

FIFTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

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SENATE

S. No. 2615

Introduced by Senator Sergio Osmeña III

EXPLANATORY NOTE

Eighteen years after the ouster of former President Ferdinand E. Marcos, the human rights violations during the dictatorship still elude justice. To the thousands of Filipinos whose civil and political rights were violated by the regime, this injustice is still a painful wound unhealed by the passage of time.

From June 30, 1965, when Marcos became President, to September 21, 1972, when he declared Martial Law and until February 25, 1986, when the Filipino people finally ousted his regime in the first peaceful People Power revolution in our history, thousands of Filipino men and women struggled against the dictatorship. They came from all sectors of Philippine society - militant workers and peasants, student activist, indigenous communities, patriotic businessmen, conscientious public servants, religious workers, Filipinos forced into exile, journalist, teachers, lawyers, doctors and other professionals, rebels from the underground and from among the Moro and Cordillera people.

The violations of human rights committed by the Marcos regime were as varied as its victims. Those with businesses or property coveted by the regime were forced to give up their assets. The greed of the dictator was matched only by the brutality of his dictatorship. Those who opposed his rule were arrested, and detained under the regime's travesty of a legal system. Many were subjected to torture and unspeakable acts of cruelty. Others became victims of 'forced disappearances' and remain missing to this day. Many more were summarily executed, 'salvaged' in secret, or killed in ruthless public massacres. Others were forced into exile abroad. One of them came back believing the filipino people were worth dying for. What eventually became a People Power revolution would not have been possible without the struggle waged by the thousands of Filipinos who fell or suffered in the darkest days of the dictatorship.

Those who survived as well as the families' left behind by those who died still bear the scars of that struggle. Eighteen years after the ouster of the Marcos dictatorship, the victims of its human rights violations have not received any reparation for the pain they went through or for the loss they suffered. This bill proposes to correct that injustice.

First, it acknowledges that compensation for victims of human rights violations is an obligation of the State. After all, it is the state that guarantees the civil and political rights of its citizens.

Second, the bill formally recognizes both the various forms of human rights violations committed during the Marcos dictatorship and those who were its victims. It gives *prima facie* recognition as human rights victims the more than 9,000 class suit plaintiffs who, ironically, found justice against the Marcos dictatorship in a foreign court. It establishes the criteria for compensating victims of human rights violations.

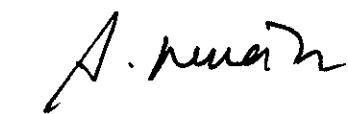
Third, it provides the statutory basis and guidelines for awarding compensation. It harmonizes the constitutional mandate to recover ill-gotten wealth from the Marcoses and their cronies with the means by which part of the funds so recovered may be used to compensate human rights victims.

Fourth, the bill sets aside a portion of the Swiss bank deposits held in escrow, subject of Civil Case 141 decided by the *Sandiganbayan* for the recovery of the ill-gotten wealth of the Marcoses as the source for compensation, even as it already appropriates a fund separate from the deposits in escrow.

Fifth, the bill directs the Commission on Human Rights (CHR) and the Presidential Commission on Good Government (PCGG) to implement the law.

Finally, it recognizes the need to officially document the history of human rights violations under the Marcos regime. It directs the CHR, the PCGG, the National Historical Institute (NHI) and the University of the Philippines (UP) to submit a report to the President, to Congress and to the Supreme Court. Ultimately, it recognizes the need to tell the truth about that part of Filipino history so it may hopefully never happen again.

The immediate passage of this bill is urged upon the members of this chamber so as to meet the urgency of granting the long-delayed compensation for the human rights victims and to comply with the Republic's bilateral as well as multilateral legal obligations arising from human rights law and litigation.



SERGIO OSMEÑA III
Senator



FIFTEENTH CONGRESS OF THE REPUBLIC)
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Senate Bill No. 2615

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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

Be it enacted by the Senate and the House of Representatives of the Republic of the Philippines in Congress assembled:

1 **SECTION 1. Short Title.** This Act shall be known as the "Human Rights Victims
2 Compensation Act of 2010".

