Senator Ramon Magsaysay, Jr. There were also serious allegations that the CARP monies were diverted to fund Arroyo’s presidential campaign.

4 February 2004

Funds held in the PNB escrow account remitted to the Philippine Treasury by PCGG as a result of the Philippine Supreme Court decision of July 15, 2003.

March 2004

In a parliamentary query to the Swiss government submitted on March 18, 2004 Swiss Member of Parliament Remo Gysin questioned the remittance of the escrow account monies to the Philippine Treasury in light of the fact that no provision was taken to compensate the victims of the Marcos regime’s human rights violations. In response to this parliamentary query, the Swiss Government answered that national regulations are national government’s concerns, and that a law addressing compensation for the victims of the Marcos regime’s human rights violations was in preparation in the Philippine Congress.

December 2004

The ongoing fight over the Marcos millions was further complicated when the District Court of Hawaii placed a global freeze order on the Marcos assets. The Philippine government appealed the freeze order to the Ninth Circuit in California, which then decided that the Philippine government was a non-party to a global freeze order placed on the Marcos assets by the District Court of Hawaii, saying that the Philippine government “lacked standing” to challenge the order, hence the California court dismissed the Philippine government’s appeal on December 28, 2004.

April 2005

Atty. Swift filed a case versus the corporate entities of Jose Y. Campos who reportedly held real estate interests in the US, particularly in Texas and in Colorado, that were owned by Ferdinand Marcos. The filed case was a claim for the Campos properties to partially settle the US$ 2
billion award from the Hawaii court, and was focused on 4,500 acres of land which were purchased with Marcos assets in the late 1970s and early 1980s by Campos.

29 December 2006

On March 8, 2006 the Philippine government applied for and was granted leave to join in the interpleader proceedings solely to assert state immunity to the Marcos funds. On December 27, 2006 the Singapore High Court dismissed 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 comprised US$ 23 million of the Marcos money originally transferred to Singapore as part of the PNB escrow account. The Philippine government appealed this decision to the Singapore Court of Appeal (note: the appeal was dismissed by the Singapore court in March 2008). Meanwhile, Atty. Swift said it was a significant victory on the way to obtaining a final verdict for the entire US$ 23 million of Marcos funds for the HRVVs.

Singapore is not a signatory to the UN Convention Against Corruption.

7 February 2007

There were various initiatives in the Philippine Congress to pass a law on the indemnification of martial law victims. Sometime in 2004-2007, the Philippine Senate approved in plenary its version of an indemnification bill, but this was never crafted into law because the House of Representatives failed to do the same, thereby leaving the measure in an unresolved condition, hence, no compensation law was ever passed during this period.

2009-2010

Court hearings and negotiations between Atty. Swift and the Campos family were held regarding a settlement for the HRVVs. The holding companies of the Campos group offered the settlement in exchange for Atty. Swift’s clientele dropping their claim on their properties. Clearly, the proposed settlement agreement exempted or rendered immune the Marcos ill-gotten wealth in the Philippines and elsewhere which are in the name of Jose Y. Campos or the corporations owned or controlled by Campos.
Atty. Swift enlisted Romulo del Prado, a HRVV and member-plaintiff of the Hawaii class action suit of 1986 and living in the US, to sign as the lone representative of the original class/plaintiffs in pursuing the settlement case with the Campos group. Too late, del Prado withdrew his support for Atty. Swift’s machinations due to Atty. Swift’s arrogating unto himself all decisions on the case without consulting his own clients/class action suit members.

In September 2010, US$ 10 million was deposited with the US District Court for the Northern District of Texas for the settlement. And, if found acceptable by Atty. Swift, it would be transferred to an escrow account in a Philadelphia bank of his choice.

Also, in September 2010, Atty. Swift wrote in a Final Notice for the Settlement Agreement sent to a chosen number of individual plaintiffs of the class action suit that the number of claimants was reduced from the 1994 list of 9,539 victims to 7,526 claimant-victims based on the so-called “order” of the Court that claimants must return to the Court the confirmation form sent to them in 1994 and 1999. He called this new list of 7,526 names as making up the “eligible members” of the class action suit.

The majority of the HRVVs-plaintiffs of the class action suit and SELDA were never formally informed of this Court decision, if there was such a decision in reality; nor were they furnished a copy of this Court order, if there was really one; nor were they furnished a copy of this trimmed-down list, given that SELDA had been the pivot in the documentation of the list of 10,059/9,539 victims that was officially submitted to the Court as documentary evidence of the gross human rights violations of Ferdinand Marcos and his government during that period in Philippine history.

November-December 2010

Final approval of the Court of the US$ 10 million Swift-Campos settlement agreement. Of this amount US$ 1,000 was allocated for each of the martial law victims, and US$ 2.5 million went to attorney’s fees, incentives and reimbursement of counsel’s expenses.

