ASSET RECOVERY AND MUTUAL LEGAL ASSISTANCE IN ASIA AND THE PACIFIC

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Chapter 5
Case Study «Ferdinand Marcos» (Philippines)
Ferdinand E. Marcos (Philippines): A Case Study

Merceditas Gutierrez
Ombudsman, Republic of the Philippines

Mandate of the Republic of the Philippines to Recover Ill-Gotten Wealth

The mandate of the Republic of the Philippines to recover the ill-gotten wealth of former President Marcos, his relatives, friends, and business associates is provided under Executive Order No. 1, signed by former President Corazon C. Aquino on 28 February 1986, through the creation of an agency called the Presidential Commission on Good Government. The mandate also provides for an adoption of adequate measures to prevent the occurrence of corruption.

On 12 March 1986, Executive Order No. 2 was also signed, freezing all assets and properties of the Marcoses, their close relatives, subordinates, business associates, dummies, agents, or nominees, pending the outcome of appropriate proceedings in the Philippines to determine whether such assets or properties were acquired by such persons through improper or illegal use of funds belonging to the republic. This order also authorized the Philippines to request and appeal to foreign governments wherein any such assets or properties may be found, to freeze them and prevent their transfer, conveyance, and encumbrance pending the judicial proceedings in the Philippines.

Efforts to Recover Ill-Gotten Wealth in Foreign Countries

Pursuant to Executive Orders No. 1 and 2, the Republic of the Philippines investigated the alleged ill-gotten wealth of the Marcoses and their business associates in the Philippines and in foreign countries. This report discusses only the major events in the recovery efforts in the US and in Switzerland, the only countries where the Philippines succeeded in recovering some Marcos assets.

Results Obtained in the United States

The Marcos assets sought to be recovered in the US was conservatively estimated to be ranging from USD600 million to USD1.5 billion. However, from 1986
up to 2006, the Presidential Commission on Good Government has recovered some real estate properties, such as the Olympic Tower Apartment, Pendleton Drive property, the Cedars, Summit Drive Beverly Hills, Lindenmere estate, and the Makiki Heights property. It failed to recover the four New York buildings in Manhattan, namely, 40 Wall Street, Crown Building, Herald Center, and the building located at 200 Madison Avenue. But the court awarded a lump-sum amount to the Republic of the Philippines in an administrative settlement after it allowed bank creditors to foreclose the properties as they were heavily mortgaged. It also recovered some jewelry, and various silverware, paintings, antiques, and works of art, which were later auctioned on various dates, as well as cash in Sanwa Bank and some shares of stocks in California Overseas Bank and Redwood Bank. Based on available records, the total value of the assets recovered in the US is less than USD50 million.

Obstacles encountered and lessons learned in the US recovery efforts were
- incomplete data on the scope and extent of the looting made by the Marcos administration;
- inability/reluctance of some banks holding Marcos accounts to immediately disclose the accounts;
- failure of the Philippine Government to initiate civil actions to recover the assets and properties of some relatives and associates of Marcos;
- injunction orders did not direct the banks to disclose the amount and status of the deposits subject of the order;
- difficulty in locating known Marcos associates privy to the Marcos transactions;
- difficulty in establishing and then untangling the paper trail of Marcos' overseas assets, and reluctance of foreign governments to cooperate in the recovery efforts;
- real estate properties were heavily mortgaged;
- settlement agreement with Imelda Marcos;
- absence of a mutual assistance agreement on criminal matters;
- Statute of Limitations;
- acquittal of Imelda Marcos in the RICO case;
- competing claims made by third party claimants over the Marcos assets; and
- lack of technology for faster coordination/communication between authorities.

The Marcos case was not a simple case of theft but rather a complex, intricate, and systematic plunder of the government's coffer. The nonavailability of complete data on the scope and extent of the looting made by the Marcos
administration made the initial recovery efforts of the Republic of the Philippines extremely difficult. Other than the documents left by the Marcoses in Malacanang and information that some volunteer groups gave, the Government had to practically reconstruct, and piece together various information obtained from financial institutions, government agencies, and other sources, bearing in mind that the probative value of the evidences must be able to stand judicial scrutiny.