3 **SEC. 2. Declaration of Policy.** - Article II, Section 11 of the Constitution of the
4 Republic of the Philippines declares that the State values the dignity of every human
5 person and guarantees full respect for human rights. Pursuant to the declared policy,
6 Article III, Section 12 of the Constitution prohibits the use of torture, force, violence,
7 threat, intimidation, or any other means which vitiate the free will even as the Constitution
8 mandates the compensation and rehabilitation of victims of torture or similar practices,
9 and their families. Article XIII, Section 18(6) of the Constitution also directs the
10 Commission on Human Rights (CHR) to recommend to the Congress effective measures
11 to promote human rights and to provide for compensation to victims of human rights
12 violations, or their families. By virtue of Article II, Section 2 of the Constitution adopting
13 generally accepted principles of international law as part of the law of the land, the
14 Philippines must also adhere to international human rights laws and documents, including
15 the International Covenant on Civil and Political Rights (ICCPR) which imposes on each
16 State party the obligation to take the necessary steps to adopt such laws to give effect to
17 the rights recognized therein and to ensure that any person whose rights or freedoms

1 have been violated shall have an effective remedy even if the violation is committed by
2 persons acting in an official capacity.

3 Consistent with the foregoing, it is hereby declared the policy of the State to
4 recognize the heroism of all Filipinos who were victims of summary execution, torture,
5 involuntary disappearance and other gross human rights violations committed during the
6 regime dictatorial of former President Ferdinand Marcos covering the period from
7 September 21, 1972 to February 25, 1986. The State hereby acknowledges its moral and
8 legal obligation to recognize and/or compensate said victims and/or their families for the
9 deaths, injuries, sufferings, deprivations, and damages they suffered under the Marcos
10 regime. In declaring this policy, the State also takes into account the adherence of the
11 Republic of the Philippines to the Universal Declaration of Human Rights and the
12 December 10, 1997 Swiss Federal Supreme Court decision granting anticipatory
13 restitution to the Philippines of certain Swiss bank deposits forming part of the ill-gotten
14 wealth of Ferdinand Marcos, which decision urges that the Philippines take steps to
15 compensate the victims of human rights violations under the Marcos regime.

16 **SEC. 3. *Definition of terms.*** — In this Act, the following terms shall be understood
17 as follows:

18 a. "Human Rights Violation" - A human rights violation, under this Act shall
19 include, but not be limited to, any of the following acts or omissions during the period from
20 September 21, 1972 to February 25, 1986 by persons acting in an official capacity and/or
21 agents of the State:

22 1. Any search, arrest and/or detention without a valid search warrant or
23 warrant of arrest issued by a civilian court of law, including any
24 warrantless arrest or detention carried out pursuant to the declaration of
25 Martial Law by Ferdinand Marcos as well as any arrest or detention or
26 deprivation of liberty carried out on or before February 25, 1986 on the
27 basis of an "Arrest Seize and Seizure Order (ASSO)", a "Presidential
28 Commitment Order (PCO)" or a "Preventive Detention Action (PDA)" as

1 they were defined by decrees of Ferdinand Marcos or in any manner
2 that the arrest, detention, or deprivation of liberty was effected.

- 3 2. The infliction by a person acting in an official capacity and/or an agent
4 of the State of physical injury upon, or torture or killing or violation of
5 other human rights, of any person peacefully exercising civil or political
6 rights, including the freedom of speech, assembly or organization;
7 and/or the right to petition the government for redress of grievances
8 even if such exercise was alleged to constitute or form part of rebellion,
9 sedition or "subversion" as then defined by law; and even if such
10 violation took place during or in the course of what the authorities at the
11 time deemed an illegal assembly or demonstration: *Provided*, That
12 torture in any form or under any circumstance shall be considered a
13 human rights violation;
- 14 3. Causing, through force or intimidation, the involuntary exile of a person
15 from the Philippines;
- 16 4. Causing the unjust or illegal takeover of a business, the confiscation of
17 property or the deprivation of livelihood of a person by agents of the
18 State, including those caused by Ferdinand Marcos, his spouse Imelda
19 Marcos, their immediate relatives by consanguinity or affinity, as well as
20 those persons considered as among their close relatives, associates
21 and subordinates under Executive Order No. 1, issued on February 26,
22 1986 by President Corazon Aquino in the exercise of her legislative
23 powers under the Freedom Constitution;
- 24 5. Causing, committing and/or conducting any of the following acts or
25 series of acts:
- 26 (a) involuntary disappearances;
- 27 (b) saturation drives and/or "zona"s;
- 28 (c) "hamletting" and/or food blockades;