The Philippine government’s Commission of Human Rights (CHR), headed by Etta Rosales, a claimant herself, was assigned by Atty. Swift to assist in the distribution of the money to the plaintiffs/claimants.
March-April 2011

In February 2011 Atty. Swift arrived in the Philippines to oversee the cheque distribution to the HRVVs which started in March 1. In due time, the corruption of the system and process of distribution would be exposed. Atty. Swift left the country when these issues were raised, and Atty. Domingo took over.

Some documented examples of delisted/enlisted anomalies were: six (6) of the 1986 original named plaintiffs did not find their names in the Real-Swift-Domingo list; the head of the documentation team (herself an HRVV and a Hawaii plaintiff) who got The Ford Foundation grant for the documentation of 10,000 human rights victims was not on the list; a senator who was an ex-detainee but never filled up the form during the 1986-1989 documentation period was delivered a cheque by Atty. Domingo himself; in almost all distribution centers, hundreds of claimants who received notices in 1993-94 and/or in 1999 were not in the list, but many more who did not receive any notices in 1993-94/1999 were given cheques due to personal interventions by CHR “volunteer” staff from Claimants 1081; some plaintiffs’ names were found not in their registered addresses, but in some other place in another region (a more detailed documentation of this delisting incident can be availed of at the SELDA office).

On March 7, 2011 SELDA initiated the Petition for Reinstatement and Due Compensation of the delisted 2,013 class suit members. The National Capital Region claimants who signed this petition in the name of the 2,013 delisted victims were assisted by SELDA members to fill up the form Claims Requiring Further Investigation which Attys. Swift and Domingo were forced to come up with in response to the numerous complaints. Some 150 claimants who signed these forms immediately submitted these to CHR Chairperson Etta Rosales, who said that she would bring this to the attention of Atty. Swift.

To date (March 2013), nothing has been done to correct this injustice to the legitimate plaintiffs-claimants who were documented in the original list of 10,059/9,539 names.

Neither Atty. Swift nor Judge Real explained the criteria used in delisting more than 2,000 names and coming up with 7,526 names, nor did they respond to SELDA’s requests that the 9,539 names should be open to any
class action suit plaintiff/member, given that it is a duly-submitted court document (ironically furnished originally by SELDA from its human rights research and documentation work in 1986 – 1989), hence, it is public property.

The case had somewhat become a horrifying spectre of aging human rights victims being twice-over victimised by American litigators in an American court.

November 2011

Two months after the last deadline for the cheque distribution of Atty. Swift and company, the Criminal Investigation and Detection Group (CIDG) of the Philippine police force, arrested eight (8) persons in the act of encashing checks with the names of victim-claimants who were members of the class action suit, but were unable to present themselves during the distribution period. The eight persons were accompanied by Marilyn and Edward Santiago, known to Atty. Swift’s Filipino representative, lawyer Rod Domingo, and who himself was listed among the respondents of the case and was considered at-large during the arrest. It was reported that Atty. Domingo arrived at the police precinct, presented himself as the lawyer of the group, and insisted that his name be stricken from the arrest order. They were all released on bail by Atty. Domingo. The case was docketed in a Quezon City Regional Trial Court awaiting resolution whether it would be heard by the court or not.

September 2012

In investigating the circumstances of the arrest of the fake claimants and their subsequent release on bail by Atty. Swift’s Filipino lawyer Domingo, it was established by the police that the cheques came from the office of Atty. Domingo and signed by Atty. Swift; that the police investigator of the case intimated that he was offered 2.5 million pesos (approximately US$ 59,000) not to continue with the investigation. He also hinted that he was reprimanded (that the CIDG unit to which he belonged should not have interfered in the case) by some “higher-ups” whose names he was afraid to divulge for fear of what would happen to his career, more so his life.
Given the inefficient system of justice in the Philippines, and the dominance of political patronage and whoever-has-the-power-rules, the case may “get lost” in the bureaucratic paper trail and may never be heard of again.

The direct and class action suit plaintiffs who are mostly too poor and already too old, do not have the resources to underwrite the expenses needed to pursue this fake-claimants’ case and expose the machinations and corruption of these lawyers. In the Philippines, it is well-known that the Philippine justice system is too flawed to listen to the side of the poor and dispossessed who have no money, hence, no power to seek redress of the injustice done to them and in their name.

2012

A decade has almost passed since an indemnification bill was filed in Congress by the Bayan Muna partylist in coordination with SELDA and Karapatan, a national alliance for the advancement of people’s rights. SELDA was relentless in its lobbying efforts in the House of Representatives (HOR) and the Senate to approve and ratify an indemnification bill. Contentious phrasings of draft bills were discussed with the lawmakers over and over again.