US monetary authorities were uncooperative in disclosing the financial transactions of the Marcoses. It now appears that the monetary assets deposited in nine major US banks holding 82 accounts of the Marcoses covered by injunction—the details of which are not known to the Republic of the Philippines—are probably still in the custody of the banks concerned, legally beyond the reach, control, and disposition of the Philippines, the Marcoses, and anti-money-laundering agencies.

The injunction restraining the Marcoses and the banks from transferring assets held in almost all major banks in the US did not carry with it a duty and responsibility on the part of the banks concerned to disclose to the Philippine authorities or to the US courts the amount and, more importantly, the status of the deposits subject of the order. These are legally protected information under the US Bank Secrecy Law.

Some co-racketeers, namely, Fe Roa Gimenez and Glicerio Tantoco, who were privy to the transactions of the Marcoses, were unindicted because their whereabouts cannot be ascertained.

Difficulty in providing the paper trail of Marcos' overseas assets and the reluctance of foreign governments to cooperate in the recovery efforts were the primary reasons for the failure of the Philippines to identify and recover the entire Marcos' hoard in the US. Ownership of these overseas properties was legally structured and designed to conceal the interest of the Marcoses. Usually, the properties were owned by an offshore corporation which, in turn, was owned and controlled by Panamanian corporations. Ownership of these corporations are embodied in bearer shares, and the holders of these bearer shares controlled the corporations which held title to the properties.

The four New York buildings in Manhattan—40 Wall Street, Crown Building, Herald Center, and the building located at 200 Madison Avenue—were heavily mortgaged. However, the court awarded a lump-sum amount to the Philippines in an administrative settlement after it allowed bank creditors to foreclose the properties.
The Aquino administration failed to forge a mutual assistance agreement on criminal matters with the US Government. The Mutual Legal Assistance Treaty in Criminal Matters with the US became effective only in November 1996.

The Philippine Government’s effort to recover ill-gotten wealth is not barred by prescription. In the US, the Statute of Limitations is strictly observed. The death of former President Marcos has considerably affected the outcome of the criminal and civil cases in the US. Imelda Marcos was acquitted in the criminal indictment by the grand jury despite overwhelming evidence presented by the prosecutors. Her defense counsel succeeded in depicting her as “a poor widow who knew nothing of her husband’s activities.”

One lesson learned in the recovery of the Marcos assets abroad is that the competing claims made by third party claimants over Marcos’ deposits complicated the legal issues. These authorities should have given the Philippines its sovereign discretion to make a legal determination as to the validity of the claims and the entitlement, if any, of various claimants to the Marcos assets, after said assets have been reconveyed to the Government, in which case, the venue of their claims would have been the Philippine courts. This would have expedited the resolution of various competing claims against the Marcos deposits and the incurring of unnecessary expenses would have been avoided. As it stands now, foreign courts allow and adjudicate the merits of attachment proceedings and interpleader cases filed by other claimants over assets that have been already declared by Philippine courts to be ill-gotten and therefore forfeited in favor of the Government.

Results Obtained in Switzerland

The assets sought to be recovered in Switzerland were estimated to be worth USD1 billion. From 1986 to 2006, however, the Philippines was able to recover only (i) the USD2 million deposits of the Philippine Sugar Commission deposited at the United Overseas Bank of Geneva in 1989, (ii) the USD16 million deposits of Roberto S. Benedicto with Credit Suisse in 1990, and (iii) the USD356 million Marcos deposits, which later grew to USD658 million because of interest, for a total of only USD374 million, in principal deposits.

Obstacles encountered and lessons learned (Switzerland):

1. Delay in the Filing of the Federal Act on International Mutual Assistance on Criminal Matters Act Request

In April 1986, the Philippines filed a formal request for mutual assistance with the Federal Office for Police Matters in Switzerland, pursuant to the IMAC
against the Marcoses and their business associates. The petition requested the Swiss authorities to (i) ascertain and provide information as to the location of the assets, the names of the depositors and the banks involved, and the amounts involved; and (ii) freeze the assets to preserve the values and prevent the transfer of the assets. The filing of the petition was intended merely to extend the provisional freeze order blocking the Marcos assets. The original petition was considered defective by the Swiss authorities because it did not ask for the penal prosecution of the persons involved and for the transfer of funds, but only to safeguard its right over the Marcos deposits. This request likewise was considered an "indeterminate and generic" report since it did not contain sufficient information for the Swiss authorities to determine whether the persons mentioned in the request participated in the offenses alleged to be committed by the Marcoses or whether they were only beneficiaries to justify the transfer of funds.