- (d) stealing or otherwise exploiting children of persons they suspected to be engaged in acts against the Marcos regime;
 - (e) committing sexual offenses against detainees and/or in the course of conducting military and/or police operations; and
 - (f) violation of the rights of freedom of the press by causing the closure of and imposing prior restraint on media facilities, detention of its editors and/or writers;
 - (g) violation of the rights of freedom of speech and assembly, by preventing peaceful assemblies and demonstrations, dispersing them with water cannons and hitting participants with truncheons and the like and inflicting injury;
 - (h) violation of the rights of labor by preventing and dispersing peaceable strikes;
 - (i) other violation and/or abuses similar or analogous to the above including those recognized by international law.

b. "Human Rights Violation Victim" (HRVV) — For the purpose of this Act, a victim of a human rights violation is one whose human rights were violated by persons in an official capacity and/or agents of the State as these terms are defined herein. In order to qualify for compensation under this Act, the human rights violation must have occurred during the period from September 21, 1972 to February 25, 1986: *Provided*, however, That victims of human rights violations that occurred within one month after February 25, 1986 shall be entitled to compensation under this Act if they can establish

- (i) the violation was committed by agents of the State/persons acting in an official capacity loyal to the Marcos regime; and
 - (ii) the violation was committed for the purpose of preserving, maintaining, supporting or promoting the said regime.

1 c. "Persons Acting in an Official Capacity/Agents of the State" - The following
2 persons shall be deemed persons acting in an official capacity and/or agents of the State
3 under this Act:

- 4 1. Any member of the former Philippine Constabulary (PC), the former
5 integrated National Police (INP), the Armed Forces of the Philippines
6 (AFP) and the Civilian Home Defense Force (CHDF) from September
7 21, 1972 to February 26, 1986 as well as any civilian agent/s attached
8 thereto; and any member of a paramilitary group even if he is not
9 organically part of the PC, INP, AFP or CHDF so long as it is shown
10 that the group was organized, funded, supplied with equipment,
11 facilities and/or resources, and/or indoctrinated, controlled/or
12 supervised by any person acting in an official capacity/agent of the
13 state as herein defined;
- 14 2. Any member of the civil service, including citizens who held elective or
15 appointive public office at anytime from September 21, 1972 to
16 February 26, 1986;
- 17 3. Those persons referred to in Executive Order No. 1, including
18 Ferdinand Marcos, his spouse Imelda Marcos, their immediate
19 relatives by consanguinity or affinity, as well as those persons,
20 relatives, associates, and subordinates pursuant to said law, shall be
21 deemed agents of the State under this Act.

22 ***SEC. 4. Prima Facie Finding that One is a Human Rights Victim Under This Act.***

23 - The nine thousand and five hundred thirty-nine (9,539) persons named as class suit
24 plaintiffs in the Human Rights Litigation Against the Estate of Ferdinand E. Marcos and in
25 whose favor a final and executory judgment has been rendered by the United States
26 District Court in the State of Hawaii shall be entitled to the disputable presumption that
27 they are human rights violation victims (HRW) as defined in this Act. This disputable

1 presumption is subject to validation and may be contradicted or rebutted by competent
2 evidence.

3 **SEC. 5. Conclusive finding that one is a Human Rights Victim.** - Any person/s who
4 have secured or can secure in their favor a judgment or award of damages from any court
5 of the Philippines arising from a human rights violation as defined in section 3 of this Act,
6 even if the said judgment has not yet become final and executory, shall be considered
7 conclusively as a human rights victim without need of further proof.

8 **SEC. 6. Other Claimants.** - Any person who does not fall under the preceding
9 sections 4 or 5 but was a human rights victim can file a claim with the human rights
10 claims board for compensation and/or recognition.

11 A claimant under section 4 whose claim has been disallowed by the aforesaid
12 board cannot file a claim under this section.