Cited as reasons for the “freezing” of the indemnification bill are: strong lobby by the Marcos family whose members are back in power; pressure from the military; despite his election campaign promise, Pres. Noynoy Aquino did not certify the bill as “urgent”.

Finally in March 2012, the HOR passed House Bill 5990, entitled An Act Providing Compensation to Victims of Human Rights Violations During the Marcos Regime, Documentation of Said Violations, Appropriating Funds Therefor, and for Other Purposes. Its principal author was the Bayan Muna party-list, and lobbying efforts were again led by SELDA. The Senate version was still stuck with the Justice and Human Rights Committee due to the Senate hedging on approving and passing its own draft bill. Deliberation of the two versions of the bill in a meeting of the Bicameral Committee was thus much delayed.

Once again, SELDA sought the help of its solidarity links in Switzerland that lobbied with the Swiss government. During the 2012
annual Asia-Europe Meeting (ASEM) in Vientianne, Laos, the Swiss President made an inquiry with Philippine President Benigno Aquino III who had no choice but to promise some action.

The Senate finally approved in December 2012 its own version (Senate Bill 3334 similarly entitled with its HOR counterpart, *An Act Providing for Compensation to the Victims of Human Rights Violations during the Regime of Former President Ferdinand Marcos, Documentation of Said Violations, Appropriating Funds Therefor, and for Other Purposes*). SELDA discerned that the Senate Bill was still in its earlier version that contained flaws unacceptable to the organisation’s members. SELDA had earlier drawn up a lobby briefing paper that contained the provisions it wanted amended in the Senate version, hence, this briefer became the basis of SELDA’s lobby in the bicameral proceedings on the compensation bill.

**January-February 2013**

SELDA watched over the three bicameral proceedings and lobbied self-willed senators to consider the law’s provisions and language from the viewpoint of the human rights violations victims.

There were four main points that SELDA questioned as unjust:

1. The word “peacefully” to describe the manner of the victims’ exercise of their rights to resist the dictatorship should be deleted. This proviso made it possible for the applicability of the law to be denied any claimant who had been linked to the armed resistance, thus excluding such martyrs as Edgar Jopson, Lorena Barros, Melito Glor, Eman Lacaba, Dr. Bobby dela Paz, such anti-martial law activists like Jose Maria Sison, Alan Jazmines, Maita Gomez, those from the “Light-a-Fire” movement, and many others who resisted and fought the dictatorship.

   Aside from this, the provision essentially gave the victim the additional burden to prove, not only that his/her rights were violated, but also that he/she was not involved in any violent action at the time of the violation. This would practically defeat the purpose of the compensation law.
At the second bicameral committee meeting on January 16, 2013, Bayan Muna Representative Neri Colmenares argued for the HOR version which approximated SELDA’s position. He was supported by Senators Francis Escudero and Teopisto Guingona III, Representatives Edcel Lagman and Lorenzo Tanada III, with former Representative Satur Ocampo as resource person. Senator Joker Arroyo and Akbayan Representative Walden Bello, and their resource person Etta Rosales, former Akbayan representative and presently chair of the CHR, were for the inclusion of the word “peacefully.”

2. The other point was on the rules on “presumption” and whether it should be “conclusive” or “disputable” presumption. SELDA upheld that the members of the class action suit and direct action plaintiffs who filed and won their case in the Hawaii court should be under “conclusive presumption” being human rights violations victims during martial law and therefore, should be automatically recognised as such under the law. “Disputable” presumption would mean that the Hawaii class action suit plaintiffs would have to go through the grueling and painful process of proving once more that they were victims of human rights violations under the Marcos dictatorship despite the fact that they had been legally recognised as such by the Hawaii Court. The advocates for the use of the term “disputable presumption” were Senator Joker Arroyo, Representative Walden Bello, and CHR Chair Etta Rosales.

3. The exclusion of the desaparecidos as victims of martial law. The Senate bill forgot to include these victims.

4. There was an effort from some quarters to ignore SELDA’s role in the preparations for and filing of the class action suit in the Hawaii court. The Senate versions of the bill tended to omit SELDA from the list of human rights organisations mentioned in the bill.
Three Bicameral Committee hearings were conducted before a final version, the *Human Rights Victims Reparation and Recognition Act of 2013*, and which was acceptable to the majority of the victims, was crafted and approved by the Bicameral Committee on January 23, 2013.

In the end, the word “peacefully” was excised from the bill and “conclusive presumption” was used to refer to the claims of the members of the Hawaii class action suit and direct action plaintiffs. Victims of enforced disappearance were included among HRVVs. However, instead of making it automatic for the selected human rights organisations like SELDA to sit in the Claims Board, the law specified that the identified human rights organisations “may” only nominate members to the Board whom the President of the Republic of the Philippines would be appointing.