Philippine authorities and Swiss lawyers hired by the Government during the initial years of the recovery effort were not familiar with the IMAC law such that they failed to discuss and provide evidence to demonstrate the cycle of criminal activities of the Marcoses and their business associates—the fundamental requirements for the immediate grant of assistance. Likewise, they initially failed to communicate and/or explain satisfactorily the nature of the civil and criminal cases, and the jurisdiction of the Philippine courts and administrative bodies in relation to the conduct of investigation of said cases. This omission considerably delayed the disposition of the Marcos case.

It was only on 21 December 1990 that the Swiss Federal Court ordered the transmission to the Philippines of the Swiss banking documents of the Marcos deposits in Geneva, Zurich, and Fribourg, Switzerland, subject to the condition that cases for the forfeiture of these deposits be filed within 1 year therefrom, failing which, the freeze of the assets will be lifted. In said ruling, the Marcos deposits would only be remitted to the Republic upon fulfillment of the following conditions:
- that there be final convictions against Mrs. Imelda Marcos,
- that she be accorded due process of law, and
- that her rights under the Swiss Federal Constitution and under the European Convention on Human Rights and Fundamental Freedoms be safeguarded.

2. Difficulty under Swiss Banking Laws in 1986 as regards Disclosure of Financial Dealings with Banks

The Swiss Federal Banking Commission authorities issued the freeze on the Marcos deposits at 6:00 pm of 24 March 1986, or 26 days after the Marcoses fled to Hawaii. On 25 March 1986, the Swiss authorities officially declared the freeze
on the assets. During this crucial period between 26 February until 24 March 1986, the Marcos assets can be re-documented or transferred to other depository banks. Because of the delay in filing the request of the International Mutual Assistance on Criminal Matters Act in 1986, some Marcos funds were possibly transferred to other banks, considering that the transfer of cash assets can be done in a matter of seconds because of our highly computerized world. The noncash assets can be done immediately thereafter. Timely and prompt action of the concerned authorities in filing a petition for mutual assistance is therefore very important.

In 1986, the banking laws of Switzerland were primarily designed to protect the banks and their clients making the disclosure thereof extremely difficult even to the Swiss authorities who regulate these banks, and foreign governments requesting assistance. Only in 1995 did Swiss authorities modify their banking laws.

Concealing ownership of trust companies, fiduciary, foundations, Anstalten, trading companies, shell companies, anonymous trading companies, etc. is a legal profession in Switzerland, making it difficult to trace beneficial owners of various fund transfers.


1. Issuance anti-corruption policies sanctioned by the UN Convention against Corruption (UNCAC): Formulation of effective anti-corruption policies as now provided under the provisions of UNCAC.
2. Revision of Statute of Limitations: Providing a longer period of prescription within which to start proceedings.
3. Freezing, seizure, and confiscation of assets: Amendment of bank secrecy law to enable faster freezing, seizure, and confiscation of illegal assets.
4. Extradition: Extradition provisions under UNCAC allowing extradition even in the absence of a formal extradition treaty will facilitate prosecution of fugitives and plundersers.
5. Mutual legal assistance: Affidavits, sworn statements, and depositions could have been obtained and used to strengthen the cases against the principal defendants under a mutual legal assistance arrangement.
6. Law enforcement cooperation: Establishment of law enforcement agencies closely cooperating with one another for better coordination.
7. Prevention and detection of transfers of proceeds of crimes: Mandatory requirements on the verification of the identity of
customers, determination of the identity of beneficial owners of funds, and monitoring of accounts would have discouraged the Marcoses, including their trustees and nominees, from depositing funds with foreign financial institutions through dummies.

8. Training and technical assistance: Capacity building for investigators and prosecutors.