13 **SEC. 7. Compensation.** - Any HRV qualified under this Act shall receive
14 compensation from the State as hereinafter prescribed: *Provided*, That for HRVV's who
15 are deceased, the HRVV's spouse, children, parents, nearest relative within the fourth
16 civil degree of consanguinity and/or affinity, or such other person named by the executor
17 or administrator of the deceased HRVV's estate in that order, shall be entitled to receive
18 such compensation: *Provided, further*, That any compensation received under this Act
19 shall be without prejudice to the receipt of any other sum by the HRVV from any person
20 other than the Republic in any case involving any human rights violation as defined by
21 this Act.

22 **SEC. 8. Amount of Compensation.** - The amount of compensation under this Act
23 shall be in proportion to the gravity of the human rights violation committed on the HRVV.

24 **SEC. 9. Source of Compensation.** - The funds transferred through the December
25 10, 1997 Order of the Swiss Federal Supreme Court and presently held in escrow in
26 connection with Civil Case No. 141 where the Supreme Court rendered judgment in favor
27 of the Republic of the Philippines shall become the principal source of funds for The

1 implementation of this Act. The said judgment has become final and executory and is now
2 disposable.

3 **SEC. 10. Transfer of Funds.** - From the aforesaid judgment described in the
4 preceding paragraph the amount of \$200,000,000.00 is hereby set aside and
5 appropriated to fund the purposes of this Act.

6 **SEC. 11. Documentation of Human Rights Violations by the Marcos Regime.**

7 - As part of the implementation of this Act and without prejudice to any other documentary
8 or other evidence that may be required for the award of any compensation, any HRVV
9 seeking compensation under this Act shall execute a detailed sworn statement,
10 accompanied by photographs, letters, death certificates, pleadings and other judicial or
11 quasi-judicial documents, newspaper or videotaped accounts, or materials including
12 corroborative statements of witnesses, narrating the circumstances of the human rights
13 violation committed against him. Such materials along with any other relevant documents
14 shall be compiled by the agencies mandated to implement this Act, with the assistance of
15 the National Historical Institute (NHI), the University of the Philippines (UP) and such
16 other non-governmental organizations (NGO) they may engage. Their report shall be
17 submitted to the President, the Congress and the Supreme Court within one year from
18 the effectivity of the Act.

19 **SEC. 12. Human Rights. Claims Board; Creation; Composition; Secretariat.** -

20 (a) There is hereby created an independent and quasi-judicial body to be known as
21 the Human Rights Claims Board to be composed of one (1) Chairperson and four (4)
22 members of known probity and with a deep understanding of the human rights violations
23 committed during the autocratic rule of President Marcos to be appointed by the
24 President, as follows:

25 a. Two (2) representatives from the public sector to be appointed by the
26 President, one of whom shall be chosen by the vote of 2/3 of all the
27 members as the Chairperson.

1 b. Three (3) representatives of the following non-governmental organizations
2 (NGOs) who were active in attending to the needs of human rights victims
3 during the period covered, to be nominated collectively by said NGOs and
4 appointed by the President, as members: *Provided*, That each of the NGO's
5 mentioned below may not have more than one representative on the Board
6 at any given time:

- 7 1. Task Force Detainees of the Philippines (TFDP);
8 2. Association of Major Religious Superiors (AMRSP);
9 3. National Secretariat for Social Action (NASSA);
10 4. Medical Action Group (MAG);
11 5. Free Legal Assistance Group (FLAG);
12 6. Movement of Attorneys for Brotherhood and Integrity (MABINI); and
13 7. Protestant Lawyers League of the Philippines (PLLP).

14 (b) The Human Rights Board shall be attached but shall not be under the
15 Commission on Human Rights.

16 (c) The Board shall organize itself within 30 days from completion of the
17 appointment of at least four members of the Board: thereafter, and within thirty (30) days,
18 the board shall organize its secretariat under the rules it shall promulgate.

19 **SEC. 13. *Proper Disposition of funds.*** - The Board shall ensure that the funds
20 appropriated or which may become available as compensation for human rights victims
21 are properly disbursed in accordance with the policy stated by Congress. The Board shall
22 likewise ensure that the human rights violations committed by the Marcos regime are
23 thoroughly documented. Accordingly, the Board shall promulgate the rules, guidelines,
24 procedure and criteria necessary to implement this Act within thirty (30) days from date of
25 its organization, which shall be submitted for approval to the Congressional
26 Oversight Committee composed of three (3) senators and three (3) congressmen. Upon
27 approval of the implementing Rules and Regulations by the Congressional Oversight
28 Committee, the Committee shall be *functus officio* and shall be disbanded.