**28 January 2013**

The version approved by the Bicameral Committee was ratified both by the House of Representatives and the Senate. Its salient provisions are:

- “. . . *it is hereby declared the policy of the State to recognise the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986 and restore the victims’ honor and dignity.*”

- PhP 10B is allocated for reparation to the martial law victims and/or their families “for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime.”

- The claimants in the class action suit and direct action plaintiffs in the human rights litigation against Marcos in the U.S. Federal District Court of Honolulu, Hawaii “wherein a favorable judgment has been rendered, shall be extended the conclusive presumption that they are HRVVs (human rights violation victims).” The HRVVs recognised by the *Bantayog ng mga Bayani* Foundation are likewise accorded the same conclusive presumption.
• Other martial law victims may file for claims as long as the violation of their rights happened from Sept. 21, 1972 to Feb. 25, 1986; included as special consideration are those who were victimised a month before Sept. 21, 1972 and a month after Feb. 25, 1986.

• *A Roll of Martial Law Victims* will be enshrined along with victims’ stories in a memorial to be built in their honour. Also to be built are a museum and library. The atrocities under martial law and the lessons to be learned will be included in the curriculum for elementary, secondary and tertiary education.

**15 February 2013**

SELDÃA issued a news release informing martial law victims, and the general public as well, to be vigilant against scams victimising the claimants. A number of reports reached SELDA of various incidents, such as: in Marawi City, some people were invited to “seminars” on the law, and were allegedly asked to pay Php 3,000 each so they would eventually receive a million pesos; Php 15,000 was being asked of victims in Eastern Visayas; martial law victims in Bataan were approached by persons who identified themselves as members of a certain “Bullion group” – they were told that they would be assisted in getting their reparation if they registered with Bullion and paid membership and many other dues.

SELDÃA reminded everyone concerned of the scam in November 2011 when a group led by a couple connected to Atty. Domingo’s office was arrested by the CIDG for falsifying their identities and for encashing cheques of martial law victims after the Texas-Colorado settlement with Marcos crony Jose Yao Campos.

**25 February 2013**

President Benigno Aquino III approved and signed Republic Act 10368 known as the *Human Rights Victims Reparation and Recognition Act of 2013*, entitled "An Act Providing for Reparation and Recognition of Victims of Human Rights Violations during the
Marcos Regime, Documentation of Said Violations, Appropriating Funds Therefor, and for Other Purposes” during the 27th EDSA People Power anniversary programme.

The implementing guidelines of the law will still have to be drafted by a Human Rights Victims’ Claims Board, the members of which will be appointed by the President of the Republic and to be convened within 30 days after the signing of the law. The Board is expected to finish its work within two years.

**NOTA BENE**

**March 2013**

SELDAn promptly issued a circular to its members and allied human rights organisations explaining the essential contents of the law and providing guidelines on what the martial law victims should do so they could benefit from the provisions of the law.

SELDa set up a Victims’ Reception Room in its National Office to attend to inquiries and needs of martial law victims, and staffed with volunteers who take turns receiving the victim-claimants.

To assist the victim-claimants, SELDA prepared the following materials: a powerpoint presentation for easy orientation on the provisions of the law; a questions-and-answers primer on the provisions of the law; a guide list on what needs to be done in preparing reparation claims (with a sample sworn statement that a victim-claimant needs to accomplish); and an infographics on the provisions of the law and the necessary steps a victim-claimant has to take. Additional materials will be circulated after the Claims Board issues its Implementing Rules and Regulations (IRR).

Representatives from the SELDA Board and the National Secretariat have already started going the rounds of provinces and cities to hold mass meetings to gather the martial law victims together, to orient them on the provisions of the law, to point out what are required of them and describe what steps to take next.

SELDa recognises the efforts of its members and other martial law victims in seeking justice for the victims and their families. Their tireless commitment, along with those from the national democratic movement,
led to the indictment of Ferdinand E. Marcos as a tyrant and human rights violator who stole money from the people; and led to the recognition of the heroism and sacrifices of the martial law victims and the grant of indemnification to them. With the help of party-list representatives, other legislators, human rights lawyers and advocates, a law has been passed in the Philippines to allow reparation to the victims from the recovered ill-gotten wealth of the Marcoses.

It is still a long way to getting justice, as human rights violations continue with impunity with almost no violator being arrested, tried and found guilty.
REFERENCES


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5. Supreme Court library in http://elibrary.judiciary.gov.ph

6. Philippine Senate files in www.senate.gov.ph


11. http://inquirer.net