1 **SEC. 14. Guidelines for the Implementing Rules.** - In implementing this Act and
2 in formulating the corresponding rules and regulations, and to ensure that all applications
3 are properly screened for fraudulent claims, the rules must provide for:

- 4 a. Transparency in the processing of the claims;
- 5 b. A procedure that allows any concerned party to oppose an application or
6 claim on the ground that it is fraudulent, fictitious, or spurious, and gives
7 that party the opportunity to question the same and to present evidence in
8 support thereof; and
- 9 c. A procedure that is speedy and expeditious without sacrificing any of the
10 parties' fundamental rights.

11 **SEC. 15. Powers and Functions of the Board.** - The Board shall have quasi-
12 judicial powers and functions, as follows:

- 13 a) to receive, evaluate, process and investigate applications for claims under this
14 Act;
- 15 b) to conduct independent administrative hearings and resolve applications for
16 claims, grant or deny the same;
- 17 c) to deputize appropriate government agencies in order to effectively implement
18 its functions;
- 19 d) to promulgate rules and regulations in order to carry out the objectives of this
20 Act; and
- 21 e) to issue, serve and enforce subpoenas *ad testificandum* and subpoenas *duces*
22 *tecum.*

23 **SEC. 16. Determination of Award.** - The Board shall follow the point system in the
24 determination of the award. The range shall be 1 to 10 points, as follows:

- 25 a) victims who died shall be given 9 to 10 points
- 26 b) victims who were tortured shall be given 4 to 9 points
- 27 c) victims who were detained shall be given 2 to 4 points

1 d) victims who were harassed and economically disadvantaged shall be given
2 1 to 2 points.

3 In each category, victims who had suffered more would receive more points. In
4 instances were a victim had suffered in more than one category, the victims shall be
5 awarded only the points in the higher category.

6 The Board shall collate and add—up all the points awarded to all the claimants and
7 divide the total amount to be awarded under this Act with the total number of points
8 collated to determine how much each point would be entitled.

9 Each claimant would then be awarded with the number of points he was awarded
10 multiplied by the value of one point.

11 **SEC. 17. *Penalties.*** - Any claimant who is found by the Board, after due hearing,
12 to have filed a false claim, shall be referred to the appropriate office for prosecution. If
13 convicted, he shall suffer imprisonment of eight to ten years and shall be deprived of the
14 right to vote in any election for any popular elective office or to be elected to such office;
15 he shall also be deprived of the public offices and employments which he may have held;
16 and shall be disqualified for any public office or employment.

17 **SEC. 18. *Roll of Victims.*** - Persons who are found to be human rights victims but
18 who opt not to collect compensation shall be given recognition by enshrining their names
19 in a Roll of Human Rights Victims to be prepared by the Board. The Roll shall be filed
20 with the National Library and in such offices or agencies, national and international, which
21 are dedicated to the prevention of human rights abuses.

22 **SEC. 19. *Period.*** - The Board shall complete their work within one year from the
23 approval of the Implementing Rules and Regulations unless the same is extended by an
24 Act of Congress.

25 **SEC. 20. *Appropriations.*** - The initial amount of ten million pesos (p
26 10,000,000.00) from the presidents contingency fund shall be used for the establishment
27 of human rights claims board to be refundable from the amount of two hundred million
28 dollars (\$200,000,000.00) stated in section 10.

1 **SEC. 21.** *Repealing Clause.* - All laws, decrees, executive orders, rules and
2 regulations, or parts thereof inconsistent with any of the provisions of this Act including
3 Section 63(b) of Republic Act No. 6657, as amended, otherwise known as the
4 Comprehensive Agrarian Reform Law of 1998, are hereby repealed or modified
5 accordingly.

6 **SEC. 22.** *Separability Clause.* — If, for any reason, any section or provision of
7 this Act is declared unconstitutional or invalid, such other sections or provisions not
8 affected thereby shall remain in full force and effect.

9 **SEC. 23.** *Effectivity Clause.* — This Act shall take effect fifteen (15) days after
10 its complete publication in at least two (2) national newspapers of general circulation.

11 Approved,